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BAR ADMISSIONS PRACTICE MATERIALS

CORPORATE
LAW

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LAW SOCIETY OF NEW BRUNSWICK

CORPORATE LAW

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THE LAW SOCIETY OF NEW BRUNSWICK

Introduction

Chapter 1

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Introduction

1. Alternative Forms of Business Entity

The alternative forms of business entity by or through which a person may carry on business in New Brunswick are:

- a) sole proprietorship;
- b) partnership;
- c) limited partnership;
- d) a corporation with share capital;
- e) joint venture;
- f) co-operative associations; and
- g) limited liability partnerships.

2. Nature of a Corporation

In popular parlance the words "company" and "corporation" are used interchangeably to refer to a body corporate established pursuant to legislation creating or permitting the incorporation of legal entities. "Company" may also be used in reference to unincorporated entities like a partnership.

With a few exceptions, corporations incorporated in New Brunswick for business purposes are subject to the *Business Corporations Act*, S.N.B. 1981, and c. B-9.1 (the NBBCA”).

3. Advantages of Incorporation

To a large extent, business undertakings in Canada are carried on through corporations with share capital, the reason being that corporations have distinct advantages over partnerships or sole proprietors. The reasons for incorporating a business in preference to the alternative forms of business entity will normally be determined by some of the following considerations.

3.1 Limited Liability of Shareholders

The corporation is a separate entity distinct from its shareholders. The corporation, not its shareholders, owns the undertaking and assets of the corporation and carries on the business. Similarly the corporate liabilities are those of the corporation; they are not the liabilities of individual shareholders.

It should be noted that the directors and officers of the corporation have specific statutory liabilities to shareholders and creditors of the corporation. Liabilities may arise in the following areas: the issuance of shares for improper consideration; payment of tax withholdings; directors' conflicting interests in contracts with corporation; improper declaration of dividends; and improper loans to shareholders.

(See: Section 76 of the NBBCA). If a substantial uninsurable risk is possible, there is a distinct advantage to incorporating a business.

3.2 Perpetual Existence

A corporation has perpetual existence and will not dissolve on the death of a shareholder or director.

With partnerships on the other hand the retirement or death or bankruptcy of a partner may result in the dissolution of the partnership itself unless the partners have otherwise agreed as one of the terms of the partnership arrangement.

3.3 Transferability of Shares

The control of a corporation can be easily transferred through the transfer of shares. A shareholder may (subject only to any restrictions imposed by the articles of the corporation or by any applicable shareholders' agreement) sell or otherwise dispose of his shares at any time, thereby causing himself to cease to be and his transferee to become a shareholder. Likewise on the death of a shareholder his shares may pass by transmission or devolution to his personal representatives or heirs. In neither case are the operations of the corporation affected.

A partnership interest, on the other hand, would generally not be capable of assignment or transfer without the consent of the remaining partners and, as mentioned above, the death of a partner will result in dissolution of the partnership unless the partners have agreed otherwise. Generally it is not possible for a new partner to be admitted to the partnership without the concurrence of the existing partners and, possibly, an amendment to the partnership agreement.

The private issuer exemption that is available under securities law (see section 1.05) requires that the transfer of the corporation's shares be subject to a restriction. This is the exemption that you will want to rely on whenever it is available since, unlike some of the other exemptions, there is no requirement to file any notice with the NBSC.

3.4 Corporation Not Liable for Acts of Shareholders

Since the corporation is a separate entity from its shareholders and the management of the corporation is vested in the board of directors (subject always to any unanimous shareholders agreement) a shareholder has no power or authority to deal with the assets of the corporation and cannot make commitments which may be binding on the corporation. In a partnership on the other hand, the acts of one partner, if within the scope of his ostensible authority, may be binding on the other partners and affect the partnership property.

3.5 Corporation May Contract With the Shareholders

Except in special circumstances a shareholder may contract or enter into business relations with the corporation and is not liable to account for any profit arising therefrom. He can also sue the body corporate, since it is recognized in law as a separate legal "persona". As a partnership has no separate existence, a partner may neither contract with nor sue the partnership.

3.6 Financing of Business

Once the business of a corporation has been established, it may increase its capital by the sale of additional shares or of debt obligations such as bonds and debentures.

3.7 Income Tax Act (Canada), R.S.C. 1985, c. I-5

Tax treatment for a business corporation is different from a partnership or a sole proprietorship and each may offer different advantages depending on the circumstances.

4. Where to Incorporate

Persons wishing to form a business corporation will generally face the choice of incorporation under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 (the “CBCA”) or one of the provincial statutes.

In the past, a view sometimes expressed was that if a corporation's activities were to be confined to one province, incorporation in that province was preferable but if the corporation proposed to carry on business in a number of provinces or in foreign countries, incorporation should be sought under the CBCA. There is however no difference between powers of a federally or provincially incorporated corporation.

The decision as to the jurisdiction of incorporation would generally depend on other factors such as the ease of incorporation and flexibility in carrying out corporate procedures, provincial licensing requirements, provincial fees and taxes, the extent to which financial and other disclosure of information must be reported, ability to obtain and maintain a desired corporate name, requirements as to residence of directors and so on.

5. Securities Regulation in New Brunswick

Securities law in New Brunswick consists of the *Securities Act*, S.N.B. 2004, c.S-5.5 (the “NBSA”) and regulations, rules adopted by the New Brunswick Securities Commission (“NBSC”), various national and multi-lateral instruments which are aimed at establishing a degree of uniformity between the provinces and various local policies and orders.

The term “security” is very broadly defined and includes, in addition to shares of a corporation, among other things:

- i. a document or record constituting evidence of title to, or an interest in, the capital, assets, property, profits, earnings or royalties of any person;
- ii. a document or record constituting evidence of an option, subscription or other interest in or to a security;
- iii. a bond, debenture, note or other evidence of indebtedness, share, stock, unit, unit certificate, participation certificate, certificate of share or interest, preorganization certificate or subscription other than a contract of insurance issued by an insurance corporation licensed under the *Insurance Act* or an evidence of deposit issued by a bank listed in Schedule I, II or III of the *Bank Act* (Canada), by a credit union as defined in the *Credit Unions Act* or by a loan corporation or trust corporation licensed under the *Loan and Trust Companies Act*;
- iv. a certificate of interest in an oil, natural gas or mining lease, claim or royalty voting trust certificate;
- v. an oil or natural gas royalty or lease or a fractional or other interest in either; and
- vi. a document, record, instrument or writing commonly known as a security.

Securities laws regulate essentially with respect to four areas:

1. Registration of persons – all persons who trade in securities must be registered in an appropriate category (i.e. dealer, underwriter or adviser) and, as a condition of such registration, must meet certain standards of conduct and expertise. Exemptions from this requirement are applicable to certain categories of trades.

2. Registration of securities – unless exempt, every issuer and every “control block” seller must prepare and register a prospectus containing certain prescribed information with the NBSC for all securities which are distributed for the first time. Each prospectus must contain full, true and plain disclosure about the issuer and the securities to be issued and a copy of the prospectus must be provided to all purchasers of the securities. Again, there are exemptions from this requirement with respect to certain types of securities and certain types of transactions.
3. Resale restrictions – securities issued under a prospectus exemption are subject to statutory hold periods during which time they may only be traded or sold to a purchaser under a transaction that qualifies for a further exemption from the prospectus requirements.
4. Continuous disclosure – following any prospectus-qualified distribution of securities, the issuer (known as a “reporting issuer”) must thereafter make regular and timely disclosure about its affairs and management. Also, directors and officers of reporting issuers must meet minimum conduct and disclosure requirements especially with respect to their personal trading in securities of the reporting issuer.

When an investor makes any investment in a corporation he/she will invariably receive shares, promissory notes, debentures, options or warrants, or some combination thereof, each of which is a “security” for the purposes of the NBSA.

The NBSA provides at s. 71(1) that, unless exempted under the NBSA or regulations:

no person shall trade in a security on the person's own account or on behalf of any other person where the trade would be a distribution of the security unless (a) a preliminary prospectus and a prospectus that are in the form prescribed by regulation have been filed with the Executive Director in relation to the security, and (b) the Executive Director has issued receipts for the preliminary prospectus and prospectus.

If a corporation wishes to issue securities or a controlling shareholder wishes to sell some of his or her securities, a prospectus must be prepared and filed or an applicable exemption must be found and, if securities are issued under such an exemption, they must be issued in compliance with applicable resale hold periods.

A privately owned corporation will generally want to issue securities under an exemption from the prospectus requirements. These exemptions are found in National Instrument 45-106 Prospectus and Registration Exemptions (“NI45-106”) which was adopted by the NBSC effective September 14, 2005. One of the more common exemptions applicable to small corporations is the Private Issuer Exemption.

Private Issuer Exemption

The private issuer exemption is probably the most relevant exemption with respect to privately owned companies. Under NI45-106 a private issuer is defined to be an issuer:

- a) that is not a reporting issuer or an investment fund;
- b) whose securities, other than non-convertible debt securities, are subject to restrictions on transfer that are contained in the issuer’s constating documents or security holders’ agreements and are beneficially owned, directly or indirectly by not more than 50 persons counting any two or

more joint registered owners as one beneficial owner and not counting employees or former employees of the issuer or its affiliates; and

- c)** that has distributed securities only to persons who are described in the private issuer exemption.

Under the private issuer exemption, a corporation that meets the definition of private issuer referred to above may distribute securities to the following persons:

- a)** a director, officer, employee, founder or control person of the issuer;
- b)** a spouse, parent, grandparent, brother, sister or child of a director, executive officer, founder or control person of the issuer;
- c)** a parent, grandparent, brother, sister or child of the spouse of a director, executive officer, founder or control person of the issuer;
- d)** a close personal friend of a director, executive officer, founder or control person of the issuer;
- e)** a close business associate of a director, executive officer, founder or control person of the issuer;
- f)** a spouse, parent, grandparent, brother, sister or child of the selling security holder or of the selling security holder's spouse;
- g)** a current holder of securities of the issuer;
- h)** an accredited investor;
- i)** a person of which a majority of the voting securities are beneficially owned by, or a majority of the directors are, persons described in paragraphs (a) to (h);
- j)** a trust or estate of which all of the beneficiaries or a majority of the trustees are persons described in paragraphs (a) to (h); or
- k)** a person that is not a member of the public.

With the exception of accredited investors, the persons or entities to which securities may be issued under the private issuer exemption are, generally speaking, persons or entities that are in some manner closely connected to the issuer. They have, through other means, access to knowledge and information concerning the issuer and therefore are not in need of the protection afforded by a prospectus.

The private issuer exemption that is available under securities law requires that the transfer of the corporation's shares be subject to a restriction. The private issuer restriction typically consists of a restriction on the transfer of shares, usually requiring approval of the directors or approval of the shareholders to any transfer. The share transfer restriction must be found in the articles or in a shareholders' agreement in order to allow a corporation to issue shares under the private issuer exemption. The example Articles of Incorporation attached as an Appendix in Chapter 2 contains the typical wording of such a restriction for the private issuer exemption.

6. Questions to be Decided Before Incorporation

Incorporating a corporation involves more than just satisfying the incorporation requirements of the applicable statute, be it the NBBCA or the CBCA or other provincial statute. Once the articles of incorporation are filed, the corporation must operate under them throughout its existence. If it appears that any amendment is required to the articles of incorporation, this may be accomplished of course through the filing of articles of amendment following shareholder approval. It is therefore desirable to consider carefully all questions before the documents for incorporation are prepared.

7. Pre-Incorporation Check List

- 1) Jurisdiction under which corporation is to be incorporated and will it require extra-provincial registration in another province/jurisdiction?
- 2) Language of incorporation documents (English or French).
- 3) Name of corporation and whether to be in English or French or both or whether to be in another language for use outside Canada.
- 4) Location and address of registered office.
- 5) Share capital – including voting rights, redemption, restrictions on transfer (as required for a private issuer for securities law purposes) etc.
- 6) Number of directors, their names and addresses and residency if a requirement under applicable legislation.
- 7) Names and addresses of officers of the corporation.
- 8) Restrictions on powers, if any.
- 9) Will the corporation be offering its shares to the public?
- 10) Should there be any pre-emptive rights in favour of existing shareholders? Under the NBBCA in the absence of special provisions in the articles of incorporation existing shareholders automatically have pre-emptive rights.
- 11) Should there be unanimous shareholders agreement?
- 12) Should the articles contain any provision which may be included in the by-laws?
- 13) Should provision be made to hold meetings outside the Province of New Brunswick?
- 14) Tax Considerations.
- 15) Pre-incorporation contracts.
- 16) Are any assets being transferred to the corporation in connection with its incorporation.

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Corporate Organization

Chapter 2

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Corporate organization

1. Jurisdiction

The majority of corporations carrying on business in New Brunswick are incorporated in New Brunswick. Occasionally a New Brunswick business will incorporate federally or in another province.

The decision with respect to the jurisdiction of incorporation depends upon many factors including the ease of incorporation, the flexibility in carrying on corporate procedures, provincial licensing requirements, provincial filing or registration fees and capital taxes, the extent to which financial and other disclosure of information must be reported, requirements as to residence of directors, the ability to obtain a particular corporate name and perhaps others.

2. Application of Business Corporations Act

The New Brunswick *Business Corporations Act* (the “NBBCA”) applies to every corporation incorporated or continued under the NBBCA and every corporation with share capital incorporated under a special Act of the Legislature after December 31, 1981 unless specifically excluded from application by the NBBCA or the special Act.

The NBBCA does not apply to a body corporate incorporated under the *Agricultural Associations Act*, R.S.N.B. 1973, c. A-5, the *Cooperative Associations Act*, S.N.B. 1978, c. C-22.1, the *Credit Unions Act*, S.N.B. 1992, c. C-32.2, the *Loan and Trust Companies Act*, S.N.B. 1987, c. L-11.2, or to an insurance company.

3. Opening the File

3.1 Use of Checklists

Annexed hereto as Appendices 1 and 2 are a sample Pre-Incorporation Questionnaire and a Checklist for Incorporation and Organization.

The Pre-Incorporation Questionnaire (Appendix 1) represents a suggested list of questions to be discussed with your client prior to actual incorporation. The questions are not intended to be exhaustive and are based upon the information that should be considered, for the most part, prior to completion and filing of the incorporating documents and the organization of the corporation.

The Checklist for Incorporation and Organization (Appendix 2) is intended to document actual instructions received as well as permit an organized view of the progress of the actual incorporation and organization.

3.2 Verify Capacity to Incorporate

Typically the lawyer acts as incorporator for the client. The incorporator must meet the requirements necessary to incorporate a company as outlined in Section 3(1) of NBBCA, as follows:

- 1) 19 years of age – if the individual is younger, you may be able to incorporate federally or in another province instead of New Brunswick
- 2) of sound mind
- 3) Cannot have the status of a bankrupt.

3.3 Reserve the Corporate Name

It is necessary to have all proposed names for corporations approved by Corporate Affairs (Service New Brunswick). Corporate Affairs no longer process applications of proposed names. There are a number of private search houses throughout the Province of New Brunswick who will complete the name search. Most of these houses will provide a preliminary review of the name records to confirm the availability of the name for registration. The private searcher will provide a report confirming the availability of the name, which must be forwarded to Corporate Affairs. Corporate Affairs reserves the right to deny the use of the proposed name. Corporate names are approved by Corporate Affairs in order to prevent violation of Section 10(1) of the NBBCA.

It is best to ask your client for more than one name in the event that the first option is not available. The estimated cost to search a name is \$45.00 plus HST, but cost varies according to the private search house completing the search. If the first name is not available, one or more alternatives will have to be tried. The price of doing so will again vary according to the private search house. If requested, Corporate Affairs will provide a list of these private search houses, but cannot recommend one over another.

In accordance with Section 8(1) of the NBBCA, "Limited", "Limitée", "Incorporated", "Incorporée" or "Corporation" or the abbreviation "Ltd.", "Ltée", "Inc." or "Corp." shall be part, other than only in a figurative or descriptive sense, of the name of every corporation but a corporation may use and may be legally designated by either the full or the abbreviated form. See attached Appendix 19 for the current Corporate Affairs guidelines on corporate names.

3.4 Corporate Seal

Once the name has been approved, order the corporate seal if the client wants to have a seal. It should be noted that a corporation in New Brunswick does not require the adoption of a seal. Section 21 of the NBBCA states that an instrument or agreement executed on behalf of a corporation by a director, an officer or agent of the corporation is not invalid merely because a corporate seal is not affixed thereto.

Previously a seal was required for real property documents, however the *Land Titles Act* does not require a seal to be affixed to document executed by a Corporation for registration under the *Land Titles Act*, however, documents subject to registration under the *Registry Act* may still require a corporate seal.

4. Procedure for Incorporating

4.1 Incorporating Documents

The documentation that must be filed with the Director under the NBBCA to complete incorporation are the Articles of Incorporation (See Appendix 3 - Form 1), the Notice of Registered Office (See Appendix 4 - Form 2) and a Notice of Directors (See Appendix 5-Form 4), all of which are prescribed by regulation. As you will note from the Instructions re Incorporation, the forms may be signed by a solicitor as the incorporator naming the permanent directors on Form 4 in order that they can sign the organizational proceedings.

4.2 Articles of Incorporation

a) Name of Incorporation:

Set out a proposed corporate name that complies with Section 8 of the NBBCA. It is necessary to have the name searched and reserved prior to filing with Corporate Affairs.

b) Share Structures:

When setting out classes of shares the best procedure is to determine your client's intentions, and, in addition, you may want to speak with the client's accountant to ensure that the proposed share structure achieves any tax objectives.

A working knowledge of the words which define the conditions and restrictions of shares set out in Part V of the NBBCA is necessary. Annexed as Appendix 9 is an example of a share structure that conforms with the requirements of the NBBCA.

c) Restrictions if any on Share Transfers:

There are two possible recitals to be inserted in item 3, Form I designating restrictions on Shares transfer as follows:

There are no restrictions on share transfers (generally the blank is filled in with the word "None")

or

"The restrictions on share transfers of the Corporation are attached as an appendix to the Articles of Incorporation." Appendix 7 contains different alternatives for inclusion in Item 3 of the Articles (Form 1) requiring either shareholder or directors' approval of share transfers.

As noted in Chapter 1, you should be careful incorporating corporations without share transfer restrictions as such a corporation may not qualify as a private issuer for the purpose of the *Securities Act*.

d) Number (or minimum and maximum number) of Directors:

Generally it is best to state a minimum and maximum number of directors. This gives flexibility to the Corporation and minimizes changes to the Articles of Incorporation.

The NBBCA does not require that directors be shareholders of the Corporation. You should however review any by-laws that the Corporation has or will enact to insure that no provisions in the by-laws require a director to hold shares.

e) Restrictions if any on Business the Corporation May Carry On:

Generally, this section is left as wide as possible to allow the Corporation to carry on any business without amending its articles.

The usual wording:

"There are no restrictions on the business the company may carry on."

or

"None".

If it is intended to restrict the business the Corporation may carry on, it may be done in two ways. The Corporation may wish to carry on only a specified business or the Corporation may wish to carry on any business except a specific business. The two alternatives are as follows:

- 1) **Particular Business (Corporation without Shareholders Agreement)**
The Corporation may only carry on the business of (state the details of the nature of the business to be carried on) and any business or activity ancillary or incidental thereto.

Particular Business (Corporation with Shareholders Agreement)
The Corporation may carry on the business of (describe business) and any business or activity ancillary or incidental thereto or any other business authorized by or in accordance with the provisions of a Unanimous Shareholders Agreement.
- 2) **Unauthorized Business (a Corporation without a Unanimous Shareholders Agreement)**
The Corporation may carry on any business activity other than (describe restricted activities).

Unauthorized Business (a Corporation that has a Shareholders Agreement)
The Corporation may carry on any business activity other than (describe restricted activities) unless further restricted by the provisions of a Unanimous Shareholders Agreement.

f) Other Provisions

Appendix 8 is a precedent schedule to the articles with respect to Item 6 - Other Provisions. These are the more commonly included provisions under this Section.

4.3 Notice of Registered Office

The full address in New Brunswick of the registered office must be stated including the postal code. If the office is changed a notice of change of Registered Office must be filed within 15 days of change.

4.4 Notice of Directors

When preparing the notice of Directors, the full name, address including postal code, occupation and telephone number must be clearly stated.

5. Share Capital

5.1 Introduction

The ownership of business corporations is divided into shares. The shareholder does not have any ownership interest in any specific asset of the corporation but usually has a right on dissolution to receive a portion of the remaining assets of the corporation after its debts are paid.

5.2 Common and Preferred Shares

The words "common" and "preferred" have no fixed meaning although the word "preferred" or "preference" may not be used to designate a class of shares unless that class has a preference or right over some other class: NBBCA Subsection 22(4).

Shares described as common shares usually are entitled, as a class, to dividends at the discretion of the directors and to receive the remaining property of the corporation on dissolution after payment of all debts and amounts to holders of shares that rank senior to the common shares.

5.3 Number of Classes

If there is only one class of share authorized in the articles of a corporation the NBBCA stipulates that the rights of the holders of those shares are equal in all respects and include the rights:

- a) to vote at shareholder meetings
- b) to receive any dividend declared; and
- c) to receive the remaining property on dissolution

If there are two or more classes the rights of each class must be different and set out in the articles. Otherwise, the classes will rank equally even if one class is described as "preferred".

5.4 Share Conditions

In the articles the number, par value (if any), designations, conditions, restrictions, rights and privileges of each class of shares must be set out. Such share provisions allocate dividend, liquidation and voting rights among the various classes of shares.

Some of the catch-words used to describe features commonly attached to shares are listed below:

- a) **Redeemable** - may be re-purchased by the corporation, usually on a pro rata basis after notice is given to all holders of the class to be redeemed;
- b) **Retractable** - redeemable at the option of the holder of the share (instead of at the option of the corporation);
- c) **Purchase for cancellation** - a corporation may under the NBBCA make an agreement with an individual shareholder to buy back a share even if the share is not redeemable;
- d) **Non-voting** - all shares vote unless otherwise stipulated in the articles; even if stipulated that a class of shares is non-voting, shares may have the right to vote when certain fundamental changes are proposed;
- e) **Par value** - the par value is a nominal issue price that may be attached to shares. A share with a par value may not be issued for less than the par value, but may be issued for more. The NBBCA concept of par value is otherwise of little significance - par value is not

necessarily the same as "stated capital" (see section 25) or "paid-up capital" under the *Income Tax Act*.

- f) **Cumulative or non-cumulative dividend** - a cumulative dividend is one that accrues whether or not the corporation declares the dividend; non-cumulative dividends do not accrue and, if not declared in the applicable period, expire.
- g) **Participating or non-participating** - a participating share is one that participates in profits of the Corporation or on liquidation, usually without any restriction.

Needless to say, when setting out the share conditions in articles of incorporation it is not sufficient to describe a share using merely the catch-word "redeemable" or "retractable" or "cumulative" etc. without also specifying the precise terms of that particular characteristic of the share, such as the redemption price, dividend rates, etc.

An example of a set of share conditions can be found at Appendix 9.

6. Issue of Shares

The statutory provisions applicable to the issuance of shares are set out in Part V of the NBBCA.

Unless a unanimous shareholder agreement deprives them of the power to do so, the issuance of shares is at the direction of the directors. The directors' resolution issuing shares generally constitutes an acceptance of an offer from the shareholder to buy shares and directs the issuance of the shares. The shareholder offer is often called a subscription. Shares can be issued for cash or for property or for past services but a promissory note or promise to pay is not sufficient consideration for the issue of a share.

Since shares must not be issued until they are fully paid, the price of the share must be determined by the directors before issue. The directors therefore determine the issue price in money and then ensure that the corporation receives cash or property that is the fair equivalent of that money amount.

For an example of a resolution issuing shares for cash (with accompanying subscription) see Appendix 10 and for an example of a resolution issuing shares for property see Appendix 11.

7. Stated Capital Account

The stated capital account is intended to reflect the consideration received by the corporation for each class (and series) of shares issued and is accounted for on a class by class or series by series basis.

The basic rule is that the value of all consideration (no more and no less) received by the corporation for shares issued by it must be added to the stated capital account for the class of shares issued. For example if 100 common shares are issued in return for \$10 each, \$1000 must be added to the stated capital account for the common shares. It does not matter whether the shares have a par value or no par value (except that a par value share cannot be issued for **less** than its par value).

There is an exception to the rule for shares issued in certain non-arm's length transactions: NBBCA Subsection 25(4). The exception may, for example, apply if a shareholder transfers property to the corporation in exchange for shares. In that case the amount added to the stated capital account for the shares issued could be the whole or any part of the value of the property

transferred to the corporation. See Appendix 11 for an example of a directors' resolution applying this exception.

Stated capital is significant since it is a component of various solvency tests provided for under the NBBCA such as determining when a corporation may declare a dividend, repurchase or redeem shares or amalgamate. Stated capital also generally equates to paid-up capital for income tax purposes which can determine the amount that may, for example, be returned to a shareholder on a tax favourable basis.

8. Organizational Proceedings

8.1 Organization of the Corporation/Preparation of the Minute Book

By virtue of subsection 7(1) of the NBBCA, "a Corporation comes into existence on the date shown in the certificate of incorporation." After receiving the Certificate of Incorporation, the next step is to organize the Corporation and prepare a minute book - the records of the Corporation. There are various providers of minute books, including Dye & Durham, www.dyedurham.ca.

A minute book is usually divided into the following sections:

- 1) Articles
- 2) By-Laws
- 3) Resolutions
- 4) Directors' Register
- 5) Shareholders' Register
- 6) Transfer Register
- 7) Shareholders' Ledger
- 8) Minutes of Shareholders
- 9) Minutes of Directors
- 10) Share Certificates
- 11) Forms Filed

In the Articles section of the minute book insert the Certificate of Incorporation and the copies of Form 1, Form 2 and Form 4 which have been filed with Corporate Affairs. Keep a copy in your file to photocopy for banks, etc. as requested.

8.2 Enactment of By-laws

After incorporation and receipt of the Certificate of Incorporation, you should attend immediately to completing the organization of the corporation in accordance with the instructions of your client. This generally means the enactment of the by-laws of the corporation by a directors' resolution and the subsequent affirmation by a resolution of the shareholders. The usual practice is to enact the by-laws as part of the directors' organizational resolutions which include the issuance of shares, and then have the shareholders affirm the by-laws, elect permanent directors and appoint the auditor (if any).

Appendices 13 and 14 are a precedent for organizational proceedings. Appendix 15 is a model for general by-law for the corporation.

8.3 Meeting of Directors

It should be noted that pursuant to subsection 62(1) of the Act that only the directors need

be involved in the initial organization of the corporation and no activity by the shareholders is necessary until the first annual meeting. However the usual practice is to adopt organizational proceedings of both directors and shareholders following incorporation, primarily because in most corporations the directors and shareholders are for the most part one and the same (or at least closely related) and it is not inconvenient to do so.

8.4 Resolution to Fix the Numbers of Directors

If the number of directors is set at between a minimum and a maximum in the articles, and no other provision is made in the articles, the number of directors within a minimum and a maximum must be fixed by a by-law.

Section 60(2) of the NBBCA does not contemplate delegating this by by-law to the directors. The authority to fix the number within the minimum and maximum can be delegated in the articles and it is not unusual to see provisions in the articles of a corporation permitting the directors or the shareholders to set the number of directors by resolution.

In such a case you would, as part of the organizational resolutions, adopt a resolution setting the size of the board of directors.

8.5 Banking Resolution and Borrowing

Included in Appendix 12 is a sample banking resolution. If you are acting for more than one party in incorporating, special attention should be paid to the form of banking resolution as generally they are more broadly worded than may be intended. Particular attention should be paid to provisions which permit delegation of signing authority. Do not hesitate to amend the standard forms recommended by financial institutions if they are not appropriate.

Because the NBBCA permits a corporation to borrow and give security the enactment of a borrowing by-law is not necessary although a standard form is included in the precedent by-laws. The banks, instead, often require confirmation and/or copies of the directors and officers registers of the corporation, the articles and the borrowing by-laws along with confirmation that any unanimous shareholder agreement does not restrict or limit the powers of the corporation to borrow and issue security.

Although the banks require the operation and verification of account agreement, they do not generally allow any amended version. You should bring to the attention of your clients the nature of the agreement and its relative one-sidedness in favour of the bank. Particular note should be made of the provisions with respect to the delivery of statements of account and the effect of a failure to notify the bank of any inaccuracies within a certain prescribed period (generally 30 days) after receipt.

8.6 Corporate Registers and Ledgers

Section 48 of the NBBCA requires that a Corporation maintain a share register where it is required to include the names, alphabetically arranged, and the latest known address of each person who is or has been a shareholder, the number of shares held by each shareholder and the date and particulars of the issue and transfer of each share.

Annexed hereto as Appendix 16 are sample Shareholders' Register, Directors' Register, Share Transfer Register and Shareholders' Ledger for a corporation with four shareholders, two

directors and two classes of shares (voting Class A and non-voting common Class B). The sample represents a situation where there are four shareholders but only two of those shareholders are directors in the corporation.

9. Ongoing Maintenance of Corporate Records

All actions taken by directors or shareholders on behalf of the corporation should be recorded in the minute book either by resolution or minutes. The corporate accountant should be consulted regarding dividends or bonuses paid and all such payments should be recorded in the minute book.

As in looking after your home or your car, continuous maintenance will ensure the corporation is running smoothly when it comes time for a re-organization, amalgamation or sale of shares, all of which require proper documentation. Ongoing annual maintenance will ensure that transactions that may be difficult in themselves are not further impeded by inaccurate corporate records.

10. Annual Proceedings

Annual Returns are required to be filed in the month following the anniversary of incorporation of the corporation. The annual proceedings for the corporation (receipt of financial statements by shareholders and directors, election or reelection of directors and appointment or reappointment of any auditor) are required to be taken within 18 months of incorporation and thereafter within 15 months of the prior annual meeting or adoption of resolutions in lieu thereof.

Annexed as Appendix 17 are precedent annual resolutions. They are relatively straightforward and purport to cover all of the proceedings necessary to be transacted annually by the shareholders.

11. Electronic Transactions

In New Brunswick, the *Electronic Transactions Act* governs electronic commerce and allows for the ability to manage corporate governance issues quickly and efficiently using electronic methods such as e-mail. Annexed hereto as Appendix 18 are sample By-Law Provisions to address electronic signatures and voting.

12. E-Filing

Under both the New Brunswick Corporate Affairs registry and the Federal Industry Canada registry certain forms can be filed online instead of delivering originals to offices.

13. Summary and Conclusion

In general, you should have a structured approach to incorporation to ensure that it is properly and efficiently carried out and completed. The necessary questionnaires, checklists and instructions should be easily available to you as well your secretary or legal assistant as should the necessary forms and precedents.

Appendix 1

INCORPORATION OF A BUSINESS CORPORATION PRE-INCORPORATION QUESTIONNAIRE

A. ARTICLES OF INCORPORATION

1. Does corporation intend to offer its securities to the public?
2. Is a special date of incorporation desired? Required?
3. Does corporation intend to operate in other jurisdictions?
4. Are name consents required?
5. Are special provisions to be considered for inclusion in articles?

- ❖ shareholders' meetings out of N.B. (ss. 84(3))
- ❖ notice of shareholders' meetings (ss. 87(5))
- ❖ removal of statutory pre-emptive rights (ss. 27(1) & (2))
- ❖ borrowing powers or restrictions
- ❖ election of directors in rotation
- ❖ other

6. Are any powers to be withheld or limited?

7. Are there to be restrictions on transfers of shares?

- ❖ common shares
- ❖ special shares
- ❖ unanimous shareholder agreement
- ❖ buy-sell agreement

8. Authorized capital to be divided into:

- ❖ common
- ❖ par value
- ❖ no par value
- ❖ limited or unlimited number
- ❖ special or preferred (classes/series)
- ❖ special provisions
- ❖ dividends
- ❖ cumulative
- ❖ participating
- ❖ voting
- ❖ redeemable
- ❖ retractable
- ❖ repurchasable
- ❖ convertible
- ❖ other provisions

9. Registered Office - street address in New Brunswick

10. Incorporators

- ❖ number
- ❖ names, addresses, telephone numbers

11. Directors

- ❖ number
- ❖ quorum
- ❖ first directors (names, addresses, occupation, telephone)

B. BYLAWS AND RESOLUTIONS

12. General bylaw to include:

Regarding the directors:

- ❖ powers
- ❖ remuneration
- ❖ removal
- ❖ meetings
- ❖ indemnification

Regarding the shareholders:

- ❖ meetings
- ❖ quorum
- ❖ loans to
- ❖ fiscal year end
- ❖ cumulative voting

13. Other resolutions to cover: location of corporate records (solicitor's office)

C. ORGANIZATION

14. Bank

- ❖ branch and signing officers
- ❖ special accounts to be opened

15. Officers' names, addresses and telephone numbers

16. Auditors or Accountants

17. Issuance of shares

18. Agreements between shareholders

- ❖ unanimous shareholder agreement
- ❖ buy-sell agreements
- ❖ voting trusts
- ❖ others

Appendix 2

CHECKLIST FOR INCORPORATION AND ORGANIZATION OF BUSINESS CORPORATION

1. **INSTRUCTIONS** received by _____ on _____.
2. **NAME**
 - suggested name _____
 - clearance by department _____
 - cleared in other jurisdictions _____
 - written confirmation to client _____
3. **ARTICLES OF INCORPORATION**
 - prepared _____ checked _____
 - incorporators _____
 - consent to use of name _____
 - executed _____
4. **INCORPORATION FEE**
 - quoted \$ _____
 - Received retainer \$ _____
5. **FILE ARTICLES, NOTICES, CONSENT(S)** Date _____
6. **ADVICE FROM SERVICE NEW BRUNSWICK**
 - date of incorporation _____
 - advised client _____
7. **SEAL (if required)**
 - ordered _____ received _____ checked by _____
8. **MINUTE BOOK**
 - ordered _____ received _____ checked by _____
9. **SHARE CERTIFICATES**
 - issued _____ checked by _____
10. **OFFICERS**
name, address, occupation, and telephone number
 - President: _____
 - Vice President: _____
 - Secretary: _____
 - Treasurer: _____
 - Others: _____
11. **DIRECTORS**
name, address, occupation and telephone number
 - _____
 - _____

12. BANKING ARRANGEMENTS

bank _____
 branch _____
 signing authority _____
 borrowing certificate _____

Prepared and checked	signed	delivered to bank
signing resolution	_____	_____
borrowing certificate	_____	_____
signature cards	_____	_____
list of directors and officers	_____	_____
Account Agreement	_____	_____
initial deposit for shares	_____	_____

13. AUDITORS

Notified _____ with copy of articles _____

14. BYLAW NO. 1 (General)

special provisions or separate bylaw(s)
 directors' remuneration
 removal of directors
 fiscal year end
 shareholders' loans
 officers – positions of authority
 executive committee
 directors' meetings, quorum
 shareholders' meeting, quorum
 casting vote
 prepared _____ checked _____

15. ORGANIZATION RESOLUTIONS - DIRECTORS

prepared _____ checked _____
 enactment of Bylaw 1 (General By-Law)
 enactment of any other bylaws
 election or appointment of officers
 issuance of shares
 form of share certificates
 banking resolution(s)
 fixing fiscal year end
 others

16. ORGANIZATION RESOLUTIONS - SHAREHOLDERS

prepared _____ checked _____

17. ARTICLES

certificate of incorporation dated _____
received _____
copies for minute book _____ auditor _____ others _

18. ORGANIZATION - COMPLETION

resolutions signed _____
bylaws signed _____
share certificates prepared _____
signed _____ registers completed

19. MINUTE BOOK COMPLETED

Received by solicitor _____

20. REPORT TO CLIENT

dictated _____ checked _____ mailed _____

21. ACCOUNT FORWARDED _____**22. CORPORATE RECORDS FORWARDED OR RETAINED**

minute book _____
seal (if requested) _____
share certificates _____
certification of _____
incorporation _____
original agreements _____

23. NATURE OF BUSINESS

licensing requirement _____
registration _____
requirement _____

24. REGISTRATIONS & LICENCES

Extra-Provincial registration(s)?
GST/HST?
Workers Compensation/WorkSafe NB?
Payroll?
Other?
Operating Licences or Permits?

Appendix 3

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**BUSINESS CORPORATIONS ACT
FORM 1
ARTICLES OF INCORPORATION
(SECTION 4)**

**LOI SUR LES CORPORATIONS COMMERCIALES
FORMULE 1
STATUTS CONSTITUTIFS
(ARTICLE 4)**

1 - Name of Corporation:

Raison sociale de la corporation:

BARCO LIMITED

2 - The classes and any maximum number of shares that the corporation is authorized to issue and any maximum aggregate amount for which shares may be issued including shares without par value and/or with par value and the amount of the par value:

Les catégories et le nombre maximal d'actions que la corporation peut émettre ainsi que le montant maximal global pour lequel les actions peuvent être émises y compris les actions sans valeur au pair ou avec valeur au pair ou les deux et le montant de la valeur au pair:

An unlimited number of common shares without nominal or par value.

3 - Restrictions, if any, on share transfers:

Restrictions, s'il y en a, au transfert d'actions:

No securities, other than non-convertible debt securities, shall be transferred without the consent of the directors or shareholders of the corporation expressed by resolution passed at a meeting of the board of directors or the shareholders or by an instrument or instruments in writing signed by all such directors or shareholders.

4 - Number (or minimum and maximum number) of directors:

Nombre (ou nombre minimum et maximum) des administrateurs:

Minimum 1 Maximum 10

5 - Restrictions, if any, on business the corporation may carry on:

Restrictions, s'il y en a, à l'activité que peut exercer la corporation:

None

6 - Other provisions, if any:

D'autres dispositions, le cas échéant:

See Schedule - "Other Provisions"

7 - Incorporators:

Fondateurs:

Date	Names - Noms	Address (include postal code) Adresses (y compris le code postal)	Signature
[date]	John Smith	123 Legal Street Saint John, NB E2E 4S4	

FOR DEPARTMENT USE ONLY

RÉSERVÉ À L'USAGE DU MINISTÈRE

Corporation No. - N^o. de Corporation

Filed - Déposé

SN0247/440307 / 45-4104 (1/09)

[Corporation]
(hereinafter referred to as the “Corporation”)

**THIS IS SCHEDULE “Other Provisions” TO THE FOREGOING FORM 1 UNDER THE
NEW BRUNSWICK BUSINESS CORPORATIONS ACT**

1. PLACE OF SHAREHOLDER MEETINGS

Notwithstanding subsections (1) and (2) of Section 84 of the *Business Corporations Act*, as from time to time in force, meetings of shareholders of the Corporation may be held at any place outside New Brunswick.

2. NOTICE OF SHAREHOLDER MEETINGS

Notwithstanding subsection (1) of Section 87 of the *Business Corporations Act*, as from time to time in force, notice of time and place of a meeting of shareholders of the Corporation shall be deemed to be properly given if sent not less than ten (10) days nor more than fifty (50) days before such meeting:

- (a) to each shareholder entitled to vote at the meeting;
- (b) to each director; and
- (c) to the auditor, if any.

3. PRE-EMPTIVE RIGHTS

- (A) Notwithstanding subsection (2) of Section 27 of the *Business Corporations Act*, as from time to time in force, but subject however to any rights arising under any unanimous shareholders agreements, the holders of equity shares of any class, in the case of the proposed issuance by the Corporation of, or the proposed granting by the Corporation of rights or options to purchase, its equity shares of any class of any shares or other securities convertible into or carrying rights or options to purchase its equity shares of any class, shall not as such, even if the issuance of the equity shares proposed to be issued or issuable upon exercise of such rights or options or upon conversion of such other securities would adversely affect the unlimited dividend rights of such holders, have the pre-emptive right as provided by Section 27 of the *Business Corporations Act* to purchase such shares or other securities.
- (B) Notwithstanding subsection (3) of Section 27 of the *Business Corporations Act*, as from time to time in force, but subject however to any rights arising under any unanimous shareholders agreements, the holders of voting shares of any class, in case of the proposed issuance by the Corporation of, or the proposed granting by the Corporation of rights or options to purchase, its voting shares of any class or any shares or options to purchase its voting shares of any class, shall not as such, even if the issuance of the voting shares proposed to be issued or issuable upon exercise of such rights or options or upon conversion of such other securities would adversely affect the voting rights of such holders, have the pre-emptive right as provided by Section 27 of the *Business Corporations Act* to purchase such shares or other securities.

4. FINANCIAL ASSISTANCE

The Corporation may, directly or indirectly, give financial assistance by means of a loan, guarantee or otherwise:

- (a) to any shareholder, director, officer or employee of the Corporation or of an affiliated corporation, or
- (b) to any associate of a shareholder, director, officer or employee of the Corporation or of an affiliated corporation; whether or not:
- (c) the Corporation is, or after giving the financial assistance would be, unable to pay its liabilities as they become due; or
- (d) the realizable value of the Corporation's assets, excluding the amount of any financial assistance in the form of a loan or in the form of assets pledged or encumbered to secure a guarantee, after giving the financial assistance, would be less than the aggregate of the Corporation's liabilities and stated capital of all classes.

5. NUMBER OF DIRECTORS

The number of directors within the minimum and maximum numbers provided for in these articles shall be as determined by resolution of the board of directors.

Appendix 4

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**BUSINESS CORPORATIONS ACT
FORM 2
NOTICE OF REGISTERED OFFICE OR
NOTICE OF CHANGE OF REGISTERED OFFICE
(SECTION 17)**

**LOI SUR LES CORPORATIONS COMMERCIALES
FORMULE 2
AVIS DE DESIGNATION OU
AVIS DE CHANGEMENT DU BUREAU ENREGISTRÉ
(ARTICLE 17)**

1 - Name of Corporation - Raison sociale de la corporation :

BARCO LIMITED

2 - Corporation No. - N° de la corporation

3 - Place and address of the registered office:

**123 MAIN STREET
SAINT JOHN, NB
E1E 2A2**

Lieu et adresse du bureau enregistré :

4 - Effective date of change:

N/A

Date d'entrée en vigueur du changement :

5 - Previous place and address of the registered office:

N/A

Demiers lieu et adresse du bureau enregistré :

Date	Signature	Description of Office Fonction
[DATE]		INCORPORATOR

SN025745-4105(05.08)

Appendix 5

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**BUSINESS CORPORATIONS ACT
FORM 4
NOTICE OF DIRECTORS OR
NOTICE OF CHANGE OF DIRECTORS
(SECTION 64, 71)**



**LOI SUR LES CORPORATIONS
COMMERCIALES
FORMULE 4
LISTE DES ADMINISTRATEURS OU
AVIS DE CHANGEMENT D'ADMINISTRATEURS
(ARTICLE 64, 71)**

1 - Name of Corporation:

Raison sociale de la corporation:

BARCO LIMITED

2 - The following persons became directors of this corporation: Liste des personnes devenues administrateurs de la corporation :

Effective Date Date d'entrée en vigueur	D/J	M/M	Y/A	
Name / Nom	Residential Address or Address for Service Adresse résidentielle ou adresse pour fin de signification			Occupation Téléphone
N/A				

3 - The following persons ceased to be directors of the corporation:

Liste des personnes qui ont cessé d'être administrateurs de la corporation :

Effective Date Date d'entrée en vigueur	D/J	M/M	Y/A	
Name / Nom	Residential Address or Address for Service Adresse résidentielle ou adresse pour fin de signification			
N/A				

4 - The directors of the corporation now are:

Administrateurs actuels de la corporation :

Name / Nom	Residential Address or Address for Service Adresse résidentielle ou adresse pour fin de signification	Occupation	Telephone Téléphone
JAMES E. SMITH	123 Cedarview Street Saint John, NB E3E 2A2	Businessman	765-4321

Date	Signature	Description of Office Fonction
[date]		Incorporator

For Department Use Only / Réservé à l'usage du ministère

Form 4 / Formule 4
Filed / Déposé

SND256/45-4119(0608)

Appendix 6

ARTICLES OF INCORPORATION

AUTHORIZED CAPITAL ALTERNATIVES (para. 3 of Form 1)

Common Shares (Some Examples)

An unlimited number of common shares without par value

An unlimited number of common shares of a par value of \$100.00 each

500 common shares without par value

An unlimited number of common shares without par value; - the maximum aggregate amount for which the common shares may be issued shall not exceed \$500,000.00*

Common and Special Shares (Some Examples)

An unlimited number of common shares without par value and an unlimited number of 8% non-voting, cumulative, redeemable, retractable preferred shares without par value, the terms and conditions of which are set out in the attached Schedule – Share Structure.

1,000 common shares without par value and 5,000, 8% non-voting, non-cumulative, redeemable and retractable preferred shares of a par value of \$100 each, the terms and conditions of which are set out in the attached Schedule – Share Structure.

An unlimited number of common shares without par value and the maximum aggregate amount for which the common shares may be issued shall not exceed \$100,000 and 10,000, 8% non-voting, non-cumulative, redeemable and retractable preferred shares of a par value of \$100 each, the terms and conditions of which are set out in the attached Schedule – Share Structure.

An unlimited number of common shares without par value and an unlimited number of 8% non-voting, non-cumulative, redeemable, retractable preferred shares of a par value of \$1 each, the terms and conditions of which are set out in the attached Schedule – Share Structure.

[*NOTE: Typically the maximum value is no longer included in the authorized capital terms. References to maximum amounts are generally historic in nature because at one time the amount to be paid for annual filings was dependent on the value of authorized capital. Today annual filing fees are set without dependence on authorized capital amount.]

Appendix 7
SCHEDULE TO
ARTICLES OF INCORPORATION OF
[Corporation]

PARAGRAPH 4 - RESTRICTIONS ON SHARE TRANSFERS

Alternative 1 - Shareholders' approval

No securities, other than non-convertible debt securities, shall be transferred without the (unanimous) consent of (at least 2/3 of) all the shareholders of the corporation or in accordance with the provisions of a unanimous shareholder agreement.

Alternative 2 - Directors' approval

No securities, other than non-convertible debt securities, shall be transferred without the (unanimous) consent of (at least 2/3 of) all the directors of the corporation or in accordance with the provisions of a unanimous shareholder agreement.

Alternative 3 - Directors' and Shareholder's approval

No securities, other than non-convertible debt securities, shall be transferred without the consent of the directors or shareholders of the corporation expressed by resolution passed at a meeting of the board of directors or the shareholders or by an instrument or instruments in writing signed by all such directors or shareholders.

Appendix 8
SCHEDULE TO
ARTICLES OF INCORPORATION OF
[CORPORATION]

1. PLACE OF SHAREHOLDER MEETINGS

Notwithstanding subsections (1) and (2) of Section 84 of the *Business Corporations Act*, as from time to time in force, meetings of shareholders of the Corporation may be held at any place outside New Brunswick including Montreal, Toronto, Vancouver and New York.

2. NOTICE OF SHAREHOLDER MEETINGS

Notwithstanding subsection (1) of Section 87 of the *Business Corporations Act*, as from time to time in force, notice of time and place of a meeting of shareholders of the Corporation shall be deemed to be properly given if sent not less than ten (10) days nor more than fifty (50) days before such meeting:

- (a) to each shareholder entitled to vote at the meeting;
- (b) to each director; and
- (c) to the auditor, if any.

3. PRE-EMPTIVE RIGHTS

- (A) Notwithstanding subsection (2) of Section 27 of the *Business Corporations Act*, as from time to time in force, but subject however to any rights arising under any unanimous shareholders agreements, the holders of equity shares of any class, in the case of the proposed issuance by the Corporation of, or the proposed granting by the Corporation of rights or options to purchase, its equity shares of any class of any shares or other securities convertible into or carrying rights or options to purchase its equity shares of any class, shall not as such, even if the issuance of the equity shares proposed to be issued or issuable upon exercise of such rights or options or upon conversion of such other securities would adversely affect the unlimited dividend rights of such holders, have the pre-emptive right as provided by Section 27 of the *Business Corporations Act* to purchase such shares or other securities.
- (B) Notwithstanding subsection (3) of Section 27 of the *Business Corporations Act*, as from time to time in force, but subject however to any rights arising under any unanimous shareholders agreements, the holders of voting shares of any class, in case of the proposed issuance by the Corporation of, or the proposed granting by the Corporation of rights or options to purchase, its voting shares of any class or any shares or options to purchase its voting shares of any class, shall not as such, even if the issuance of the voting shares proposed to be issued or issuable upon exercise of such rights or options or upon conversion of such other securities would adversely affect the voting rights of such holders, have the pre-emptive right as provided by Section 27 of the *Business Corporations Act* to purchase such shares or other securities.

4. FINANCIAL ASSISTANCE

The Corporation may, directly or indirectly, give financial assistance by means of a loan, guarantee or otherwise:

- (a) to any shareholder, director, officer or employee of the Corporation or of an affiliated corporation, or
- (b) to any associate of a shareholder, director, officer or employee of the Corporation or of an affiliated corporation;

whether or not:

- (c) the Corporation is, or after giving the financial assistance would be, unable to pay its liabilities as they become due; or
- (d) the realizable value of the Corporation's assets, excluding the amount of any financial assistance in the form of a loan or in the form of assets pledged or encumbered to secure a guarantee, after giving the financial assistance, would be less than the aggregate of the Corporation's liabilities and stated capital of all classes.

5. NUMBER OF DIRECTORS

The number of directors within the minimum and maximum numbers provided for in these articles shall be as determined by resolution of the board of directors.

Appendix 9

SHARE CONDITIONS THIS IS SCHEDULE "I" TO THE FOREGOING FORM 1 UNDER THE NEW BRUNSWICK BUSINESS CORPORATIONS ACT

The Corporation is authorized to issue:

- a) an unlimited number of Common shares, without nominal or par value;
- b) an unlimited number of Class A Preferred shares, without nominal or par value; and
- c) an unlimited number of Class B Preferred shares, without nominal or par value.

I. The Common shares shall have attached thereto the following rights, privileges, restrictions and conditions:

- a) **Voting.** Each Common share shall entitle the holder thereof to one (1) vote at all meetings of the shareholders of the Corporation (except meetings at which only holders of another specified class of shares are entitled to vote pursuant to the provisions hereof or pursuant to the provisions of the Act).
- b) **Dividends.** The holders of the Common shares shall be entitled to receive, as and when declared by the board of directors, subject to the rights, privileges, restrictions and conditions attaching to the Class A Preferred shares and Class B Preferred shares, in equal amounts per Common share, dividends payable in money, property or by the issue of fully paid shares of the capital of the Corporation.
- c) **Liquidation, etc.** In the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or other distribution of assets of the Corporation among shareholders for the purpose of winding-up its affairs, subject to the rights, privileges, restrictions and conditions attaching to the Class A Preferred shares and the Class B Preferred shares, the holders of the Common shares shall be entitled to receive, in equal amounts per Common share, the remaining property of the Corporation.

II. The Class A Preferred shares shall have attached thereto the following rights, privileges, restrictions and conditions:

- a) **Non-Voting.** Subject to the provisions of the Act or as otherwise expressly provided herein, the holders of the Class a Preferred shares shall not be entitled to receive notice of, nor to attend or vote at meetings of the shareholders of the Corporation.
- b) **Dividends.** The holders of the Class A Preferred shares shall be entitled to receive during each month, as and when declared by the board of directors, but always in preference and priority to any payment of dividends on the Class B Preferred shares and the Common shares or any other shares ranking junior to the Class A Preferred shares non-cumulative dividends at a fixed rate of one half of one percent (0.50%) per month calculated on the Class A Preferred Redemption Price (as hereinafter defined in paragraph II. (h)) of each such share payable in money, property or by the issue of fully paid shares of any class of the Corporation. The holders of the Class a Preferred shares shall not be entitled to any dividend in excess of the dividend hereinbefore provided for.

- c) **Liquidation, etc.** In the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or other distribution of assets of the Corporation among shareholders for the purpose of winding-up its affairs, the holders of the Class A Preferred shares shall be entitled to receive for each Class A Preferred share, in preference and priority to any distribution of the property or assets of the Corporation to the holders of the Class B Preferred shares, the Common shares or to any other shares ranking junior to the Class A Preferred shares, an amount equal to the Class A Preferred Redemption Price plus all declared and unpaid dividends thereon, but shall not be entitled to share any further in the distribution of the property or assets of the Corporation.
- d) **Redemption by Corporation.** The Corporation may, in the manner hereinafter provided, redeem at any time all, or from time to time any part, of the outstanding Class A Preferred shares on payment for each Class A Preferred share to be redeemed of the Class A Preferred Redemption Price plus all declared and unpaid dividends thereon (in paragraphs II. (e), (f) and (g) called the “**Redemption Price**”).
- e) **Procedure on Redemption.** Before redeeming any Class A Preferred shares, the Corporation shall mail or deliver to each person who, at the date of such mailing or delivery, shall be a registered holder of Class A Preferred shares to be redeemed, notice of the intention of the Corporation to redeem such shares held by such registered holder; such notice shall be delivered to, or mailed by ordinary prepaid post addressed to, the last address of such holder as it appears on the records of the Corporation, or in the event of the address of any such holder not appearing on the records of the Corporation, then to the last address of such holder known to the Corporation, at least five (5) days before the date specified for redemption; such notice shall set out the Redemption Price, the date on which the redemption is to take place and, if part only of the Class A Preferred shares held by the person to whom it is addressed is to be redeemed, the number thereof so to be redeemed; on or after the date so specified for redemption the Corporation shall pay or cause to be paid the Redemption Price to the registered holders of the Class A Preferred shares to be redeemed on presentation and surrender of the certificates for the Class A Preferred shares so called for redemption at the registered office of the Corporation or at such other place or places as may be specified in such notice, and the certificates for such Class A Preferred shares shall thereupon be cancelled, and the Class A Preferred shares represented thereby shall thereupon be redeemed; from and after the date specified for redemption in such notice, the holders of the Class A Preferred shares called for redemption shall cease to be entitled to dividends in respect of such shares and shall not be entitled to exercise any of the rights of the holders thereof, except the right to receive the Redemption Price, unless payment of the Redemption Price shall not be made by the Corporation in accordance with the foregoing provisions, in which case the rights of the holders of such shares shall remain unaffected; on or before the date specified for redemption, the Corporation shall have the right to deposit the Redemption Price of the Class A Preferred shares called for redemption in a special account with any chartered bank or trust company in Canada named in the notice of redemption, to be paid, without interest, to or to the order of the respective holders of such Class A Preferred shares called for redemption, upon presentation and surrender of the certificates representing the same and, upon such deposit being made or upon the date specified for redemption, whichever is later, the Class A Preferred shares in respect whereof such deposit shall have been made, shall be deemed to be redeemed and the rights of the respective holders thereof, after such deposit or after such redemption date,

as the case may be, shall be limited to receiving, out of the moneys so deposited, without interest, the Redemption Price applicable to their respective Class A Preferred shares against presentation and surrender of the certificates representing such Class A Preferred shares. If less than all of the Class A Preferred shares are to be redeemed the shares to be redeemed shall be redeemed pro rata, disregarding fractions, unless the holders of the Class A Preferred shares unanimously agree to the adoption of another method of selection of the Class A Preferred shares to be redeemed. If less than all of the Class A Preferred shares represented by any certificate be redeemed, a new certificate for the balance shall be issued.

- f) **Redemption by Holder.** A holder of Class A Preferred shares shall be entitled to require the Corporation to redeem at any time all, or from time to time any part, of the Class A Preferred shares registered in the name of such holder by tendering to the Corporation at its registered office the share certificate(s) representing the Class A Preferred shares which the registered holder desires to have the Corporation redeem together with a request in writing specifying (i) the number of Class A Preferred shares which the registered holder desires to have redeemed by the Corporation and (ii) the business day (in this paragraph referred to as the “**Redemption Date**”) on which the holder desires to have the Corporation redeem such Class A Preferred shares, which Redemption Date shall not be less than five (5) days after the day on which the request in writing is given to the Corporation. Upon receipt of the share certificate(s) representing the Class A Preferred shares which the registered holder desires to have the Corporation redeem together with such a request, the Corporation shall on, or at its option, before, the Redemption Date redeem such Class A Preferred shares by paying to the registered holder thereof, for each share to be redeemed, an amount equal to the Redemption Price in respect thereof; such payment shall be made by cheque payable at par at any branch of the Corporation's bankers for the time being in Canada. The said Class A Preferred shares shall be deemed to be redeemed on the date of payment of the Redemption Price and from and after such date such Class A Preferred shares shall cease to be entitled to dividends and the holders thereof shall not be entitled to exercise any of the rights of the holders of Class A Preferred shares in respect thereof. Notwithstanding the foregoing, the Corporation shall only be obliged to redeem Class A Preferred shares so tendered for redemption to the extent that such redemption would not be contrary to any applicable law, and if such redemption of any such Class A Preferred shares would be contrary to any applicable law, the Corporation shall only be obliged to redeem such Class A Preferred shares to the extent that the moneys applied thereto shall be such amount (rounded to the next lower multiple of one hundred dollars (\$100.00)) as would not be contrary to such law, in which case the Corporation shall pay to each holder his pro rata share of the purchase moneys allocable. If less than all of the Class A Preferred shares represented by any certificate be redeemed, a new certificate for the balance shall be issued.
- g) **Purchase for Cancellation.** The Corporation may purchase for cancellation at any time all, or from time to time any part, of the Class A Preferred shares outstanding, by private contract at any price, with the unanimous consent of the holders of the Class A Preferred shares then outstanding, or by invitation for tenders addressed to all the holders of the Class A Preferred shares at the lowest price at which, in the opinion of the directors, such shares are obtainable but not exceeding the Redemption Price thereof. If less than all of the Class A Preferred shares represented by any certificate be purchased for cancellation, a new certificate for the balance shall be issued.

- h) **Class A Preferred Redemption Price.** For the purposes of the foregoing paragraphs II. (b), (c) and (d), the “**Class A Preferred Redemption Price**” of each Class A Preferred share shall be an amount equal to the aggregate of (i) the monetary consideration received by the Corporation upon the issuance of such share, if such share has been issued for money and (ii) the fair market value of the consideration received by the Corporation (including, without limitation, shares of another class of the Corporation) upon the issuance of such share, if such share has been issued in whole or in part for consideration other than money, less (iii) the aggregate of all amounts by which the stated capital per Class A Preferred share has been reduced from the date of issuance until immediately before the time of redemption. Subject to the provisions of the following sub-paragraph, such fair market value is to be determined by the directors on the basis of generally accepted accounting and valuation principles.

The fair market value determined as hereinabove provided for shall be subject to revision in accordance with any binding agreement with, or decision by, the appropriate taxation authorities, or any judgment of a court of competent jurisdiction.

In the event that any such agreement, decision or judgment shall result in a final determination under the provisions of the appropriate taxation legislation and the amount thereby determined is an amount other than the amount for which such share was originally issued as determined by the directors in accordance with the preceding subparagraph, such finally determined amount for the purpose of the appropriate taxation legislation shall then be deemed to have been the fair market value of the consideration received by the Corporation upon the issuance of such Class A Preferred share. Such final determination shall reflect any assessment by the Minister of National Revenue or other taxing authority to which no appeal is taken or any agreement reached by the Corporation or any holder of a Class A Preferred share and a said taxing authority in settlement of a dispute regarding such assessment or proposed assessment, or any decision by a court or tribunal of competent jurisdiction regarding the fair market value of the Class A Preferred share or the consideration received by the Corporation upon the issuance of such Class A Preferred share to which no appeal may be taken or the period during which an appeal may be taken has expired.

In the event that, subsequent to any redemption of Class A Preferred shares, the Class A Preferred Redemption Price of each Class A Preferred share is adjusted pursuant to a revision of fair market value as aforementioned, either the Corporation shall pay out to the former holders of such redeemed Class A Preferred shares or the said former holders of the redeemed Class A Preferred shares will reimburse the Corporation as the case may be, the difference between the Class A Preferred Redemption Price of the said Class A Preferred shares as adjusted and the amount paid by the Corporation upon redemption, within sixty (60) days from the date of adjustment of the Class A Preferred Redemption Price.

- i) **Stated Capital.** In the event that only part of the amount of the consideration received by the Corporation for any Class A Preferred share issued by the Corporation is added to the stated capital account of the Class A Preferred shares, such Class A Preferred share shall be deemed to have been issued for the full amount of the consideration received, for all purposes of these articles (except only with respect to the stated capital of such Class A Preferred shares) including, but without limiting the generality of the foregoing, dividend rights, redemption rights and rights upon liquidation and dissolution.

- j) **No Change.** No change to any of the provisions of paragraphs II. (a) to (i) or of this paragraph (j) shall have any force or effect until it has been approved by a majority of not less than two-thirds (2/3) of the votes cast by the holders of the Class A Preferred shares, voting separately as a class at a meeting of such holders specially called for that purpose, or by a resolution in writing signed by all the holders of the Class A Preferred shares, in addition to any other approval required by the Act.

III. the Class B Preferred shares shall have attached thereto the following rights, privileges, restrictions and conditions:

- a) **Non-Voting.** Subject to the provisions of the Act or as otherwise expressly provided herein, the holders of the Class B Preferred shares shall not be entitled to receive notice of, nor to attend or vote at meetings of the shareholders of the Corporation.
- b) **Dividends.** The holders of the Class B Preferred shares shall be entitled to receive during each month, as and when declared by the board of directors, but always in preference and priority to any payment of dividends on the Common shares or any other shares ranking junior to the Class B Preferred shares, but after payment of dividends to the holders of the Class A Preferred shares, non-cumulative dividends at a fixed rate of fifty-four one hundredths of one percent (0.54%) per month calculated on the Class B Preferred Redemption Price (as hereinafter in paragraph III. (h) defined) of each such share payable in money, property or by the issue of fully paid shares of any class of the Corporation. The holders of the Class B Preferred shares shall not be entitled to any dividend in excess of the dividend hereinbefore provided for.
- c) **Liquidation, etc.** In the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or other distribution of assets of the Corporation among shareholders for the purpose of winding-up its affairs, the holders of the Class B Preferred shares shall be entitled to receive for each Class B Preferred share, in preference and priority to any distribution of the property or assets of the Corporation to the holders of the Common shares or any other shares ranking junior to the Class B Preferred shares, but after distribution to the holders of the Class A Preferred shares, an amount equal to the Class B Preferred Redemption Price plus all declared and unpaid dividends thereon, but shall not be entitled to share any further in the distribution of the property or assets of the Corporation.
- d) **Redemption by Corporation.** The Corporation may, in the manner hereinafter provided, redeem at any time all, or from time to time any part, of the outstanding Class B Preferred shares on payment for each Class B Preferred share to be redeemed of the Class B Preferred Redemption Price plus all declared and unpaid dividends thereon (in paragraphs III. (e), (f) and (g) called the “**Redemption Price**”).
- e) **Procedure on Redemption.** Before redeeming any Class B Preferred shares, the Corporation shall mail or deliver to each person who, at the date of such mailing or delivery, shall be a registered holder of Class B Preferred shares to be redeemed, notice of the intention of the Corporation to redeem such shares held by such registered holder; such notice shall be delivered to, or mailed by ordinary prepaid post addressed to, the last address of such holder as it appears on the records of the Corporation, or in the event of the address of any such holder not appearing on the records of the Corporation, then to the last address of such holder known to the Corporation, at least five (5) days before the date specified for redemption; such notice shall set out the Redemption Price, the date on which the redemption is to take place and, if part only of the Class B Preferred shares held by the person to whom it is addressed is to be redeemed, the

number thereof so to be redeemed; on or after the date so specified for redemption the Corporation shall pay or cause to be paid the Redemption Price to the registered holders of the Class B Preferred shares to be redeemed on presentation and surrender of the certificates for the Class B Preferred shares so called for redemption at the registered office of the Corporation or at such other place or places as may be specified in such notice, and the certificates for such Class B Preferred shares shall thereupon be cancelled, and the Class B Preferred shares represented thereby shall thereupon be redeemed; from and after the date specified for redemption in such notice, the holders of the Class B Preferred shares called for redemption shall cease to be entitled to dividends in respect of such shares and shall not be entitled to exercise any of the rights of the holders thereof, except the right to receive the Redemption Price, unless payment of the Redemption Price shall not be made by the Corporation in accordance with the foregoing provisions, in which case the rights of the holders of such shares shall remain unaffected; on or before the date specified for redemption, the Corporation shall have the right to deposit the Redemption Price of the Class B Preferred shares called for redemption in a special account with any chartered bank or trust company in Canada named in the notice of redemption, to be paid, without interest, to or to the order of the respective holders of such Class B Preferred shares called for redemption, upon presentation and surrender of the certificates representing the same and, upon such deposit being made or upon the date specified for redemption, whichever is later, the Class B Preferred shares in respect whereof such deposit shall have been made, shall be deemed to be redeemed and the rights of the respective holders thereof, after such deposit or after such redemption date, as the case may be, shall be limited to receiving, out of the moneys so deposited, without interest, the Redemption Price applicable to their respective Class B Preferred shares against presentation and surrender of the certificates representing such Class B Preferred shares. If less than all of the Class B Preferred shares are to be redeemed, the shares to be redeemed shall be redeemed pro rata, disregarding fractions, unless the holders of the Class B Preferred shares unanimously agree to the adoption of another method of selection of the Class B Preferred shares to be redeemed. If less than all of the Class B Preferred shares represented by any certificate be redeemed, a new certificate for the balance shall be issued.

- f) **Redemption by Holder.** A holder of Class B Preferred shares shall be entitled to require the Corporation to redeem at any time all, or from time to time any part, of the Class B Preferred shares registered in the name of such holder by tendering to the Corporation at its registered office the share certificate(s) representing the Class B Preferred shares which the registered holder desires to have the Corporation redeem together with a request in writing specifying (i) the number of Class B Preferred shares which the registered holder desires to have redeemed by the Corporation and (ii) the business day (in this paragraph referred to as the “**Redemption Date**”) on which the holder desires to have the Corporation redeem such Class B Preferred shares, which Redemption Date shall not be less than five (5) days after the day on which the request in writing is given to the Corporation. Upon receipt of the share certificate(s) representing the Class B Preferred shares which the registered holder desires to have the Corporation redeem together with such a request, the Corporation shall on, or at its option, before, the Redemption Date redeem such Class B Preferred shares by paying to the registered holder thereof, for each share to be redeemed, an amount equal to the Redemption Price in respect thereof; such payment shall be made by cheque payable at par at any branch of the Corporation's bankers for the time being in Canada. The said Class B Preferred shares shall be deemed to be redeemed on the date of payment of the Redemption Price and from and after such date such Class B Preferred shares shall cease to be entitled to dividends and the holders thereof shall not be entitled to exercise any of the rights of the holders of Class B Preferred shares in respect thereof. Notwithstanding the foregoing, the Corporation shall only be obliged to redeem Class B Preferred shares so tendered for redemption to the extent that such redemption would not

be contrary to any applicable law, and if such redemption of any such Class B Preferred shares would be contrary to any applicable law, the Corporation shall only be obliged to redeem such Class B Preferred shares to the extent that the moneys applied thereto shall be such amount (rounded to the next lower multiple of one hundred dollars (\$100.00)) as would not be contrary to such law, in which case the Corporation shall pay to each holder his pro rata share of the purchase moneys allocable. If less than all of the Class B Preferred shares represented by any certificate be redeemed, a new certificate for the balance shall be issued.

- g) **Purchase for Cancellation.** The Corporation may purchase for cancellation at any time all, or from time to time any part, of the Class B Preferred shares outstanding, by private contract at any price, with the unanimous consent of the holders of the Class B Preferred shares then outstanding, or by invitation for tenders addressed to all the holders of the Class B Preferred shares at the lowest price at which, in the opinion of the directors, such shares are obtainable but not exceeding the Redemption Price thereof. If less than all of the Class B Preferred shares represented by any certificate be purchased for cancellation, a new certificate for the balance shall be issued.
- h) **Class B Preferred Redemption Price.** For the purposes of the foregoing paragraphs III. (b), (c) and (d), the “**Class B Preferred Redemption Price**” of each Class B Preferred share shall be an amount equal to the aggregate of (i) the monetary consideration received by the Corporation upon the issuance of such share, if such share has been issued for money and (ii) the fair market value of the consideration received by the Corporation (including, without limitation, shares of another class of the Corporation) upon the issuance of such share, if such share has been issued in whole or in part for consideration other than money, less (iii) the aggregate of all amounts by which the stated capital per Class B Preferred share has been reduced from the date of issuance until immediately before the time of redemption. Subject to the provisions of the following subparagraph, such fair market value is to be determined by the directors on the basis of generally accepted accounting and valuation principles.

The fair market value determined as hereinabove provided for shall be subject to revision in accordance with any binding agreement with, or decision by, the appropriate taxation authorities, or any judgment of a court of competent jurisdiction. In the event that any such agreement, decision or judgment shall result in a final determination under the provisions of the appropriate taxation legislation and the amount thereby determined is an amount other than the amount for which such share was originally issued as determined by the directors in accordance with the preceding subparagraph, such finally determined amount for the purpose of the appropriate taxation legislation shall then be deemed to have been the fair market value of the consideration received by the Corporation upon the issuance of such Class B Preferred share. Such final determination shall reflect any assessment by the Minister of National Revenue or other taxing authority to which no appeal is taken or any agreement reached by the Corporation or any holder of a Class B Preferred share and a said taxing authority in settlement of a dispute regarding such assessment or proposed assessment, or any decision by a court or tribunal of competent jurisdiction regarding the fair market value of the Class B Preferred share or the consideration received by the Corporation upon the issuance of such Class B Preferred share to which no appeal may be taken or the period during which an appeal may be taken has expired.

In the event that, subsequent to any redemption of Class B Preferred shares, the Class B Preferred Redemption Price of each Class B Preferred share is adjusted pursuant to a revision of fair market value as aforementioned, either the Corporation shall pay out to the former holders of such redeemed Class B Preferred shares or the said former holders of the redeemed Class B

Preferred shares will reimburse the Corporation as the case may be, the difference between the Class B Preferred Redemption Price of the said Class B Preferred shares as adjusted and the amount paid by the Corporation upon redemption, within sixty (60) days from the date of adjustment of the Class B Preferred Redemption Price.

- i) **Stated Capital.** In the event that only part of the amount of the consideration received by the Corporation for any Class B Preferred share issued by the Corporation is added to the stated capital account of the Class B Preferred shares, such Class B Preferred share shall be deemed to have been issued for the full amount of the consideration received, for all purposes of these articles (except only with respect to the stated capital of such Class B Preferred shares) including, but without limiting the generality of the foregoing, dividend rights, redemption rights and rights upon liquidation and dissolution.
- j) **No Change.** No change to any of the provisions of paragraphs III. (a) to (i) or of this paragraph (j) shall have any force or effect until it has been approved by a majority of not less than two-thirds (2/3) of the votes cast by the holders of the Class B Preferred shares, voting separately as a class at a meeting of such holders specially called for that purpose, or by a resolution in writing signed by all the holders of the Class B Preferred shares, in addition to any other approval required by the Act.

Appendix 10

RESOLUTIONS OF THE BOARD OF DIRECTORS OF [CORPORATION] (The “Corporation”)

BE IT RESOLVED THAT:

1. the subscription of Anne Jones for One Hundred (100) common shares in the capital of the Corporation at the subscription price of One Dollar (Cdn\$1.00) per share be and the same is hereby accepted; and
2. the Corporation having received the sum of One Hundred Dollars (Cdn\$100.00) in full payment of the said One Hundred (100) common shares subscribed for by Anne Jones, the said One hundred (100) common shares be issued as fully paid and non-assessable and a certificate representing the 100 common shares be issued to Anne Jones.

Each and every one of the foregoing resolutions is hereby consented to by the signature of the director of [CORPORATION] pursuant to the New Brunswick *Business Corporations Act* this [\[DATE\]](#).

John Doe

SUBSCRIPTION

TO: DIRECTORS OF [CORPORATION]

DATE: [DATE]

The undersigned hereby subscribes for and agrees to take up 100 common shares without nominal or par value in the capital stock of [CORPORATION] and tenders herewith the sum of \$100.00 in full payment of the subscription price for such shares.

The undersigned hereby requests that a share certificate representing the said shares be issued in the name of the undersigned.

Anne Jones

ACCEPTED this [DATE].

[CORPORATION]

Per: _____

Appendix 11

RESOLUTIONS OF THE SOLE DIRECTOR OF [CORPORATION] (The "Corporation")

The undersigned, being the sole director of [CORPORATION], pursuant to the *Business Corporations Act*, by his signature, hereby passes the following resolutions:

WHEREAS the Corporation has entered into an agreement dated [DATE] (the "Purchase Agreement") dated the [DATE], made between John Doe (the "Vendor") and the Corporation, the Corporation purchased from the Vendor the undertaking and assets of the business of the Vendor (the "Purchased Assets"), on the terms and conditions therein set out;

AND WHEREAS the purchase price of \$100,000 for the Purchased Assets is, in accordance with the provisions of the Purchase Agreement, to be satisfied by the issuance to the Vendor of 1000 common shares without nominal or par value in the capital of the Corporation;

BE IT RESOLVED THAT:

- 1) The execution and delivery of the Purchase Agreement by any officer or director of the Corporation is ratified and confirmed and any officer or director of the Corporation is authorized and directed to execute and deliver under the corporate seal or otherwise, with any alterations, additions, amendments or deletions as such officer or director may approve and whose signature shall be conclusive evidence of approval, all documents or instruments in writing, and to do all other acts or things as such officer or director considers necessary, to give effect to this resolution and to complete the transactions contemplated by the Purchase Agreement;
- 2) in accordance with the Purchase Agreement between the Vendor and the Corporation, 1000 common shares without nominal or par value in the capital stock of the Corporation be and the same are hereby issued to the Vendor;
- 3) the directors of the Corporation hereby fix the consideration for the issue of the said 1000 common shares without nominal or par value in the capital stock of the Corporation as the Purchased Assets and in good faith hereby determine that such consideration is in all the circumstances of the transaction the fair equivalent of the money that the Corporation would have received if the said 1000 common shares had been issued for money, that is to say, the sum of \$100,000;
- 4) The Purchased Assets having been duly transferred by Bill of Sale into the name of the Corporation and the Corporation accordingly having received the consideration for issuance of the said 1000 common shares without nominal or par value, it is hereby declared that the said 1000 common shares are issued and shall be held as fully-paid and non-assessable shares and that a certificate or certificates representing in the aggregate the said shares be issued to the Vendor; and
- 5) the said 1000 common shares having been issued in exchange for property of a person who did not and does not deal with the Corporation at arm's length, as contemplated by subsection 25(4) of the *Business Corporations Act*, the sum of \$100 be and the same is hereby added to the stated capital account maintained for the common shares without nominal or par value of the Corporation, being a part only of the amount of the consideration received by the Corporation in exchange for the said 1000 common shares.

DATED [DATE].

John Doe

Appendix 12

RESOLUTION OF DIRECTORS OF [CORPORATION] REGARDING BANKING AND SECURITY

RESOLVED:

- 1) THAT [BANK] (the "Bank") be and is hereby appointed the Banker of the Corporation.
- 2) THAT the president alone or any one of the persons mentioned in Clause 3 hereof or any persons time to time designated in writing by the President, Vice-President, Secretary, Treasurer or Secretary-Treasurer, be and is hereby authorized on behalf of the Corporation from time to time.
 - a) to deposit or negotiate or transfer to the Bank (but for credit of the Corporation's account only) all or any cheques, promissory notes, bills of exchange, orders for the payment of money and other paper negotiable or otherwise, interest or dividend coupons and warrants, securities maturing or called for redemption, and the proceeds of any of them, and for such purpose to make, draw, endorse, sign, execute and deliver all of any of the foregoing or deliver all or any thereof to the Bank endorsed with the name of the Corporation impressed thereon by rubber stamp or otherwise; and
 - b) to receive all paid cheques and vouchers and sign and deliver to the Bank the Bank's form of settlement of balances and release, and to arrange, settle, balance and certify all books and accounts between the Corporation and the Bank, and to receive all securities attached to drafts drawn on the Corporation to be delivered upon payment of the drafts and all commercial and other paper, and to sign and deliver to the Bank receipts for all or any of the foregoing.
- 3) THAT the president alone and _____ are/is hereby authorized on behalf of the Corporation from time to time
 - a) to make, draw, accept, sign and execute, under the corporate seal or otherwise, cheques, promissory notes, bills of exchange, orders for the payment of money and other instruments whether negotiable or not, contracts for letters of credit and forward exchange, and agreements obligating the Corporation to the Bank in respect of obligations or liabilities incurred or to be incurred by the Bank for the account benefit of the Corporation;
 - b) to borrow money from the Bank upon the credit of the Corporation in such amounts and on such terms as may be deemed expedient by obtaining loans or advances or by way of overdraft or otherwise;
 - c) to mortgage, hypothecate, charge, pledge, convey, assign, transfer or create a security interest, to give security under or The Bank Act or otherwise upon, all or any of the property, real and personal, immoveable and moveable, undertaking and rights of the Corporation, present and future to secure the repayment of all or any money borrowed or to be borrowed from the Bank, jointly or obligations or liabilities of the Corporation, present or future, to the Bank, the nature and form of any such and the security and the rights, powers and authorities exercisable by the Bank or any person or persons thereunder or in respect thereof to be satisfactory to the Bank;

- d) to sign or execute, under the corporate seal or otherwise, and deliver all such assignments, transfers, conveyances, hypothecs, mortgages, charges, pledges, security under the Bank Act or other security, and the notices of intention to give security under section 427 of the Bank Act, promises to give security under the Bank Act, agreements, deeds, releases, discharges and other documents and writings as they in their discretion may consider necessary or useful in connection with the Corporation's business with the Bank or as the Bank may request;
 - e) generally to exercise all rights, powers and authorities which the Directors might or could exercise under the authority of the Corporation's By-laws, constating documents and the laws governing the Corporation, all as amended from time to time.
- 4) THAT the person or persons authorized by Clause 3 hereof, or the person or persons from time to time designated in writing by (a) the President or Vice-President and (b) the Secretary or Treasurer or Secretary-Treasurer, be and is/are hereby authorized on behalf of the Corporation from time to time to withdraw from the Bank all or any securities and property held by the Bank for safekeeping on behalf of the Corporation or as collateral security or otherwise and sign and deliver receipts therefor or to direct the Bank by written instructions signed by such person or persons to deliver all or any such securities and property to any person or persons named in such instructions.
- 5) THAT all instruments, whether negotiable or not, documents and writings made, drawn, accepted, endorsed, signed or executed as hereinbefore provided and delivered by any bearer thereof shall be valid and binding upon the Corporation, and the Bank is hereby authorized to act thereon and give effect thereto.
- 6) THAT each branch or agency of the Bank at which an account of the Corporation is kept be furnished with a copy, certified by the Secretary and, where required by law, under the Corporation's seal, of this resolution, and with a list of all persons authorized by this resolution to act for the Corporation and with written notice of any changes which may take place in such list from time to time (any such notice to be binding on the Bank only from the time when its receipt is duly acknowledged in writing), and with all designations of persons made pursuant to Clause 2 or Clause 4 hereof, and with specimens of the signatures of all persons so authorized or designated; and that this resolution shall remain in force and be binding upon the Corporation until a copy, certified by the Secretary and, where required by law, under the Corporation's seal, of a resolution of the Directors of the Corporation repealing or replacing this resolution shall have been received by the manager of each such branch or agency of the Bank and duly acknowledged in writing, and that the said list with any changes notified and acknowledged as aforesaid and the said designations shall respectively remain in force and be binding upon the Corporation until written notice to the contrary shall have been received and acknowledged as aforesaid.

CERTIFICATE

It is hereby certified by the undersigned that the foregoing is a true copy of a resolution of the Directors of the Corporation passed in accordance with the Corporation's By-laws, constituting documents, any unanimous shareholders' agreements made by the shareholders of the Corporation and all other laws governing the Corporation, all as amended from time to time, which resolution is now in full force and effect.

DATED: [DATE]

John Smith

**RESOLUTIONS OF THE SOLE FIRST DIRECTOR
OF
BARCO LIMITED**

The undersigned, being the sole director of BARCO LIMITED, a New Brunswick corporation (the “Corporation”), and being entitled to vote on the resolutions hereinafter set forth as if the same had been submitted at a meeting of the directors of the Corporation duly called and held for the purpose of acting on such resolutions, does hereby resolve, in lieu of a meeting of the directors of the Corporation, as follows:

RESOLVED:

That By-Law Number 1 be and the same is hereby enacted as the General By-Laws of the Corporation; and

That any officer or director of the Corporation, when appointed, is hereby authorized to sign and execute the aforesaid by-law and insert a copy of the same in the Corporation's minute book.

RESOLVED:

That the form of share certificates for the Common shares, Class A Preferred shares, Class B Preferred shares, Class C Preferred shares, Class D Preferred shares and Class E Preferred shares in the capital of the Corporation, copies of which are annexed hereto, be and the same are hereby approved and adopted and any officer or director of the Corporation is authorized to sign share certificates in such form to evidence shares in the capital of the Corporation.

RESOLVED:

That the affairs of the Corporation be managed by a board of directors consisting of one (1) member until otherwise determined by resolution of the sole director of the Corporation.

RESOLVED:

That the subscription of [James E. Smith](#) for One Hundred (100) common shares in the capital of the Corporation at the subscription price of One Canadian Dollar (Cdn\$1.00) per share be and the same is hereby accepted; and

That, the Corporation having received the sum of One Hundred Canadian Dollars (Cdn\$100.00) in full payment of the said One Hundred (100) common shares, the said One Hundred (100) common shares be issued as fully paid and non-assessable and a certificate therefor be issued to the said James E. Smith.

RESOLVED:

That the fiscal year of the Corporation shall end on the [DATE] of each year.

RESOLVED:

That the address of the registered office of the Corporation be and the same is hereby fixed to be,

123 Main Street
Saint John, N.B.
E2L 4S6

or such other address as determined from time to time by the directors.

RESOLVED:

That the following person be and is hereby appointed an officer of the Corporation to hold the office set out opposite his name until his successor is duly appointed:

James E. Smith

President

RESOLVED:

That the Corporation is authorized to register to carry on business in any other Province of Canada or elsewhere as the President or any other officer of the Corporation may determine and any director or officer of the Corporation is authorized to sign all documents and do all things as are necessary to effect such registrations.

RESOLVED:

That the Corporation is authorized to open one or more bank accounts at [BANK NAME] (the “Bank”) and the banking resolution in the form required by the Bank, a copy of which is attached hereto, be and the same is hereby approved and adopted;

That any director or officer of the Corporation is authorized to do all things necessary to give effect to this resolution including signing and delivering on behalf of the Corporation all certificates, instruments and agreements required by the Bank.

Each and every one of the foregoing resolutions is enacted as of this [DATE].

James E. Smith

COMMON SHARES

Certificate No. _____

For _____ Shares

Issued to _____

Dated _____, _____ (year)

From whom transferred _____

Dated _____, _____ (year)

No. Original Certificate	No. Original Shares	No. of Shares Transferred
_____	_____	_____

Received Certificate No. _____

for _____ Shares

this _____ day of _____, _____ (year)

No. _____ Shares

INCORPORATED UNDER THE LAWS OF NEW BRUNSWICK

This is to Certify that _____

is the registered holder of _____

Common shares of _____

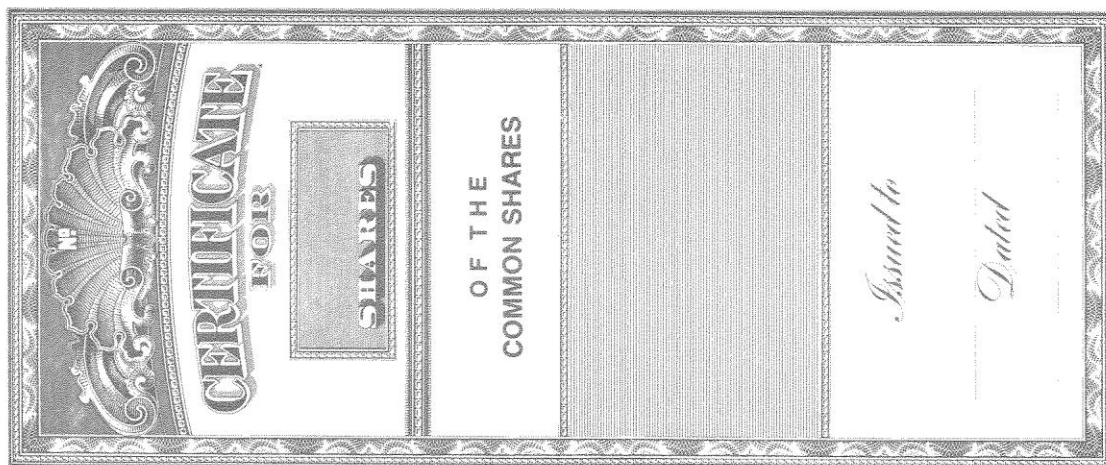
The shares represented by this certificate are transferable subject to the restrictions prescribed by the Articles of the Corporation.
A copy of the full text thereof is obtainable on demand and without charge from the Corporation.

IN WITNESS WHEREOF the Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the seal of the Corporation this _____

day of _____, _____ (year)

SHARES **EACH**

DYE & DURHAM CO. INC.
NBNPC



For Value Received, the undersigned hereby sells, endorses and transfers unto _____ Shares of the Common Shares represented by the within Certificate.

Dated _____, _____ (year)
In presence of _____

NOTICE. THE SIGNATURE OF THIS ENDORSEMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE. IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT, OR ANY CHANGE WHATEVER, AND THE CORPORATION RESERVES THE RIGHT TO REQUIRE REASONABLE ASSURANCE THAT THE ENDORSEMENT IS GENUINE AND EFFECTIVE.

Appendix 14
RESOLUTIONS OF SOLE SHAREHOLDER OF
BARCO LIMITED
(herein called the “Corporation”)

The undersigned, being the sole shareholder of [CORPORATION], pursuant to the *Business Corporations Act*, by his signature, hereby passes the following resolutions:

RESOLVED:

That By-Law No. ONE of the Corporation be enacted by the Board of Directors as _____ be and the same is hereby ratified and confirmed as the general by-laws of the Corporation.

RESOLVED:

That James E. Smith be and is hereby appointed sole director of the Corporation to hold office until the close of the first annual meeting or until his successor is duly elected or appointed.

RESOLVED:

That Messrs. Jones & Smith, Chartered Accountants, 44 Prince William Street, Saint John, N.B. be and they are hereby appointed auditors of the Corporation to hold office until the close of the first annual meeting of shareholders at such remuneration as may be fixed by the directors from time to time.

RESOLVED:

That the resolutions adopted by the first director of the Corporation, as set out in the minute book of the Corporation, be and the same are hereby approved and all acts of the first director be and the same are hereby ratified and confirmed.

DATED: [DATE]

James E. Smith

SHARE SUBSCRIPTION

DATE: [DATE]
TO: BARCO LIMITED (the “Corporation”)

The undersigned hereby subscribes for and agrees to take up One Hundred (100) common shares of the Corporation at the subscription price of One Canadian Dollar (Cdn\$1.00) per share and hereby tenders the amount of One Hundred Canadian Dollars (Cdn\$100.00) in full payment thereof.

Should this subscription be acceptable, please enter the undersigned in the share register of the Corporation and direct the Secretary or other appropriate official of the Corporation to issue a share certificate in the name of the undersigned.

James E. Smith

ACCEPTED this [DATE]

BARCO LIMITED

Per: _____

Appendix 15

BY-LAW NUMBER 1

A by-law relating generally to the regulation of the affairs of BARCO LIMITED

BE IT ENACTED AND IT IS HEREBY ENACTED as Bylaw Number 1 of BARCO LIMITED (hereinafter called the “Corporation”) as follows:

DEFINITIONS

1) In this by-law and all other by-laws of the Corporation, unless the context otherwise specifies or requires:

- a) “Act” means the Business Corporations Act, Statutes of New Brunswick, 1981, c. B-9.1, as from time to time amended, and every statute that may be substituted therefor and, in the case of such amendment or substitution, any reference in the by-laws of the Corporation shall be read as referring to the amended or substituted provisions therefor;
- b) “articles” means the articles, as from time to time amended, of the Corporation;
- c) “by-law” means any by-law of the Corporation from time to time in force and effect;
- d) “director” means an individual occupying the position of director of the Corporation and “directors”, “board of directors” and “board” includes a single director;
- e) “unanimous shareholder agreement” means an agreement as described in subsection 99(2) of the Act or a declaration of a shareholder described in subsection 99(3) of the Act;
- f) words importing the singular number only shall include the plural and vice versa; words importing the masculine gender shall include the feminine and neuter genders and vice versa; words importing persons shall include bodies corporate, corporations, companies, partnerships, syndicates, trusts and any number or aggregate of individuals;
- g) the headings used in any by-law are inserted for reference purposes only and are not to be considered or taken into account in construing the terms or provisions thereof or to be deemed in any way to clarify, modify or explain the effect of any such terms or provisions; and
- h) any term contained in any by-law which is defined in the Act shall have the meaning given to such term in the Act.

REGISTERED OFFICE

2) The Corporation may from time to time by resolution of the board of directors change the location or the address of the registered office of the Corporation to another place within New Brunswick.

CORPORATE SEAL

3) The Corporation may have one or more corporate seals which shall be such as the board of directors may adopt by resolution from time to time.

DIRECTORS

4) **Number and Powers.** There shall be a board of directors consisting of such fixed number, or minimum and maximum number, of directors as may be set out in the articles or as may be determined as prescribed by the articles, or failing that, as specified by by-law.

Subject to any unanimous shareholder agreement, the directors shall manage the business and affairs of the Corporation and may exercise all such powers and do all such acts and things as may be exercised or done by the Corporation and are not by the Act, the articles, the by-laws, any special resolution of the Corporation, any unanimous shareholder agreement or by statute expressly directed or required to be done in some other manner.

5) **Vacancies.** If the number of directors is increased, the resulting vacancies shall be filled at a meeting of shareholders duly called for that purpose. Notwithstanding the provisions of paragraph 10 of this by-law and subject to the provisions of the Act, if a vacancy should otherwise occur in the board, the remaining directors, if constituting a quorum, may appoint a qualified person to fill the vacancy for the remainder of the term. In the absence of a quorum the remaining directors shall forthwith call a meeting of shareholders to fill the vacancy pursuant to subsection 69(2) of the Act. Where a vacancy or vacancies exist in the board, the remaining directors may exercise all of the powers of the board so long as a quorum remains in office.

6) **Duties.** Every director and officer of the Corporation in exercising his powers and discharging his duties shall

- a) Act honestly and in good faith; and
- b) Exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, in the best interests of the Corporation.

7) **Qualification.** Every director shall be an individual nineteen (19) or more years of age and no one who is of unsound mind and has been so found by a court in Canada or elsewhere or who has the status of a bankrupt or who has been convicted of an offence under the Criminal Code, chapter C-34 of the Revised Statutes of Canada, 1970, as amended from time to time, or the criminal law of any jurisdiction outside of Canada, in connection with the promotion, formation or management of a corporation or involving fraud (unless three (3) years have elapsed since the expiration of the period fixed for suspension of the passing of sentence without sentencing or since a fine was imposed, or unless the term of imprisonment and probation imposed, if any, was concluded, whichever is the latest, but the disability imposed hereby ceases upon a pardon being granted) shall be a director.

8) **Term of Office.** A director's term of office shall be from the meeting at which he is elected or appointed until the annual meeting next following or until his successor is elected or appointed, or until, if earlier, he dies or resigns, or is removed or disqualified pursuant to the provisions of the Act.

9) **Vacation of Office.** The office of a director shall ipso facto be vacated if

- a) he dies;
- b) by notice in writing to the Corporation he resigns his office and such resignation, if not effective immediately, becomes effective in accordance with its terms;
- c) he is removed from office in accordance with section 67 of the Act; or
- d) he ceases to be qualified to be a director.

10) Election and Removal. (1) Directors shall be elected by the shareholders by ordinary resolution in general meeting more over on a show of hands unless a poll is demanded and if a poll is demanded such election shall be by ballot. All the directors then in office shall cease to hold office at the close of the meeting of shareholders at which directors are to be elected. A director if qualified is eligible for re-election.

(2) Subject to sections 65 and 67 of the Act, the shareholders of the Corporation may by ordinary resolution at a special meeting remove any director before the expiration of his term of office and may, by a majority of the votes cast at the meeting, elect any person in his stead for the remainder of his term.

(3) Each shareholder entitled to vote at an election of directors has the right to cast a number of votes equal to the number of votes attached to the shares held by him multiplied by the number of directors to be elected, and he may cast all such votes in favour of one candidate or distribute them among the candidates in any manner.

(4) A separate vote of shareholders shall be taken with respect to each candidate nominated for director unless a resolution is passed unanimously permitting two (2) or more persons to be elected by a single resolution.

(5) If a shareholder has voted for more than one candidate without specifying the distribution of his votes among the candidates, he shall be deemed to have distributed his votes equally among the candidates for whom he voted.

(6) If the number of candidates nominated for director exceeds the number of positions to be filled, the candidates who receive the least number of votes shall be eliminated until the number of candidates remaining equals the number of positions to be filled.

(7) A retiring director shall retain office until the adjournment or termination of the meeting at which his successor is elected unless such meeting was called for the purpose of removing him from office as a director in which case the director so removed shall vacate office forthwith upon the passing of the resolution for his removal.

11) Validity of Acts. An act by a director or officer is valid notwithstanding an irregularity in his election or appointment or a defect in his qualification.

MEETINGS OF DIRECTORS

12) Place of Meeting. Subject to the articles, meetings of directors may be held at any place within or outside New Brunswick as the directors may from time to time determine or as the person convening the meeting may give notice. A meeting of the directors may be convened by the chairman of the board (if any), the president or any director at any time. The secretary shall upon direction of any of the foregoing officers or director convene a meeting of the directors.

13) Notice. (1) Notice of the time and place for the holding of any such meeting shall be delivered, mailed, telegraphed, cabled, telexed or transmitted by facsimile to each director at his latest address as shown on the records of the Corporation not less than two (2) days (exclusive of the day on which the notice is delivered, mailed, telegraphed, cabled, telexed or transmitted by facsimile but inclusive of the day for which notice is given) before the date of the meeting, provided that meetings of the directors may be held at any time without notice if all the directors have waived notice.

(2) For the first meeting of the board of directors to be held immediately following the election of directors at an annual or special meeting of the shareholders, no notice of such meeting need be given to the newly elected or appointed director or directors in order for the meeting to be duly constituted, provided a quorum of the directors is present.

(3) A notice of a meeting of directors shall specify any matter referred to in subsection 73(2) of the Act that is to be dealt with at the meeting but, unless a by-law otherwise provides, need not otherwise specify the purpose of or the business to be transacted at the meeting.

14) Waiver of Notice. Notice of any meeting of the directors or any irregularity in any meeting or in the notice thereof may be waived by any director in writing or by telegram, cable, telex or facsimile transmission addressed to the Corporation or in any other manner, and such waiver may be validly given either before or after the meeting to which such waiver relates.

The attendance of a director at a meeting of directors is a waiver of notice of the meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

15) Telephone Participation. A director may participate in a meeting of directors or of a committee of directors by means of such telephone or other communication facilities that permit all persons participating in the meeting to hear each other, and a director participating in such a meeting by such means shall be deemed to be present at that meeting.

16) Adjournment. Any meeting of the directors may be adjourned from time to time by the chairman of the meeting, with the consent of the meeting, to a fixed time and place and no notice of the time and place for the continuance of the adjourned meeting need be given to any director if the time and place of the adjourned meeting is announced at the original meeting. Any adjourned meeting shall be duly constituted if held in accordance with the terms of the adjournment and a quorum is present thereat. The directors who formed a quorum at the original meeting are not required to form the quorum at the adjourned meeting. If there is no quorum present at the adjourned meeting, the original meeting shall be deemed to have terminated forthwith after its adjournment.

17) Quorum and Voting. Subject to the articles, a majority of directors shall constitute a quorum for the transaction of business at any meeting of directors. No business shall be transacted by the directors except at a meeting of directors at which a quorum of the board is present. Questions arising at any meeting of the directors shall be decided by a majority of votes cast. In case of an equality of votes, the chairman of the meeting shall not have a second or casting vote. Where the Corporation has only one director, that director may constitute a meeting.

18) Resolution in lieu of meeting. A resolution in writing signed by all the directors or signed counterparts of such resolution by all the directors entitled to vote on that resolution at a meeting of directors or a committee of directors is as valid as if it had been passed at a meeting of directors or committee of directors duly called, constituted and held. A copy of every such resolution or counterpart thereof shall be kept with the minutes of the proceedings of the directors or such committee of directors.

REMUNERATION OF DIRECTORS

19) Subject to the articles or any unanimous shareholder agreement, the remuneration to be paid to the directors shall be such as the board of directors shall from time to time determine and such remuneration shall be in addition to the salary paid to any officer of the Corporation who is also a

member of the board of directors. The directors may also by resolution award special remuneration to any director undertaking any special services on the Corporation's behalf other than the routine work ordinarily required of a director by the Corporation. The confirmation of any such resolution or resolutions by the shareholders shall not be required. The directors shall also be entitled to be paid their travelling and other expenses properly incurred by them in connection with the affairs of the Corporation.

SUBMISSION OF CONTRACTS OR TRANSACTIONS TO SHAREHOLDERS FOR APPROVAL

20) The directors in their discretion may submit any contract, act or transaction for approval, ratification or confirmation at any annual meeting of the shareholders or at any special meeting of the shareholders called for the purpose of considering the same and any contract, act or transaction that shall be approved, ratified or confirmed by resolution passed by a majority of the votes cast at any such meeting (unless any different or additional requirement is imposed by the Act or by the articles or any other by-law) shall be as valid and as binding upon the Corporation and upon all the shareholders as though it had been approved, ratified and/or confirmed by every shareholder of the Corporation.

FOR THE PROTECTION OF DIRECTORS AND OFFICERS

21) No director or officer for the time being of the Corporation shall be liable for the acts, receipts, neglects or defaults of any other director or officer or employee of the Corporation or for joining in any receipt or act for conformity or for any loss, damage or expense happening to the Corporation through the insufficiency or deficiency of title to any property acquired by order of the board of directors for or on behalf of the Corporation or for the insufficiency or deficiency of any security in or upon which any of the moneys of or belonging to the Corporation shall be placed out or invested or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person, firm or corporation including any person, firm or corporation with whom or which any moneys, securities or effects of the Corporation shall be lodged or deposited or for any loss, conversion, misapplication or misappropriation of or any damage resulting from any dealings with any moneys, securities or other assets belonging to the Corporation or for any other loss, damage or misfortune whatever which may happen to the Corporation in the execution of the duties of his respective office of trust or in relation thereto, unless the same shall happen by or through his failure to exercise the powers and to discharge the duties of his office honestly, in good faith with a view to the best interests of the Corporation, and in connection therewith to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, provided that nothing herein contained shall relieve a director or officer from the duty to act in accordance with the Act or regulations made thereunder or relieve him from liability for a breach thereof. The directors for the time being of the Corporation shall not be under any duty or responsibility in respect of any contract, act or transaction whether or not made, done or entered into in the name or on behalf of the Corporation, except such as shall have been submitted to and authorized or approved by the board of directors. If any director or officer of the Corporation shall be employed by or shall perform services for the Corporation, the fact of his being a shareholder, director or officer of the Corporation shall not disentitle such director or officer or such firm or body corporate, as the case may be, from receiving proper remuneration for such services.

INDEMNITIES TO DIRECTORS AND OTHERS

22) Subject to section 81 of the Act, except in respect of an action by or on behalf of the Corporation or Another Body Corporate (as hereinafter defined) to procure a judgement in its favour, the Corporation shall indemnify each director and officer of the Corporation and each former director and officer of the Corporation and each person who acts or acted at the Corporation's request as a director or officer of

Another Body Corporate, and his heirs and legal representatives, against all costs, charges and expenses, including any amount paid to settle an action or satisfy a judgment, reasonably incurred by him in respect of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being or having been a director or officer of the Corporation or Another Body Corporate, as the case may be, if

- a) he acted honestly and in good faith with a view to the best interests of the Corporation; and
- b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he had reasonable grounds for believing that his conduct was lawful.

“Another Body Corporate” as used herein means a body corporate of which the Corporation is or was a shareholder or creditor.

OFFICERS

23) Appointment of Officers. Subject to the articles or any unanimous shareholder agreement, the directors may appoint a chairman of the board, a president and a secretary and, if deemed advisable, may also appoint one or more vice-presidents, a treasurer and one or more assistant secretaries and/or one or more assistant treasurers. None of such officers, except the chairman of the board, need be a director of the Corporation. Any two or more of such offices may be held by the same person. In case and whenever the same person holds the offices of secretary and treasurer he may, but need not, be known as the secretary treasurer. The directors may from time to time designate such other offices and appoint such other officers, employees and agents as it shall deem necessary who shall have such authority and shall perform such functions and duties as may from time to time be prescribed by resolution of the directors.

24) Remuneration and Removal of Officers. Subject to the articles or any unanimous shareholder agreement, the remuneration of all officers, employees and agents appointed by the directors may be determined from time to time by resolution of the directors. The fact that any officer, employee or agent is a director or shareholder of the Corporation shall not disqualify him from receiving such remuneration as may be so determined. The directors may by resolution remove any officer, employee or agent at any time, with or without cause.

25) Duties of Officers may be Delegated. In case of the absence or inability or refusal to act of any officer of the Corporation or for any other reason that the directors may deem sufficient, the directors may delegate all or any of the powers of such officer to any other officer or to any director for the time being.

26) Chairman of the Board. The chairman of the board (if any) shall, if present, preside at all meetings of the directors. He shall sign such contracts, documents or instruments in writing as require his signature and shall have such other powers and duties as may from time to time be assigned to him by resolution of the directors.

27) President. The president shall be the chief executive officer of the Corporation and shall exercise general supervision over the business and affairs of the Corporation. The president, in the absence of the chairman of the board, or if a chairman of the board be not appointed, shall preside at all meetings of the directors, and he shall act as chairman at all meetings of the shareholders of the Corporation; he shall sign such contracts, documents or instruments in writing as require his signature

and he shall have such other powers and shall perform such other duties as may from time to time be assigned to him by resolution of the directors or as are incident to his office.

28) Vice-president. The vice-president (if any) or, if more than one, the vice-presidents in order of seniority, shall be vested with all the powers and shall perform all the duties of the president in the absence or inability or refusal to act of the president. The vice-president or, if more than one, the vice-presidents in order of seniority, shall sign such contracts, documents or instruments in writing as require his or their signatures and shall also have such other powers and duties as may from time to time be assigned to him or them by resolution of the directors.

29) Secretary. The secretary shall give or cause to be given notices for all meetings of the directors or committees thereof (if any) and of shareholders when directed to do so, and shall have charge, subject to the provisions of paragraphs 30 and 50 hereof, of the records referred to in section 18 of the Act and of the corporate seal or seals (if any). He shall sign such contracts, documents or instruments in writing as require his signature and shall have such other powers and duties as may from time to time be assigned to him by resolution of the directors or as are incident to his office.

30) Treasurer. Subject to the provisions of any resolution of the directors, the treasurer (if any) shall have the care and custody of all the funds and securities of the Corporation and shall deposit the same in the name of the Corporation in such bank or banks or with such other depositary or depositaries as the directors may by resolution direct. He shall prepare, maintain and keep or cause to be kept adequate books of accounts and accounting records.

He shall sign such contracts, documents or instruments in writing as require his signature and shall have such other powers and duties as may from time to time be assigned to him by resolution of the directors or as are incident to his office. He may be required to give such bond for the faithful performance of his duties as the directors in their uncontrolled discretion may require, but no director shall be liable for failure to require any such bond or for the insufficiency of any such bond or for any loss by reason of the failure of the Corporation to receive any indemnity thereby provided.

31) Assistant Secretary and Assistant Treasurer. The assistant secretary or, if more than one, the assistant secretaries in order of seniority, and the assistant treasurer or, if more than one, the assistant treasurers in order of seniority (if any), shall respectively perform all the duties of the secretary and treasurer, respectively, in the absence or inability to act of the secretary or treasurer as the case may be. The assistant secretary or assistant secretaries, if more than one, and the assistant treasurer or assistant treasurers, if more than one, shall sign such contracts, documents or instruments in writing as require his or their signatures respectively and shall have such other powers and duties as may from time to time be assigned to them by resolution of the directors.

32) Managing Director. The directors may from time to time appoint from their number a managing director and may delegate to him any of the powers of the directors except as provided in subsection 73(2) of the Act.

The managing director shall conform to all lawful orders given to him by the directors and shall at all reasonable times give to the directors or any of them all information they may require regarding the affairs of the Corporation. Any agent or employee appointed by the managing director shall be subject to discharge by the directors.

33) Vacancies. If the office of chairman of the board, president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer, or any other office created by the directors pursuant to paragraph

23 hereof, shall be or become vacant by reason of death, resignation, removal or in any other manner whatsoever, the directors may, subject to paragraph 23 hereof, appoint another person to fill such vacancy.

COMMITTEES OF DIRECTORS

34) The directors may from time to time appoint from their number one or more committees of directors consisting of one or more individuals and delegate to such committee or committees any of the powers of the directors except as provided in subsection 73(2) of the Act. Unless otherwise ordered by the directors, a committee of directors shall have power to fix its quorum, elect its chairman and regulate its proceedings. All such committees shall report to the directors as required by them.

SHAREHOLDERS' MEETING

35) Annual Meeting. Subject to compliance with section 85 of the Act, the annual meeting of the shareholders shall be convened on such day in each year and at such time as the directors may by resolution determine.

36) Special Meetings. (1) Special meetings of the shareholders may be convened by order of the chairman of the board, the president or a vice-president or by the directors; to be held at such time and place as may be specified in such order.

(2) Shareholders holding between them not less than ten percent (10%) of the issued shares of the Corporation that carry the right to vote at a meeting sought to be held may requisition the directors to call a meeting of shareholders. Such requisition shall state the business to be transacted at the meeting and shall be sent to each director and the registered office of the Corporation.

(3) Except as otherwise provided in subsection 96(3) of the Act, it shall be the duty of the directors on receipt of such requisition, to cause such meeting to be called by the secretary of the Corporation.

(4) If the directors do not, within twenty-one (21) days after receiving such requisition call such meeting, any shareholder who signed the requisition may call the meeting.

37) Place of Meetings. Meetings of shareholders of the Corporation shall be held at the registered office of the Corporation or at such other place within New Brunswick as the directors by resolution may determine. Notwithstanding the foregoing, a meeting of shareholders of the Corporation may be held outside New Brunswick if all the shareholders entitled to vote at that meeting so agree, and a shareholder who attends a meeting of shareholders held outside New Brunswick is deemed to have so agreed except when he attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully held. Notwithstanding either of the foregoing sentences, meetings of shareholders may be held outside New Brunswick at one or more places specified in the articles.

38) Notice. (1) Subject to the articles or a unanimous shareholder agreement, a printed, written or typewritten notice stating the day, hour, place of meeting, the general nature of the business to be transacted and, if special business is to be transacted thereat, stating

- a) the nature of that business in sufficient detail to permit the shareholder to form a reasoned judgment thereon; and

- b) the text of any special resolution to be submitted to the meeting shall be sent to each person who is entitled to notice of such meeting and who on the record date for notice appears on the records of the Corporation or its transfer agent as a shareholder and to each director of the Corporation and the auditor of the Corporation, if any, personally, by sending such notice by prepaid mail or in such other manner as provided by by-law for the giving of notice, not less than ten (10) days nor more than fifty (50) days before the meeting. If such notice is sent by mail it shall be addressed to the latest address of each such person as shown in the records of the Corporation or its transfer agent, or if no address is shown therein, then to the last address of each such person known to the secretary.

(2) The auditor of the Corporation, if any, is entitled to attend any meeting of shareholders of the Corporation and to receive all notices and other communications relating to any such meeting that a shareholder is entitled to receive.

39) Waiver of Notice. A meeting of shareholders may be held for any purpose at any time and, subject to section 84 of the Act, at any place without notice if all the shareholders entitled to notice of such meeting are present in person or represented by proxy at the meeting (except where the shareholder attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called) or if all the shareholders entitled to notice of such meeting and not present in person nor represented by proxy thereat waive notice of the meeting.

Notice of any meeting of shareholders or any irregularity in any such meeting or in the notice thereof may be waived by any shareholder, the duly appointed proxy of any shareholder, any directors or the auditor of the Corporation in writing, by telegram, cable, telex or facsimile addressed to the Corporation or by any other manner, and any such waiver may be validly given either before or after the meeting to which such waiver relates.

40) Omission of Notice. The accidental omission to give notice of any meeting to or the non-receipt of any notice by any person shall not invalidate any resolution passed or any proceeding taken at any meeting of shareholders.

41) Record Date. (1) The directors may by resolution fix in advance a date as the record date for the determination of shareholders

- a) entitled to receive payment of a dividend;
- b) entitled to participate in a liquidation distribution; or
- c) for any other purpose except the right to receive notice of or to vote at a meeting of shareholders, but such record date shall not precede by more than fifty (50) days the particular action to be taken.

(2) The directors may by resolution also fix in advance the date as the record date for the determination of shareholders entitled to receive notice of a meeting of shareholders, but such record date shall not precede by more than fifty (50) days or by less than twenty-one (21) days the date on which the meeting is to be held.

(3) If no record date is fixed,

- a) the record date for the determination of shareholders entitled to receive notice of a meeting of shareholders shall be

- i. at the close of business on the day immediately preceding the day on which the notice is given; or

- ii.** if no notice is given, the day on which the meeting is held; and
- b)** the record date for the determination of shareholders for any purpose, other than that specified in subparagraph (a) above or to vote, shall be at the close of business on the day on which the directors pass the resolution relating thereto.
- 42) Voting.** (1) Votes at meetings of the shareholders may be given either personally or by proxy. At every meeting at which he is entitled to vote, every shareholder present in person and every proxyholder shall have one (1) vote on a show of hands. Upon a poll at which he is entitled to vote, every shareholder present in person or by proxy shall (subject to the provisions, if any, of the articles) have one (1) vote for every share registered in his name.
- (2) Voting at a meeting of shareholders shall be by show of hands except where a ballot is demanded by a shareholder or proxyholder entitled to vote at the meeting. A shareholder or proxyholder may demand a ballot either before or after any vote by show of hands. In case of an equality of votes the chairman of the meeting shall not have a second or casting vote in addition to the vote or votes to which he may be entitled as a shareholder or proxyholder.
- (3) At any meeting, unless a ballot is demanded, a declaration by the chairman of the meeting that a resolution has been carried or carried unanimously or by a particular majority or lost or not carried by a particular majority shall be conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against the motion.
- (4) In the absence of the chairman of the board, the president and every vice-president, the shareholders present entitled to vote shall choose another director as chairman of the meeting and if no director is present or if all the directors present decline to take the chair then the shareholders or proxyholders present shall choose one of their number to be chairman.
- (5) If at any meeting a ballot is demanded on the election of a chairman or on the question of adjournment or termination it shall be taken forthwith without adjournment. If a ballot is demanded on any other question or as to the election of directors it shall be taken in such manner and either at once or later at the meeting or at an adjourned meeting as the chairman of the meeting directs. The result of a ballot shall be deemed to be the resolution of the meeting at which the ballot was demanded. A demand for a ballot may be withdrawn.
- (6) Where a person holds shares as a personal representative, such person or his proxy is the person entitled to vote at all meetings of shareholders in respect of the shares so held by him.
- (7) Where a person mortgages or hypothecates his shares, such person or his proxy is the person entitled to vote at all meetings of shareholders in respect of such shares unless, in the instrument creating the mortgage or hypothec, he has expressly empowered the person holding the mortgage or hypothec to vote in respect of such shares, in which case, and subject to the articles, such holder or his proxy is the person entitled to vote in respect of the shares.
- (8) Where two or more persons hold the same share or shares jointly, any one of such persons present at a meeting of shareholders has the right, in the absence of the other or others, to vote in respect of such share or shares, but if more than one of such persons are present or represented by proxy and vote, they shall vote together as one on the share or shares jointly held by them.
- 43) Proxies.** (1) A shareholder, including a shareholder that is a body corporate, entitled to vote at a meeting of shareholders may by means of a proxy appoint a proxyholder or one or more alternate proxyholders, none of whom are required to be a shareholder of the Corporation, which proxyholders

shall have all the rights of the shareholder to attend and act at the meeting in the place and stead of the shareholder except to the extent limited by the proxy.

(2) An instrument appointing a proxy shall be in writing and shall be executed by the shareholder or by his attorney authorized in writing or, if the shareholder is a body corporate, either under its seal or by an officer or attorney thereof, duly authorized. A proxy is valid only at the meeting in respect of which it is given or any adjournment thereof.

(3) Unless the Act requires another form, an instrument appointing a proxyholder may be in the following form:

“The undersigned shareholder _____ of _____ hereby appoints _____ of _____ or _____ failing him, of as the proxy of the undersigned to attend and act for and on behalf of the undersigned at the meeting of the shareholders of the said corporation to be held on the day of _____, 20____, and at any adjournment thereof to the same extent and with the same power and authority as if the undersigned were personally present at the said meeting or such adjournment thereof.

Dated the day of _____, 20_____.

Signature of Shareholder

NOTE: This form of proxy must be signed by a shareholder or his attorney authorized in writing or, if the shareholder is a body corporate, either under its seal or by an officer or attorney thereof duly authorized.”

44) Adjournment. (1) The chairman of the meeting may with the consent of the meeting adjourn any meeting of shareholders from time to time to a fixed time and place. If a meeting of shareholders is adjourned for less than sixty (60) days, it is not necessary to give notice of the adjourned meeting other than by announcement at the earlier meeting that is adjourned.

If a meeting of shareholders is adjourned by one or more adjournments for an aggregate of sixty (60) days or more, notice of the adjourned meeting shall be given as for an original meeting.

(2) Any adjourned meeting shall be duly constituted if held in accordance with the terms of the adjournment and a quorum is present at the opening thereof. The persons who formed a quorum at the original meeting are not required to form the quorum at the adjourned meeting. If there is no quorum present at the opening of the adjourned meeting, the original meeting shall be deemed to have terminated forthwith after its adjournment. Any business may be brought before or dealt with at any adjourned meeting which might have been brought before or dealt with at the original meeting in accordance with the notice calling the same.

- 45) Quorum.** (1) Except as hereinafter provided, a quorum for any meeting of shareholders shall be one (1) or more shareholders or proxyholders holding or representing not less than a majority of the shares entitled to be voted at such meeting.
- (2) If a quorum is present at the opening of a meeting of shareholders, the shareholders present in person or represented by proxy may proceed with the business of the meeting notwithstanding that a quorum is not present throughout the meeting.
- (3) If a quorum is not present at the opening of a meeting of shareholders, the shareholders present in person or represented by proxy may adjourn the meeting to a fixed time and place but not transact any other business.
- (4) Where the Corporation has only one shareholder or only one holder of any class or series of shares, or if only one person is present at a meeting holding or representing sufficient shares to constitute a quorum, the shareholder present in person or by proxy constitutes a meeting.
- 46) Resolution in Lieu of meeting.** A resolution in writing signed by all the shareholders or signed counterparts of such resolution by all the shareholders entitled to vote on that resolution at a meeting of shareholders is as valid as if it had been passed at a meeting of the shareholders duly called, constituted and held. A copy of every such resolution or counterpart thereof shall be kept with the minutes of the meetings of shareholders.
- 47) Telephone Participation.** A shareholder may participate in a meeting of shareholders or of a committee of shareholders by means of such telephone or other communication facilities that permit all persons participating in the meeting to hear each other, and a shareholder participating in such a meeting by such means shall be deemed to be present at that meeting.

SHARES AND TRANSFERS

- 48) Issuance.** Subject to the articles, any unanimous shareholder agreement and to section 27 of the Act, shares in the Corporation may be issued at such times and to such persons or classes of persons and, subject to sections 23 and 24 of the Act, for such consideration as the directors may determine.
- 49) Certificates.** Share certificates (and the form of stock transfer power on the reverse side thereof) shall (subject to compliance with section 47 of the Act) be in such form and be signed by such director(s) or officer(s) as the directors may from time to time by resolution determine.

Such certificates shall be signed manually by at least one director or officer of the Corporation or by or on behalf of a registrar, transfer agent or branch transfer agent of the Corporation, and any additional signatures required on a share certificate may be printed or otherwise mechanically reproduced thereon. If a share certificate contains a printed or mechanically reproduced signature of a person, the Corporation may issue the share certificate notwithstanding that the person has ceased to be a director or an officer of the Corporation, and the share certificate is as valid as if he were a director or an officer at the date of its issue.

- 50) Registrar and Transfer Agent.** The directors may from time to time by resolution appoint or remove one or more registrars and/or branch registrars (which may but need not be the same person) to keep the share register and/or one or more transfer agents and/or branch transfer agents (which may but need not be the same person) to keep the register of transfers, and (subject to section 48 of the Act) may provide for the registration of issues and the registration of transfers of the shares of the Corporation in one or more places and such registrars and/or branch registrars and/or transfer agents and/or branch transfer agents shall keep all necessary books and registers of the Corporation for the

registration of the issuance and the registration of transfers of the shares of the Corporation for which they are so appointed. All certificates issued after any such appointment representing shares issued by the Corporation shall be countersigned by or on behalf of one of the said registrars and/or branch registrars and/or transfer agents and/or branch transfer agents, as the case may be.

51) Surrender of Share Certificates. No transfer of a share issued by the Corporation shall be recorded or registered unless or until the certificate representing the share to be transferred has been surrendered and cancelled or, if no certificate has been issued by the Corporation in respect of such share, unless or until a duly executed share transfer power in respect thereof has been presented for registration.

52) Defaced, Destroyed, Stolen or Lost Certificates. If the defacement, destruction or apparent destruction, theft, or other wrongful taking or loss of a share certificate is reported by the owner thereof to the Corporation or to a registrar, branch registrar, transfer agent or branch transfer agent of the Corporation (hereinafter, in this paragraph, called the "Corporation's transfer agent") and such owner gives to the Corporation or the Corporation's transfer agent a written statement verified by oath or statutory declaration as to the defacement, destruction or apparent destruction, theft, or other wrongful taking or loss and the circumstances concerning the same, a request for the issuance of a new certificate to replace the one so defaced, destroyed, wrongfully taken or lost and a bond of a surety company (or other security approved by the directors) in such form as is approved by the directors or by the chairman of the board, the president, a vice-president, the secretary or the treasurer of the Corporation, indemnifying the Corporation (and the Corporation's transfer agent, if any), against all loss, damage or expense, which the Corporation and/or the Corporation's transfer agent may suffer or be liable for by reason of the issuance of a new certificate to such shareholder, a new certificate may be issued in replacement of the one defaced, destroyed or apparently destroyed, stolen or otherwise wrongfully taken or lost, if such issuance is ordered and authorized by any one of the chairman of the board, the president, a vice-president, the secretary or the treasurer of the Corporation or by resolution of the directors.

DIVIDENDS

53) Declaration and Payment of Dividends. (1) Subject to the following subparagraph (2), the directors may from time to time by resolution declare and the Corporation may pay dividends on its issued shares, subject to the provisions (if any) of the articles.

(2) The directors shall not declare and the Corporation shall not pay a dividend if there are reasonable grounds for believing that;

- a) the Corporation is, or would after the payment be, unable to pay its liabilities as they become due; or
- b) the realizable value of the Corporation's assets would thereby be less than the aggregate of its liabilities and stated capital of all classes.

(3) Subject to section 41 of the Act, the Corporation may pay a dividend in money or property or by issuing fully paid shares of the Corporation.

54) Receipt of Dividends by Joint Holders. In case two or more persons are registered as the joint holders of any securities of the Corporation, any one of such persons may give effectual receipts for all dividends and payments on account of dividends, principal, interest and/or redemption payments on redemption of securities (if any) subject to redemption in respect of such securities.

VOTING SECURITIES IN OTHER BODIES CORPORATE

55) All securities of any other body corporate carrying voting rights held from time to time by the Corporation may be voted at all meetings of shareholders, bondholders, debenture holders or holders of such securities, as the case may be, of such other body corporate in such manner and by such person or persons as the directors of the Corporation shall from time to time determine and authorize by resolution. The duly authorized signing officers of the Corporation may also from time to time execute and deliver for and on behalf of the Corporation proxies and/or arrange for the issuance of voting certificates and/or other evidence of the right to vote in such names as they may determine without the necessity of a resolution or other action by the directors.

NOTICE

56) Service. (1) Any notice or other document required to be given or sent by the Corporation to any shareholder, director or auditor of the Corporation shall be delivered personally or sent by prepaid mail or by telegram, telex, cablegram or facsimile addressed to:

- a) the shareholder at his latest address as shown on the records of the Corporation or its transfer agent; and
- b) the director at his latest address as shown in the records of the Corporation or in the last notice filed under section 64 or 71 of the Act.

With respect to every notice or other document sent by prepaid mail it shall be sufficient to prove that the envelope or wrapper containing the notice or other document was properly addressed and put into a post office letter box.

(2) If the Corporation sends a notice or document to a shareholder in accordance with the provisions of the foregoing subparagraph (2) and the notice or document is returned on three (3) consecutive occasions because the shareholder cannot be found, the Corporation is not required to send any further notices or documents to the shareholder until he informs the Corporation in writing of his new address.

57) Shares registered in more than one name. All notices or other documents required to be sent to a shareholder by the Act, the regulations under the Act, the articles or the by-laws of the Corporation shall, with respect to any shares in the capital of the Corporation registered in more than one name, be given to whichever of such persons is named first in the records of the Corporation and any notice or other document so given shall be sufficient notice or delivery of such document to all the holders of such shares.

58) Persons becoming entitled by operation of law. Every person who by operation of law, transfer or by any other means whatsoever shall become entitled to any shares in the capital of the Corporation shall be bound by every notice or other document in respect of such shares which prior to his name and address being entered on the records of the Corporation shall have been duly given to the person or persons from whom he derives his title to such shares.

59) Deceased Shareholder. Any notice or other document delivered or sent by post or left at the address of any shareholder as the same appears in the records of the Corporation shall, notwithstanding that such shareholder be then deceased and whether or not the Corporation has notice of his decease, be deemed to have been duly served in respect of the shares held by such shareholder (whether held solely or with other persons) until some other person be entered in his stead in the records of the Corporation as the holder or one of the holders thereof and such service shall for all purposes be deemed a sufficient

service of such notice or other document on his heirs, executors or administrators and all persons (if any) interested with him in such shares.

60) Signatures to Notices. The signature of any director or officer of the Corporation to any notice may be written, stamped, typewritten or printed or partly written, stamped, typewritten or printed.

61) Computation of Time. Where a given number of days' notice or notice extending over any period is required to be given under any provisions of the articles or by-laws of the Corporation, the day of service or posting of the notice shall, unless it is otherwise provided, be counted in such number of days or other period and such notice shall be deemed to have been given or sent on the day of service or posting.

62) Proof of Service. A certificate of any officer of the Corporation in office at the time of the making of the certificate or of a transfer officer of any transfer agent or branch transfer agent of shares of any class of the Corporation as to facts in relation to the mailing or delivery or service of any notice or other documents to any shareholder, director, officer or auditor or publication of any notice or other document shall be conclusive evidence thereof and shall be binding on every shareholder, director, officer or auditor of the Corporation, as the case may be.

CHEQUES, DRAFTS, NOTES, ETC.

63) All cheques, drafts or orders for the payment of money and all notes, acceptances and bills of exchange shall be signed by such officer or officers or other person or persons, whether or not officers of the Corporation, and in such manner as the directors may from time to time designate by resolution.

CUSTODY OF SECURITIES

64) (1) All securities (including warrants) owned by the Corporation shall be lodged (in the name of the Corporation) with a chartered bank or a trust company or in a safety deposit box or, if so authorized by resolution of the directors, with such other depositaries or in such other manner as may be determined from time to time by the directors.

(2) All securities (including warrants) belonging to the Corporation may be issued and held in the name of a nominee or nominees of the Corporation (and if issued or held in the names of more than one nominee shall be held in the names of the nominees jointly with right of survivorship) and shall be endorsed in blank with endorsement guaranteed in order to enable transfer thereof to be completed and registration thereof to be effected.

EXECUTION OF CONTRACTS, ETC.

65) (1) Contracts, documents or instruments in writing requiring the signature of the Corporation may be signed by any one of the directors or officers. All contracts, documents or instruments in writing so signed shall be binding upon the Corporation without any further authorization or formality. The directors are authorized from time to time by resolution to appoint any officer or officers or any other person or persons on behalf of the Corporation either to sign contracts, documents or instruments in writing generally or to sign specific contracts, documents or instruments in writing. Where the Corporation has only one director and officer, being the same person, that person may sign all such contracts, documents or other written instruments.

(2) The corporate seal (if any) may, when required, be affixed to contracts, documents or instruments in writing signed as aforesaid by an officer or officers, person or persons appointed as aforesaid by resolution of the directors.

(3) The term “contracts, documents or instruments in writing” as used in this by-law shall include deeds, mortgages, hypothecs, charges, conveyances, transfers and assignments of property, real or personal, immovable or moveable, agreements, releases, receipts and discharges for the payment of money or other obligations, conveyances, transfers and assignments of shares, warrants, bonds, debentures or other securities and all paper writings.

(4) In particular, without limiting the generality of the foregoing, any one of the directors or officers of the Corporation are hereby authorized to sell, assign, transfer, exchange, convert or convey all shares, bonds, debentures, rights, warrants or other securities owned by or registered in the name of the Corporation and to sign and execute (under the seal of the Corporation or otherwise) all assignments, transfers, conveyances, powers of attorney and other instruments that may be necessary for the purpose of selling, assigning, transferring, exchanging, converting or conveying or enforcing or exercising any voting rights in respect of any such shares, bonds, debentures, rights, warrants or other securities.

Where the Corporation has only one director and officer, being the same person, that person may perform the functions and exercise the powers herein contemplated.

AUDITOR

66) At each annual meeting of the shareholders of the Corporation an auditor may be appointed for the purpose of auditing and verifying the accounts of the Corporation for the then current year and his report shall be submitted at the next annual meeting of the shareholders. The auditor shall not be a director or an officer of the Corporation. Unless fixed by the meeting of shareholders at which he is appointed, the remuneration of the auditor shall be determined from time to time by the directors.

FISCAL YEAR

67) The fiscal period of the Corporation shall terminate on such day in each year as the directors may from time to time by resolution determine.

BORROWING

68) General Borrowing. The directors may from time to time:

- a) borrow money upon the credit of the Corporation;
- b) issue, reissue, sell or pledge debt obligations of the Corporation;
- c) give a guarantee on behalf of the Corporation to secure performance of an obligation of any person; and
- d) mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the Corporation, owned or subsequently acquired, to secure any obligation of the Corporation.

The directors may from time to time authorize any director or directors, or officer or officers, of the Corporation, to make arrangements with reference to the money borrowed or to be borrowed as aforesaid, and as to the terms and conditions of the loan thereof, and as to the securities to be given therefor, with power to vary or modify such arrangements, terms and conditions and to give such additional securities

for any moneys borrowed or remaining due by the Corporation as the directors of the Corporation may authorize, and generally to manage, transact and settle the borrowing of money by the Corporation.

* * * * *

This by-law was made by resolution of the sole director on [DATE].

Authorized Officer

This by-law was confirmed by ordinary resolution of the shareholders on [DATE].

Authorized Officer

Appendix 16

SHAREHOLDERS' LEDGER

Name Richard, Elizabeth A.

Adress 17 Connaught Street, Fredericton, N.B.

Occupation _____

Phone Nos	Office	Residence	453-5432	Common or Special	Class "B" common
-----------	--------	-----------	----------	----------------------	------------------

[illegible]

SHAREHOLDERS' LEDGER

Name Richard, Elizabeth A.

Adress 17 Connaught Street, Fredericton, N.B.

Occupation

Phone Nos Office

Residence 453-5432

Common
or Special **Class "A" common**

[illegible]

SHAREHOLDERS' LEDGER

Name Slazenger, Joan M.

Adress 142 Anderson Drive, Saint John, N.B.

Occupation ·

Phone Nos Office

Residence 633-4321

Common
or Special Class "B common

[illegible]

Name Slazenger, Joan M.

Adress 142 Anderson Drive, Saint John, N.B.

Occupation _____

[illegible]

SHAREHOLDERS' LEDGER

Name Richard, Walter B.

Adress 17 Connaught Street, Fredericton, N.B.

Occupation

Phone Nos	Office	453-2345	Residence	453-5432	Common or Special	Class "B" common
-----------	--------	-----------------	-----------	-----------------	----------------------	-------------------------

[illegible]

SHAREHOLDERS' LEDGER

Name **Richard, Walter B.**

Adress 17 Connaught Street, Fredericton, N.B.

Occupation

Common

Phone Nos Office 453-2345

Residence 453-5432

or Special Class "A" common

[illegible]

Name Slazenger, Ralph J.

Adress 142 Anderson Drive, Saint John, N.B.

Occupation

Common
Phone Nos. Office **633-1234** Residence **633-4321** or Special Class "B common"

[illegible]

Name **Slazenger, Ralph J.**

Adress 142 Anderson Drive, Saint John, N.B.

Occupation _____

Common
Phone Nos. Office **633-1234** Residence **633-4321** or Special Class "A" common

[illegible]

SHAREHOLDERS' LEDGER

Name Treasury - An unlimited number of non-voting common shares designated as Class "B" shares

Adress

Occupation:

Phone Nos	Office	Residence	Common or Special
-----------	--------	-----------	-------------------

[illegible]

Name Treasury - An unlimited number of voting common shares designated as Class "A" shares

Adress

Occupation _____

Phone Nos	Office	Residence	Common or Special
-----------	--------	-----------	-------------------

[illegible]

[illegible]

[illegible]

DIRECTORS' REGISTER

[illegible]

DIRECTORS' REGISTER

[illegible]

SHAREHOLDERS' REGISTER

[illegible]

SHAREHOLDERS' REGISTER

[illegible]

Appendix 17

**RESOLUTION OF THE BOARD
OF
DIRECTORS OF BARCO LIMITED**

The undersigned being all of the directors of **BARCO LIMITED**, a New Brunswick corporation, (the “**Corporation**”) and being entitled to vote on the resolutions hereinafter set forth as if the same had been submitted at a meeting of the directors of the Corporation duly called, constituted and held for the purpose of acting on such resolutions, do hereby resolve, in lieu of a meeting of the directors of the Corporation, as follows:

RESOLVED:

That the financial statements including the balance sheet as at [DATE] and the statement of income and retained earnings to [DATE] be approved and adopted and the president is hereby authorized to sign the said financial statements on behalf of the board of directors to evidence such approval.

DATED this [DATE]

James E. Smith

**ANNUAL RESOLUTION OF THE SHAREHOLDERS
OF
BARCO LIMITED**

The undersigned being all of the shareholders of **BARCO LIMITED**, a New Brunswick corporation, (the “**Corporation**”) and being entitled to vote on the resolutions hereinafter set forth as if the same had been submitted at a meeting of the shareholders of the Corporation duly called, constituted and held for the purpose of acting on such resolutions, do hereby resolve, in lieu of a meeting of the shareholders of the Corporation, as follows:

RESOLVED:

THAT the financial statements including the balance sheet as at [DATE] and the statement of income and retained earnings to [DATE] be and the same are hereby approved and adopted;

RESOLVED:

THAT Messrs. Black & Company be and they are hereby appointed auditors of the Corporation to hold office until the next annual meeting of the shareholders of the Corporation at a remuneration to be determined by the board of directors of the Corporation.

RESOLVED:

THAT James E. Smith be and he is hereby elected director of the Corporation to hold office until the next annual election of directors or until his successor is elected or appointed, subject to the provisions of the Corporation's by-laws.

RESOLVED:

THAT all acts and proceedings of the officers and directors of the Corporation since the last annual meeting of the shareholders be and the same are hereby approved, ratified and confirmed.

DATED this [DATE].

James E. Smith

Jane A. Doe

**RESOLUTION OF THE BOARD OF DIRECTORS
OF
BARCO LIMITED**

The undersigned being all of the directors of **BARCO LIMITED**, a New Brunswick corporation, (the “Corporation”) and being entitled to vote on the resolutions hereinafter set forth as if the same had been submitted at a meeting of the directors of the Corporation duly called, constituted and held for the purpose of acting on such resolutions, do hereby resolve, in lieu of a meeting of the directors of the Corporation, as follows:

BE IT RESOLVED:

THAT the following persons are hereby confirmed as being the officers of the Corporation, who will hold the office set out opposite their name at the pleasure of the board of directors or until their successors are duly appointed:

James E. Smith -	President
Jane A. Doe	- Secretary and Vice-President
Anne W. Jones -	Treasurer

DATED this [DATE].

James E. Smith

Appendix 18

BY-LAW: ELECTRONIC VOTING

Electronic Shareholder Communication. If any shareholder so requests, the Corporation may distribute notice of shareholder meetings, financial statements and any other information or material required or permitted by the *Business Corporations Act* (New Brunswick), the by-laws of the Corporation or any other applicable law to be delivered to such shareholder in electronic form and all such information and material shall be deemed delivered by the Corporation to the shareholder when such information, in electronic form, enters an information system outside the control of the Corporation.

Electronic Signature. Where any provision of the *Business Corporations Act* (New Brunswick), the by-laws of the Corporation or any other applicable law requires that a document be executed by a shareholder or his or her authorized representative, such requirement shall be satisfied by an electronic signature.

Interpretation. For the purposes of this by-law:

- a) electronic form includes any document that is in digital or optical form;
- b) electronic signature means electronic information that a person has created or adopted in order to indicate his or her assent to the document and is attached to or associated with the document and includes an electronic representation of the manual signature of the person signing the document.

Resolutions in Writing. A resolution in writing signed by all the directors or signed counterparts of such resolution by all the directors entitled to vote on that resolution at a meeting of directors or a committee of directors is as valid as if it had been passed at a meeting of directors or committee of directors duly called, constituted and held. A copy of every such resolution or counterpart thereof shall be kept with the minutes of the proceedings of the directors or such committee of directors.

Any of the Directors may evidence his or her consent to the resolution in electronic form by reply email to the sender of the resolution and such reply shall constitute his or her electronic signature to the resolution and shall be deemed to constitute an original signature evidencing such approval in accordance with the *Electronic Transactions Act*, S.N.B. 2001, c. E-5.5.

An email evidencing his or her consent to the resolution shall be substantially in the following form:

By typing my name below I hereby certify that I, (Insert Full Name of Consenting Director) , a Director of the (Insert Corporation Name) , consent to the above resolution sent to me by email on (Insert Date) by the (Office held by Sender ie: Secretary) of the Corporation. The setting out of my name on this resolution shall be considered the electronic signature of the myself in accordance with the provisions of the *Electronic Transactions Act*, S.N.B. 2001, c. E-5.5.

TYPE FULL NAME OF CONSENTING DIRECTOR ABOVE

Appendix 19

Choosing a Name in New Brunswick

Guidelines for Corporate, Business and Partnership Names



Choosing a Name in New Brunswick

Guidelines for Corporate, Business & Partnership Names

**Corporate Registry
Service New Brunswick
432 Queen Street
PO Box 1998
Fredericton, NB
E3B 5G4**

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INTRODUCTION

These guidelines are to inform and facilitate clients who are wishing to register a corporate, business or partnership name in New Brunswick. The guidelines are designed to help you select an acceptable name and have it approved.

To ensure one's proposed name is not identical or deceptively similar to another on record, prior to incorporating a company/corporation or registering a partnership and/or business name in New Brunswick, you should ensure that the proposed name is suitable for incorporation and/or registration. This reduces potential confusion regarding names and uniquely identifies the name of the business in the marketplace. In determining whether a proposed name is suitable, you, as a businessperson, will take many factors into account in selecting a proposed name. (Does it describe the product or service offered? Is the name distinctive? Can customers identify and remember the name?) One major factor to take into account is the provisions in various Acts and Regulations of the Province of New Brunswick, which deal with the suitability of a name for incorporation and/or registration. (See Business Corporations Act, Limited Partnership Act, and Partnerships and Business Names Registration Act.) Copies of the Acts and Regulations are available from the Queen's Printer section of the Office of the Attorney General or online at www.snb.ca.

A major emphasis of these legislative provisions is to prohibit the incorporation or registration of a name that is either identical or deceptively similar to a name already on record in New Brunswick with the Registry. These provisions attempt to alleviate the public confusion and inconvenience which would likely result with having identical or deceptively similar names on record. We, as well, note that these legislative provisions also prohibit the corporation or registration of a name that is identical or deceptively similar to a Nova Scotia corporation or business name.

It should be noted that in circumstances where it is determined a name has been incorporated and/or registered and is identical or deceptively similar to an existing name on record, provisions exist under the Acts to order a change in the name of the more recently "recorded" name.

GENERAL GUIDELINES FOR CHOOSING A PROPOSED NAME

The following guidelines refer to corporate names. If you are choosing a business name (sole proprietorship) or a partnership name the guidelines would still apply except that there is no requirement to have a legal element in the proposed name. Business names or partnership names do not have a legal element in their name as they are not at law corporations.

CRITERIA

The overall goals in choosing corporate names acceptable for registration at Corporate Registry are:

- (a) ensure the proposed name is not identical or deceptively similar to a name on record
- (b) ensure the proposed name meets your overall business objectives of what you want the name to reflect as to the nature of activities of your business and its uniqueness as a name.

ELEMENTS IN A NAME

Nearly all corporate names are composed of three elements

1. The **DISTINCTIVE** element is the main identifier of the corporate name;
2. The **DESCRIPTIVE** element describes the nature and the principle business of the company and should be used when a distinctive element is weak thereby making the combined name distinctive, and
3. The **LEGAL** element indicates the status of the company as an incorporated body

Examples:

<u>Distinctive Element</u>	<u>Descriptive Element</u>	<u>Legal Element</u>
Black's	Clothing Store	Limited
Reprox	Reproductions	Limited
Fredericton	Boys Club	Inc.

There are varying degrees of distinctiveness in corporate names, some being highly distinctive and others very weak. The more distinctive the name is, the more memorable and commercially useful it will be. Some words are very weak either by the word itself or because of frequent use. (See the attached list.) These words should be avoided or used in conjunction with a distinctive word.

e.g. Black's Clothing Store Limited (distinctive name)
Clothing Store Ltd. (weak non-distinctive name)

ENGLISH AND FRENCH NAMES

A company may have an English or a French name or an English and French name. If a company has both an English and French name it may use either one at any time, or it may use both versions.

e.g. Sunshine Bakeries Limited
Au Soleil Boulangerie Limitee

It should be noted that there is no requirement that the French or English version of a company name be an exact translation, but they must have the same general meaning.

If the company's name is the name of a person, there is no necessity of repeating the name. This would also be the case if the company is a coined word.

e.g. Francois J. LeBlanc Ltd./Ltee
Exxon Ltee/Ltd

If the name in both English and French is unduly cumbersome to use, it is suggested that such company register a shorter business French and English name under the Partnerships and Business Names Registration Act.

GENERAL POLICIES

1. A proposed corporate name may not be that of another company operating in New Brunswick whether incorporated or unincorporated, nor should it so resemble the name of another company as to be confounded therewith.
2. A corporate name *may* not consist of initials only. Some word, indicative of the business of the corporation together with the initials is necessary in order to make the name distinctive.
3. A coined word made up of a combination of letters or syllables, and not found in a dictionary, may be granted if combined only with the legal element.
4. A person may incorporate a company under his own name providing an identical name has not already been used. In many cases, the Registry requires that the person's name which is being used give his consent to the use of the name, unless the person whose name is used is one of the original applicants.

Examples

(a) A corporate name which has as its distinctive feature a surname, e.g. John R. Craig's Plumbing Ltd., requires a consent unless said person's name appears as an applicant.

(b) A corporate name which has as its distinctive feature a given name, e.g. Pauline's Hairstyling Ltd., does not require a consent.

(c) If the surname is distinctive by itself or is distinctive when used with a descriptive element, it may be allowed; in which case consent would not be required.

e.g. Bandertine Limited or Briggs' Arrowspace Ltd.

Family names require a descriptive element. A person can usually use his family name as long as the name is not being used to benefit from the goodwill of an established well-known name which would confuse the public.

e.g. Smith Construction Inc.

5. A corporate name which has as its distinctive feature a number or numbers may use same in written form, e.g. Four In One Clothing Ltd.

e.g. One two three Step Day Care – allowed
1 2 3 Step Day Care – not allowed

A company may have a number (ex. Information 2000 Ltd.) within the name.

Exception: Companies using street names are allowed.

e.g. 1155 Regent St. Ltd.
telephone # names not allowed

6. A current calendar year can form part of the corporate name provided it is the year of the company's Incorporation and is enclosed in brackets and precedes the legal element.

e.g. Ward Construction (2009) Inc.

7. A geographic term is a free word to which no one can ordinarily claim exclusive use and it must be accompanied by a descriptive term.

e.g. Keswick Plumbing & Heating

8. A descriptive term is, by definition, a free word used to describe a business and therefore should be accompanied by another descriptive term. e.g. Smart Delivery Ltd.

9. The exact name of an existing company may not be used for the incorporation of a new company. Some distinguishing word or words must be added to its name, e.g. Brown's Construction Ltd., could not be used for incorporating a new company if a company of such a name is already in existence. However Brown's Construction (2009) Ltd., could be used provided the existing company gives its consent to the use of the name and its undertaking to either dissolve its articles of incorporation or change its name to a dissimilar name normally within six months from date of incorporation of the new company. Corporate Registry will review any such undertaking and determine whether it is acceptable, in this particular instance, to permit the registration/incorporation and to proceed with the proposed name. The year indicated must be the year of incorporation. If such an undertaking is given and nothing is done, the Director, under section 10(4) of the Business Corporations Act, will change the name of the company which has given such undertaking.

10. When two or more corporations amalgamate, the name of the amalgamated corporation may be the same as one of the amalgamating corporations, or it may be a distinctive new name.
11. Similar descriptive elements should be avoided when there is already an existing corporation/business with the same distinctive element.

Forward Trucking Ltd.
Forward Transport Ltd.

Bigjohn Lumber Corp.
Bigjohn Logging Corp.

Eatall Restaurant Inc.
Eatall Dining Room Inc.

NOVA SCOTIA NAMES

The Province of New Brunswick has Legislative and Regulatory provisions that prohibit the incorporation/registration of names that are identical or similar to deceptively similar to

1. Nova Scotia corporations
2. Nova Scotia based business names and partnerships

Likewise, the Province of Nova Scotia has reciprocal provisions in respect to New Brunswick corporations, business names and partnerships.

FURTHER REVIEW OF A DESCRIPTIVE ELEMENT

(A) COINED – e.g. Reprox

Such words would be allowed and in most cases because they are distinctive may not require another word. One of the best recent examples would be EXXON. Many such coined words need not be translated. They can be used in either the French or English name. e.g. Exxon Ltee/Ltd. However, it must be distinctive and cannot be accepted if the word has or could have general use.

Eg. Carport

Patsan Ltd. – on record
Patsan Construction – consent required

(B) GENERAL WORDS – e.g. Sunshine

Words used with a meaning other than their ordinary meaning will require a descriptive element. e.g. Sunshine Ladies Wear Limited. There may be an exception if the word alone has acquired a secondary meaning, e.g. Carpark Limited.

(C) FAMILY NAMES – e.g. Black

A family name in order to be distinctive may require a descriptive element or another word or words, e.g. Black's Clothing Store Limited. A person has the right to use his own name as long as the name is not being used to benefit from the good will of an established name which would confuse the public. Some family names acquire a secondary meaning and do not require a distinctive meaning, e.g. The Moore Corporation. Many people in the Province have the same last name, e.g. White. Such persons may be required to also use their given name or names, e.g. John W. White Construction Limited

(D) GEOGRAPHICAL NAMES – e.g. Miramichi, St. Stephen

These words are general words and cannot be retained for the exclusive use of any company except where a secondary meaning has been acquired, e.g. Hudson Bay. In all other cases a geographical name must be accompanied by a descriptive element or another word or words.

(E) DESCRIPTIVE NAME

Many words used by companies could be deceptive unless they have a descriptive element or another word or words. In order that the name be distinctive, it is strongly recommended that at least another word be used, e.g. Instead of calling a bakery "High Tide Limited" the applicants would be advised to use "High Tide Pastries Limited".

(F) GENERAL WORDS

These words should be avoided. However, if used they should be used with a distinctive word or a descriptive element, e.g. Industrial. - Industrial Marnox Ltd. or Industrial Building Supplies Limited. (See list attached).

(G) WEAK WORDS

Many words should likely not be used because of their overuse. If they are used in a name they must have a very descriptive or distinctive element, e.g. tire - this would require a distinctive element, e.g. F. W. Kessenger Tires Ltd. Another example would be Central - this would require a descriptive element - Central Eel Canneries Limited. A sample list of weak words, because of frequent use, is attached. This is not an all inclusive list.

(H) PROHIBITIONS OR RESTRICTIONS

1. Such words as co-operative, credit union or municipal; should not be used without contacting the Credit Unions, Co-operatives & Trust Companies and Examinations Branch of the Department of Justice and Consumer Affairs.
2. Certain other words which would indicate that the company is backed or associated with by a known government body e.g. R.C.M.P. Limited or U.N. Consultant Ltd.
3. The name of National recognized clubs or associations without the consent of the parent organization. The consent must accompany the application.
4. The word "Engineering" without the consent of the Association of Professional Engineers and Geoscientist of New-Brunswick.

5. The use of "Insurance" in a name should be verified with the Insurance Branch of the Department of Justice and Consumer Affairs.
6. The words "Nursing Home" are allowed only with written approval of Minister or Deputy Minister of Health which must accompany application.
7. N.B. or (N.B.) may be used at the end of a corporate name, however, if there is a parent company, consent is required.
8. The use of "School" will be rejected if it appears, from the proposed name, that the corporation is an educational institute, without authorization from the relevant provincial authority (Department of Education).
 - Eg. Exact Driving School Inc. – acceptable
 - Eg. Southern Middle School Inc. – not acceptable without authorization
9. Where the name of a proposed corporation uses the term "University" or "College" in a fashion that the corporation is a degree-granting institution, the name will not be rejected as being misleading unless it can be established that the corporation has been authorized by the relevant provincial authority to grant degrees.
 - Eg. University Painters Inc. – acceptable
 - Eg. College Painters Inc. – acceptable
10. The use of "Professional Corporation", "Corporation professionnelle", "P.C." and "C.P." are allowed if the corporation has the capacity to practise a profession in accordance with paragraph 13(3)(d) of the Business Corporations Act and the Act governing the profession permits such words or abbreviations to be in the name of the corporation.
11. If your corporation will have activities of a financial nature, make sure the name does not connote carrying on the business of a bank, loan company, insurance company, trust company, other financial intermediary, or stock exchange unless the appropriate federal or provincial regulator consents in writing to the use of the name.

(I) USE OF THE WORDS "NEW BRUNSWICK" AND "N.B." AS THE FIRST WORDS IN A NAME

1. For incorporations and registrations under the Business Corporations Act, Limited Partnership Act and Partnerships and Business Names Registration Act, the consent of the Minister for Service New Brunswick is required. Historically, consent has only been given on an exception basis for profit oriented businesses.

The written request for consent should be forwarded to Corporate Registry, which will then deal with the request with the Minister's office.

The request should set out reasons for wanting "New Brunswick" or "N.B." as the first words in the name. A NUANS report is also required.

2. For non profit incorporations under the Companies Act, one is normally able to use “New Brunswick” and “N.B.” as the first words in the name. No consent of the Minister for Service New Brunswick is required.

The basic requirement is to ensure that any proposed name is not deceptively similar to an existing name and that the name does not indicate connection, support, authority from or any function of government.

(J) NUMBERED NAME CORPORATIONS

In certain special cases, incorporators/owners choose to go strictly with a numbered name corporation. You may want to consult your business or legal advisor to see whether this is a suitable alternative for you.

The legal name of a numbered corporation, in New Brunswick, is made up of the following components: a six-digit number assigned by Corporate Registry, the province name and a legal ending. Numbered corporations may be in a bilingual format or unilingual format.

Examples:

(Bilingual format)

123456 N.-B. Ltd./Ltée **or**

123456 New Brunswick Corp. 123456 Nouveau-Brunswick Corp.

(English format)

123456 N.B. Ltd. **or**

123456 New Brunswick Inc.

(French format)

123456 N.-B. Ltée **or**

123456 Nouveau-Brunswick Incorporée

1. INTERNET NAMES

Suffixes like “.ca” or “.com” are not considered a distinctive or descriptive element in a name. If the name is distinctive without the suffix it may be approved subject to the results of the name search. If the name is to be incorporated it must have a legal ending.

(L) EXTRA-PROVINCIAL CORPORATIONS

Extra-provincial corporations are required to obtain an Atlantic based NUANS name search when registering in New Brunswick. The Registry will review the name to determine the suitability of the name of the extra-provincial corporation for registration purposes. In circumstances where the name of the extra-provincial corporation is viewed as unsuitable, provisions exist to require the corporation to register a business name under which it will carry on business in New Brunswick.

(M) PROTECTION OF DISSOLVED/CANCELLED NAMES

Business names and Partnership names, once cancelled, are immediately available to anyone wishing to register the same or similar name. Caution should be used however if you decide to

use a well know name that has been cancelled as there may be confusion with who the owner of the name is. The owner of the cancelled business name or partnership name may still have “common law” rights to the use of the name and could take legal action against you for use of their name.

Corporation names, once dissolved, amalgamated or changed, are not available for three years from the date of the dissolution, amalgamation or name change. Within the three year period you may be able to incorporate a corporation with a somewhat similar name. If you intend to do so it is recommended that you contact Corporate Registry first.

(N) TRADEMARKS

If your name is similar to or the same as a registered trademark the Corporate Registry branch would encourage you to select a dissimilar name. The owner of a trademark could launch a court action to compel you to stop using your name and perhaps even to pay damages. The last 2 pages of the NUANS report indicates trademarks that are the same or similar to your proposed name (see the Section relating to “Obtaining a Proposed Name” for information regarding obtaining a NUANS report).

If you want to register your company name as a trademark you may wish to discuss with your legal and/or business advisor as to the advantages of registering a trademark. You may also access the website of the Canadian Intellectual Property Office at www.cipo.gc.ca.

OBTAINING A PROPOSED NAME

- 1) Select a proposed name.
- 2) Obtain a name search report from a private sector name search firm. This report must be an Atlantic New Brunswick based NUANS search report. Review the report and the firm's covering letter to determine whether the proposed name continues to seem to be suitable from your perspective.

ELECTRONIC FILING OF THE REPORT and APPLICATION

- 1) You are able to file your incorporation or business name registration (sole proprietor only) documents electronically with Corporate Registry. Check our web site at www.snb.ca. During this process you will be asked to attach the NUANS search report. You must first save the NUANS report to your electronic files in order to attach the report.

Note: The name search report must be a current report, i.e. one done within 90 days of receipt by the Registry.

- 2) The Corporate Registry will review the NUANS report to determine whether the proposed name is suitable for incorporation/registration. It will also review the incorporation/registration documents submitted online to ensure they are acceptable for filing. If the proposed name and the other documents are suitable, the Registry will file the incorporation/registration documents.

PAPER FILING OF THE REPORT and APPLICATION

1) Send in the name search report, covering letter and the incorporating/registration documents to the Corporate Registry.

Note: The name search report must be a current report, i.e. one done within 90 days of receipt by the Registry.

2) The Corporate Registry will review the NUANS report to determine whether the proposed name is suitable for incorporation/registration. It will also review the incorporation/registration documents to ensure they are acceptable for filing. If the proposed name and the other documents are suitable, the Registry will file the incorporation/registration documents.

FREQUENTLY OCCURRING TERMS IN CORPORATE NAMES

AGENCIES	GAS	PACIFIC
AGENCY	GENERAL	PARK
AIR	GEORGE	PAUL
ALBERTA	GOLF	PHARMACY
AMERICAN	HARDWARE	PLACEMENTS
ASSOCIATES	HEATING	PRINTING
ASSOCIATION	HOLDING(S)	PRODUCTION
AUTO	HOME(S)	PRODUCTS
BAY	HOSPITAL	PROPERTIES
BROTHERS	HOTEL	PLUMBING
BUILDERS	HOUSE	QUEBEC
BUILDING	HOUSING	UNION
CAISSE	IMPERIAL	UNITED
CANADA	IMMEUBLES	RANCH
CANADIAN	INDUSTRIAL	REAL
CAR	INDUSTRIES	REALTIES
CENTRAL	INSURANCE	REALTY
CENTRE	INTERNATIONALI	RENTALS
CHURCH	NVESTMENT	RESTAURANT
CITY	JOHN	RIVER
CLEANERS	LAKE	ROYAL
CLUB	LAND	SALES
COMMUNITY	LEAF	SCHOOL
COMPAGNIE	LEASING	SECURITIES
CONSULTANT	LIFE	SERVICE(S)
CONSTRUCTION	LOGGING	SHOP
CO-OPERA TIVE	LOISIRS	SOCIETE
CORPORATION	LUMBER	SOCIETY
CONTRACTING	MACHINE	SON(S)
CONTRACTOR	MANAGEMENT	SPORTS
COUNTY	MANUFACTURING	STEEL
CREDIT	MAPLE	STORE(S)
DEVELOPMENT	MARINE	SUPPLIES
DISTRIBUTOR	MARKET	SUPPLY
DISTRICT	METAL	SYNDICATE
ELECTRIC	MINES	SYSTEMS
ENGINEERING	MINING	TELEPHONE
ENTERPRISE(S)	MONTREAL	TIRE
ESTATE(S)	MOTEL	TORONTO
EQUIPMENT	MOTOR(S)	TRADING
EXPLORATION	MUTUAL	TRANSPORT
FARM(S)	NATIONAL	TRUCKING
FILS	NEW	VALLEY
FOOD(S)	NORTH	VANCOUVER
FOUNDATION	NORTHERN	WEST
FURNITURE	OIL	WESTERN
GARAGE	ONTARIO	WORK

THE LAW SOCIETY OF NEW BRUNSWICK

Corporate Reorganizations

Chapter 3

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Corporate reorganizations

1. Introduction

Corporate reorganization generally refers to various transactions whereby the nature or structure of the corporation is changed. These changes can include amendments to the articles, amalgamation of corporations, continuance in another jurisdiction, or transactions that are approved and adopted by a plan of arrangement pursuant to section 128 of the NBBCA.

2. Articles of Amendment

A corporation may add provisions to, remove provisions from or otherwise change its articles by way of Articles of Amendment. Articles of Amendment are used, for example, to change the name of the corporation or to vary its share capital (subsection 113(1)).

The procedure to effect Articles of Amendment is as follows:

The proposal to amend the articles may come from the directors or any shareholder entitled to vote at an annual meeting (subsection 114(1) of NBBCA). (See Appendix 1 attached). The proposal is then submitted to the shareholders. The amendment may be approved by a written resolution of all of the shareholders entitled to vote or by special resolution passed at a meeting. Notice of the meeting of shareholders at which the proposal is to be considered must set out the proposed amendment. (See Appendix 2 attached). If the amendment is one which, if passed, would entitle a shareholder to dissent and to be paid the fair value of his shares, that fact must also be stated in the notice of meeting (subsection 114(2) of NBBCA).

The resolution to amend the articles must be passed by a special resolution of the shareholders (subsection 113(1) of NBBCA) (see Appendix 4 for an example of such a resolution). Certain amendments to the share capital must be also approved by special resolutions of the holders of the classes or series of shares that are particularly affected, voting separately as a class or series (section 115 of NBBCA) and this is applicable whether or not such series or classes are otherwise entitled to vote. Within three months of confirmation by the shareholders, the Articles of Amendment in the prescribed form (Form 3) shall be sent to the Director. An example of a completed Form 3 is set out in Appendix 3.

Upon receipt of the Articles of Amendment, the Director will issue a Certificate of Amendment (section 117). The amendment to the articles becomes effective on the date shown in the Certificate of Amendment (subsection 118(1)).

If a corporation has amended its articles, it may at any time on its own volition by way of special resolution restate its articles as amended. A corporation may also be required to do this by the Director (subsection 119(1)). In such a case the restated articles are sent to the Director in the prescribed form (Form 5) (subsection 119(2)). Upon receipt of the restated articles, the Director will issue a Restated Certificate of Incorporation (subsection 119(3)).

The restated articles may not make any amendments to the articles and are effective on the date shown on the Restated Certificate of Incorporation and as of that date supersede the original articles of incorporation and all amendments to the original articles (see Appendix 5 attached).

3. Dissolution

3.1 Introduction

"Liquidation" ordinarily refers to the process of disposing of the assets of the business owned by a

corporation. The process is sometimes referred to as winding-up.

"Dissolution" is used in corporate law to mean the termination of the existence of a corporation followed by the payment of its liabilities and subsequent termination. Upon dissolution the corporation ceases to exist except for very limited purposes, such as satisfying its liabilities.

Dissolution or liquidation and dissolution may be voluntary or involuntary. There are four principal types of procedure that result in voluntary dissolution:

- 1) directors' dissolution - where no shares have been issued the corporation may be dissolved by authority of a resolution of all the directors: NBBCA subsection 137(1);
- 2) shareholders' dissolution - where shares have been issued but the corporation has no property or liabilities the dissolution may be approved by a special resolution of the shareholders (2/3 majority): NBBCA subsection 137(2);
- 3) shareholders' dissolution/liquidation - if the corporation has property or liabilities or both, the shareholders authorize the directors to discharge the liabilities and distribute the remaining property before dissolution: NBBCA subsection 137(3);
- 4) formal liquidation and dissolution - a more complicated procedure that is usually employed where the liabilities cannot all be discharged outright or where the creditors are not all known: NBBCA section 138.

The most common reason for an involuntary dissolution is failure to file annual returns with Corporate Affairs (Service New Brunswick).

An involuntary liquidation and dissolution may be ordered by the court where a corporation has been managed in a manner that is oppressive to the interests of any shareholder, creditor, director or officer or where the court is of a view that it is otherwise just an equitable to do so (section 141 of the NBBCA).

3.2 Remaining of property General-Conveyance

If any property remains in a corporation at the time of dissolution it will vest in the Crown (subsection 154(1) of the NBBCA). For that reason it is standard practice for any corporation that is being dissolved to execute a general conveyance or wind-up agreement which operates to convey all remaining property to, or for the benefit of, the shareholders.

3.3 Forms

With the exception of a formal liquidation and dissolution under section 138 of the NBBCA, a corporation is dissolved by filing Articles of Dissolution (Form 11).

Under the formal liquidation and dissolution process the corporation first files a statement of intent to dissolve (Form 12) following which the corporation proceeds to liquidate its assets and pay its liabilities. When the liquidation process is complete, the corporation is dissolved by filing Form 11. Examples of the Form 11 and Form 12 are set out in Appendices 6 and 7.

4. Amalgamation

4.1 General Comments

An amalgamation under the NBBCA is a continuation of two or more corporations as one corporation. It is a combining of all the assets and liabilities into one corporation. There is no actual conveyance or transfer of assets on amalgamation.

4.2 Short-Form Amalgamations

An amalgamation is usually accomplished by an amalgamation agreement which is approved by special resolutions of the shareholders of each of the amalgamating corporations.

However, in the case of the amalgamation of wholly-owned subsidiaries of a parent corporation or an amalgamation of a parent corporation and one or more of its wholly-owned subsidiaries, the NBBCA permits the shareholder approval to be dispensed with as well as the amalgamation agreement.

A directors' resolution complying with section 123 suffices. This simplified procedure is often referred to as a "short-form amalgamation".

In the case of an amalgamation of a corporation with its wholly owned parent, the articles of amalgamation (including the name) must be the same as the articles of the parent. On the amalgamation of two or more wholly owned subdivisions of the same parent, the shares of all but one corporation are cancelled and the articles of amalgamation (including the name) must be the same as the articles of the corporation whose shares are not cancelled.

4.3 Effect of Amalgamation

Section 125 of the NBBCA codifies two Supreme Court of Canada decisions to the effect that the predecessor companies are not dissolved but continued on amalgamation as one corporation with all the rights and subject to all the liabilities previously existing.

Corporate Affairs treats the amalgamated corporation as a new corporation for the purposes of record-keeping (it assigns the amalgamated corporation a new corporation number). The *Income Tax Act* provides that the fiscal year of each predecessor corporation terminates on amalgamation.

4.4 Dissenting Shareholder Rights

A shareholder who objects to the amalgamation is entitled to dissent under section 131 of the NBBCA and to be paid the fair value of his shares (see also NBBCA subsection 122(2)). Dissent rights do not apply in the case of a short-form amalgamation.

4.5 Procedure

The elements of an amalgamation are as follows:

- 1) an agreement between the amalgamating corporations that contains the provisions listed in Subsection 121(1) of the NBBCA (see Appendix 8) (except in the case of a short-form amalgamation);
- 2) approval of the agreement by shareholders of each amalgamating corporation holding not less than 2/3 of the shares; even non-voting shares carry the right to vote on the amalgamation (Appendix 9) or, in the case of a short-form amalgamation, approval by the directors of each amalgamating corporation in compliance with section 123 of the NBBCA.
- 3) confirmation by certificate of amalgamation which is issued by the Director upon receipt of:
 - a) Articles of Amalgamation (Form 6) with Additional Information Form (Appendix 10);
 - b) Notice of Directors (Form 4) (Appendix 11);
 - c) Notice of Registered Office (Form 2) (Appendix 12); and
 - d) a statement as to solvency and protection of creditors in accordance with subsection 124(2) (Appendix 13).

5. Continuance

5.1 General Comments

A corporation incorporated under the laws of any jurisdiction other than New Brunswick may, if allowed under the laws of its own jurisdiction, or a corporation incorporated or continued under the laws of New Brunswick, may apply for a certificate of continuance in New Brunswick under the NBBCA. Section 126 of the NBBCA governs the procedure for continuance in New Brunswick.

A corporation governed by the NBBCA may apply for authorization to be continued in another jurisdiction (i.e., under the CBCA) and section 127 of the NBBCA governs the procedure for a NBBCA corporation wishing to continue in another jurisdiction.

5.2 Procedure for Continuance of a Corporation in New Brunswick

The elements of a continuance are as follows:

- 1) the corporation must follow the procedure under its current laws which apply for authorization to continue in New Brunswick and authorize its directors to make the application for a certificate of continuance in New Brunswick (subsection 126(1)(a));
- 2) confirmation by certificate of continuance which is issued by the Director upon receipt of:
 - a) Articles of Continuance (Form 7);
 - b) Notice of Registered Office (Form 2);
 - c) Notice of Directors (Form 4)
- 3) the Director will send a copy of the Certificate of Continuance to the appropriate official or public body in the jurisdiction where the continuance was authorized (if such authorization is applicable) (subsection 126(6) of the NBBCA).

5.3 Effect of the Issuance of Certificate of Continuance

Once a Certificate of Continuance is issued, the corporation becomes subject to the NBBCA as if it had been incorporated under it; the Articles of Continuance are deemed to be the Articles of Incorporation for the continued corporation and the Certificate of Continuance is deemed to be the Certificate of Incorporation of the continued corporation (subsection 126(5) of the NBBCA).

Upon continuance, the corporation then possesses all the property, rights and privileges and is subject to all the liabilities, including civil, criminal and administrative, and all contracts, disabilities and debts of the corporation. A conviction against, or ruling, order or judgment in favour of or against, the corporation can be enforced by or against it.

All shares in the corporation issued before it was continued under the NBBCA are deemed to have been issued in compliance with the NBBCA with the provisions of the articles of continuance, irrespective of whether the shares are fully paid, and of any designation, rights, privileges, restrictions or conditions set out on or referred to in the certificate representing those shares, and continuance under the NBBCA will not deprive a shareholder of any right or privilege that he may claim under, or relieve him of any liability in respect of, an issued share.

5.4 Continuance of a New Brunswick Corporation in Another Jurisdiction

In order for a New Brunswick corporation to apply for continuance in another jurisdiction, the corporation must be authorized by special resolution of its shareholders (see example in Appendix 14 attached), and establish to the satisfaction of the Director under the NBBCA that its proposed continuance in another jurisdiction will not adversely affect creditors or shareholders of the corporation.

The NBBCA will cease to apply to the corporation on the date shown in the certificate of discontinuance issued by the Director under the NBBCA, which shall be dated the date upon which the corporation is continued under the laws of the other jurisdiction.

A corporation will not be permitted to continue in another jurisdiction unless the laws of that jurisdiction provide in effect that:

- a)** the property of the corporation continues to be its property.;
- b)** the body corporate continues to be liable for the obligations of the corporation;
- c)** an existing cause of action, claim or liability to prosecution is unaffected;
- d)** a civil, criminal or administrative action or proceeding pending by or against the corporation may be continued to be prosecuted by or against the body corporate; and
- e)** a conviction against the corporation may be enforced against the body corporate or a ruling, order or judgment in favour of or against the corporation may be enforced by or against the body corporate.

Appendix 1**NOTICE OF PROPOSAL**

TO: ABC Inc.
371 Smith Street
Moncton, New Brunswick
E3X 4T4

Pursuant to sections 89 and 114 of the *Business Corporations Act*, I hereby give notice that I will propose at the next annual meeting of the shareholders of ABC Inc. that the articles of ABC Inc. be amended to change the name of the corporation to XYZ Inc.

DATED at Moncton, New Brunswick, this [DATE].

Jack Jones
Shareholder

Appendix 2

NOTICE OF ANNUAL AND SPECIAL MEETING

TO: The Shareholders, directors and auditor of ABC Inc.

TAKE NOTICE that the Annual Meeting of the Shareholders of ABC Inc. (the “Corporation”) will be held at Head Office of the Corporation at 371 Smith Street, Moncton, New Brunswick, on [DATE], at the hour of 2 o'clock in the afternoon for the purposes of:

- (a) Receiving the financial statements of the corporation for the year ending [DATE];
- (b) Electing the directors of the Corporation for the ensuing year; and
- (c) Reappointing [NAME OF ACCOUNTANT] as auditor of the Corporation for the ensuing fiscal year.

ALSO TAKE NOTICE that there shall be considered at the said meeting a proposal by Jack Jones, a shareholder of the Corporation, to amend the articles of the Corporation to change the name from ABC Inc. to XYZ Inc.

DATED: [DATE]

ABC INC.

Secretary

Appendix 3

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NEW BRUNSWICK
BUSINESS CORPORATIONS ACT
FORM 3
ARTICLES OF AMENDMENT
(SECTION 26, 116)



NOUVEAU-BRUNSWICK
LOI SUR LES CORPORATIONS COMMERCIALES
FORMULE 3
STATUTS DE MODIFICATION
(ARTICLE 26,116)

1-Name of Corporation - Raison sociale de la corporation

[Corporation]

2-Corporation No.-Numéro de la corporation

[####]

3-The articles of the above-mentioned corporation are amended as follows:

Les statuts de la corporation mentionnée ici sont modifiés comme suit :

The articles of the Corporation are amended:

(a) by the creation of an unlimited number of Class C Preferred Shares without nominal or par value; and

(b) by deleting the rights, privileges, restrictions and conditions attaching to the common shares, Class A Preferred shares and Class B Preferred shares in the capital of the Corporation and substituting therefore the rights, privileges, restrictions and conditions for the common shares, Class A Preferred shares, Class B Preferred shares and Class C Preferred shares attached hereto as Schedule "A".

[NTD: attached to this form would be a separate sheet(s) of paper titled "Schedule "A"" which would address the terms and conditions for the shares]

Date	Signature	Description of Office - Description du bureau
FOR DEPARTMENTAL USE ONLY RÉSERVÉ AU SEUL USAGE DU MINISTÈRE		Filed -Déposé

SN0250/440307 / 45-5031 (9/09)

Appendix 4**SPECIAL RESOLUTION OF THE SHAREHOLDERS of
ABC INC. (the “Corporation”)****BE IT RESOLVED THAT**

1. The Articles of ABC Inc. be amended to change the name of the corporation from ABC Inc. to XYZ Inc.:
2. The secretary or any other officer of the Corporation be and he is hereby authorized to submit Articles of Amendment in the prescribed form to the Director of Corporations to effect the aforesaid change of name.

DATED this [DATE]

[shareholder]

Appendix 5

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**BUSINESS CORPORATIONS ACT
FORM 5
RESTATED ARTICLES OF INCORPORATION
(SECTION 119)**



**LOI SUR LES CORPORATIONS
COMMERCIALES
FORMULE 5
STATUTS CONSTITUTIFS MIS À JOUR
(ARTICLE 119)**

1 - Name of Corporation - Raison sociale de la corporation: [Corporation]	Corporation No. - N°. de corporation: [###]
2 - The classes and any maximum number of shares that the corporation is authorized to issue and any maximum aggregate amount for which shares may be issued including shares without par value and/or with par value and the amount of the par value:	Les catégories et le nombre maximal d'actions que la corporation peut émettre ainsi que le montant maximal global pour lequel les actions peuvent être émises y compris les actions sans valeur au pair ou avec valeur au pair ou les deux et le montant de la valeur au pair :

Unlimited number of common shares without nominal or par value.

3 - Restrictions, if any, on share transfers: See Schedule - Restrictions on Share Transfer	Restrictions, s'il y en a, au transfert d'actions:
---	--

4 - Number (or minimum and maximum number) of directors: Minimum 1 Maximum 10	Nombre (ou nombre minimum et maximum) des administrateurs:
---	--

5 - Restrictions, if any, on business the corporation may carry on: None	Restrictions, s'il y en a, à l'activité que peut exercer la corporation:
--	--

6 - Other provisions, if any: See Schedule - Other Provisions	D'autres dispositions, le cas échéant:
---	--

The foregoing Restated Articles of Incorporation correctly set out, without substantive change, the corresponding provisions of the Articles of Incorporation as amended and supersede the original Articles of Incorporation.

Les statuts constitutifs mis à jour indiquent, sans changement substantif, les dispositions correspondantes des statuts constitutifs modifiés qui remplacent les statuts constitutifs originaux.

Date	Signature	Description of Office Fonction
[Date]		President

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Filed - Déposé:

SN0254/440307 / 45-4106 (1/09)

[CORPORATION]
(hereinafter referred to as the “Corporation”)

**SCHEDULE – RESTRICTIONS ON SHARE TRANSFER
TO THE FOREGOING FORM 5 UNDER THE
NEW BRUNSWICK BUSINESS CORPORATIONS ACT**

No securities, other than non-convertible debt securities, shall be transferred without the consent of the directors or shareholders of the corporation expressed by resolution passed at a meeting of the board of directors or the shareholders or by an instrument or instruments in writing signed by all such directors or shareholders.

[CORPORATION]

(hereinafter referred to as the “Corporation”)

**SCHEDULE – OTHER PROVISIONS
TO THE FOREGOING FORM 5 UNDER THE
NEW BRUNSWICK BUSINESS CORPORATIONS ACT****1. PLACE OF SHAREHOLDER MEETINGS**

Notwithstanding subsections (1) and (2) of Section 84 of the *Business Corporations Act*, as from time to time in force, meetings of shareholders of the Corporation may be held at any place outside New Brunswick.

2. PRE-EMPTIVE RIGHTS

- (A) Notwithstanding subsection (2) of Section 27 of the *Business Corporations Act*, as from time to time in force, but subject however to any rights arising under any unanimous shareholders agreements, the holders of equity shares of any class, in the case of the proposed issuance by the Corporation of, or the proposed granting by the Corporation of rights or options to purchase, its equity shares of any class of any shares or other securities convertible into or carrying rights or options to purchase its equity shares of any class, shall not as such, even if the issuance of the equity shares proposed to be issued or issuable upon exercise of such rights or options or upon conversion of such other securities would adversely affect the unlimited dividend rights of such holders, have the pre-emptive right as provided by Section 27 of the *Business Corporations Act* to purchase such shares or other securities.
- (B) Notwithstanding subsection (3) of Section 27 of the *Business Corporations Act*, as from time to time in force, but subject however to any rights arising under any unanimous shareholders agreements, the holders of voting shares of any class, in case of the proposed issuance by the Corporation of, or the proposed granting by the Corporation of rights or options to purchase, its voting shares of any class or any shares or options to purchase its voting shares of any class, shall not as such, even if the issuance of the voting shares proposed to be issued or issuable upon exercise of such rights or options or upon conversion of such other securities would adversely affect the voting rights of such holders, have the pre-emptive right as provided by Section 27 of the *Business Corporations Act* to purchase such shares or other securities.

3. FINANCIAL ASSISTANCE

The Corporation may, directly or indirectly, give financial assistance by means of a loan, guarantee or otherwise:

- (a) to any shareholder, director, officer or employee of the Corporation or of an affiliated corporation, or
- (b) to any associate of a shareholder, director, officer or employee of the Corporation or of an affiliated corporation;
- whether or not:
- (c) the Corporation is, or after giving the financial assistance would be, unable to pay its liabilities as they become due; or

- (d) the realizable value of the Corporation's assets, excluding the amount of any financial assistance in the form of a loan or in the form of assets pledged or encumbered to secure a guarantee, after giving the financial assistance, would be less than the aggregate of the Corporation's liabilities and stated capital of all classes.

4. NUMBER OF DIRECTORS

The number of directors within the minimum and maximum numbers provided for in these articles shall be as determined by resolution of the board of directors.

5. OTHER

Subject to the provisions of the *Business Corporations Act* (New Brunswick), the Corporation may purchase or otherwise acquire any shares issued by it.

The Corporation shall have a lien on the shares registered in the name of a shareholder or his legal representative for any indebtedness owed by him to the Corporation, and such lien shall be enforceable in accordance with the by-laws of the Corporation or otherwise.

Subject to the Articles of the Corporation and the *Business Corporations Act* (New Brunswick), the holder of a fractional share shall be entitled to that number of votes equal to one multiplied by the fraction represented by such share and to notice of all meetings of shareholders of the Corporation

Appendix 6

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BUSINESS CORPORATIONS ACT
FORM 11
ARTICLES OF DISSOLUTION
(SECTION 137, 138)



LOI SUR LES CORPORATIONS
COMMERCIALES
FORMULE 11
STATUTS DE DISSOLUTION
(ARTICLE 137, 138)

1 - Name of Corporation / Raison sociale de la corporation: [CORPORATION]	2. Corporation No.-N°. de corporation: [###]						
3 - The corporation has - La corporation n'a <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 60%;"> not issued any shares pas émis d'actions </div> <div style="width: 35%; text-align: center;"> <input type="checkbox"/> </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 60%;"> no property and no liabilities aucun bien ni aucune dette </div> <div style="width: 35%; text-align: center;"> <input checked="" type="checkbox"/> </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 60%;"> not sent a statement of revocation of intent to dissolve pas envoyé de déclaration de renonciation d'intention de dissolution </div> <div style="width: 35%; text-align: center;"> <input type="checkbox"/> </div> </div>							
4 - Documents and records of the corporation shall be kept for six years from the date of dissolution by: <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 45%;"> Les documents et livres de la corporation, pour une période de six ans à partir de la date de dissolution, doivent être conservés par: </div> </div>							
5 - Name / Nom ABC INC. Address / Adresse 234 MAIN STREET FREDERICTON, NB E3C 2A2	Occupation BODY CORPORATE						
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 20%;">Date</th> <th style="width: 30%;">Signature</th> <th style="width: 50%;">Description of Office Fonction</th> </tr> </thead> <tbody> <tr> <td style="vertical-align: top;">[DATE]</td> <td></td> <td style="vertical-align: top;">PRESIDENT</td> </tr> </tbody> </table>		Date	Signature	Description of Office Fonction	[DATE]		PRESIDENT
Date	Signature	Description of Office Fonction					
[DATE]		PRESIDENT					
FOR DEPARTMENT USE ONLY RÉSERVÉ À L'USAGE DU MINISTÈRE							

Appendix 7

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**NEW BRUNSWICK
BUSINESS CORPORATIONS ACT
FORM 12
STATEMENT OF INTENT TO
DISSOLVE OR REVOCATION
OF INTENT TO DISSOLVE
(SECTION 138)**

**NOUVEAU-BRUNSWICK
LOI SUR LES CORPORATIONS COMMERCIALES
FORMULE 12
DÉCLARATION D'INTENTION DE
DISSOLUTION OU DE RENONCIATION
D'INTENTION DE DISSOLUTION
(ARTICLE 138)**

1 - Name of Corporation - Raison sociale de la corporation [CORPORATION]	2 - Corporation Number - Numéro de la corporation [#####]
3 - The corporation intends to liquidate and dissolve - La corporation a l'intention de procéder à la liquidation ou à la dissolution <input checked="" type="checkbox"/>	4 - The corporation revokes its certificate of Intent to Dissolve La corporation révoque son certificat d'intention de dissolution <input type="checkbox"/>

Date [DATE]	Signature	Description of Office - Fonction PRESIDENT
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Filed - Déposé		

440260 / 45-5037 (1/09)

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Appendix 8

THIS AMALGAMATION AGREEMENT dated this ____ day of _____, ____.

BETWEEN:

CORPORATION 1, a corporation duly incorporated under the laws of the Province of New Brunswick (hereinafter called “Corp1”)

OF THE FIRST PART

- and -

CORPORATION 2, a corporation continued under the laws of the Province of New Brunswick (hereinafter called “Corp2”)

OF THE SECOND PART

WHEREAS the parties hereto are each corporations subject to the provisions of the *Business Corporations Act* (New Brunswick) (hereinafter called the “Act”);

AND WHEREAS Corp2 is a direct wholly-owned subsidiary of Corp1;

AND WHEREAS the parties hereto acting under the authority contained in the Act have agreed to amalgamate upon the terms and conditions hereinafter set out;

AND WHEREAS the parties hereto and each of them have made full disclosure to the other of all of their respective assets and liabilities;

AND WHEREAS it is desirable that the said amalgamation should be effected;

NOW THEREFORE the parties hereto have agreed as follows:

1. In this agreement the expression “Amalgamated Corporation” means the corporation continuing from the amalgamation of the parties hereto.
2. The parties hereto do hereby agree to amalgamate under the provisions of sections 120 and 121 of the Act and to continue as one corporation upon and subject to the terms and conditions hereinafter set out.
3. The name of the Amalgamated Corporation shall be “[NEW NAME]”.
4. The Amalgamated Corporation shall be authorized to issue an unlimited number of common shares without nominal or par value.
5. The number of directors of the Amalgamated Corporation shall be a minimum of One (1) and a maximum of ten (10) and the number of directors within such minimum and maximum shall be set from time to time by resolution of the director(s) of the Amalgamated Corporation.
6. There shall be no restrictions on the business which the Amalgamated Corporation is authorized to carry on.

7. Notwithstanding subsections (1) and (2) of Section 84 of the Act, as from time to time in force, meetings of shareholders of the Corporation may be held at any place outside New Brunswick.
8. Notwithstanding subsection (1) of section 87 of the Act, as from time to time in force, notice of the time and place of a meeting of shareholders shall be deemed to be properly given if sent not less than ten (10) days nor more than fifty (50) days before the meeting to each shareholder entitled to vote at the meeting, to each director, and to the auditor (if any).
9. (A) Notwithstanding subsection (2) of section 27 of the Act, as from time to time in force, but subject however to any rights arising under any unanimous shareholders agreements, the holders of equity shares of any class, in the case of the proposed issuance by the Corporation of, or the proposed granting by the Corporation of rights or options to purchase, its equity shares of any class of any shares or other securities convertible into or carrying rights or options to purchase its equity shares of any class, shall not as such, even if the issuance of the equity shares proposed to be issued or issuable upon exercise of such rights or options or upon conversion of such other securities would adversely affect the unlimited dividend rights of such holders, have the pre-emptive right as provided by section 27 of the Act to purchase such shares or other securities.

(B) Notwithstanding subsection (3) of section 27 of the Act, as from time to time in force, but subject however to any rights arising under any unanimous shareholders agreements, the holders of voting shares of any class, in case of the proposed issuance by the Corporation of, or the proposed granting by the Corporation of rights or options to purchase, its voting shares of any class or any shares or options to purchase its voting shares of any class, shall not as such, even if the issuance of the voting shares proposed to be issued or issuable upon exercise of such rights or options or upon conversion of such other securities would adversely affect the voting rights of such holders, have the pre-emptive right as provided by section 27 of the Act, to purchase such shares or other securities.
10. The Amalgamated Corporation may, directly or indirectly, give financial assistance by means of a loan, guarantee or otherwise:
 - (a) to any shareholder, director, officer or employee of the Amalgamated Corporation or of an affiliated corporation; or
 - (b) to any associate of a shareholder, director, officer or employee of the Amalgamated Corporation or of an affiliated corporation;

Whether or not:

 - (c) the Amalgamated Corporation is, or after giving the financial assistance would be, unable to pay its liabilities as they become due; or
 - (d) the realizable value of the Amalgamated Corporation's assets, excluding the amount of any financial assistance in the form of a loan or in the form of assets pledged or encumbered to secure a guarantee, after giving the financial assistance, would be less than the aggregate of the Amalgamated Corporation's liabilities and stated capital of all classes.
11. No securities, other than non-convertible debt securities, shall be transferred without the consent of the directors or shareholders of the corporation expressed by resolution passed at a

meeting of the board of directors or shareholders or by an instrument or instruments in writing signed by all such directors or shareholders.

- 12 The first directors of the Amalgamated Corporation shall be as set out in Schedule “A” who shall hold office until the first annual meeting of the Amalgamated Corporation or until their successors are elected or appointed.
- 13 The first officers of the Amalgamated Corporation shall be as set out in Schedule “A” who shall hold offices indicated until replaced by resolution of the director or directors of the Amalgamated Corporation.
- 14 Upon the amalgamation of the parties hereto:
 - (a) the issued and outstanding shares in the capital of Corp2 shall be cancelled without any repayment of capital in respect thereof;
 - (b) the issued and outstanding common shares in the capital of Corp1 shall be converted, into an equal number of common shares of the Amalgamated Corporation; and
 - (c) the amount credited to the stated capital account for the common shares in the capital of Corp1 shall be added to the stated capital account for the common shares of the Amalgamated Corporation.
- 15 After the issue of the Certificate of Amalgamation giving effect to the amalgamation contemplated by this agreement, the shareholders of the parties hereto shall, at the request of the Amalgamated Corporation, surrender the certificates representing shares held by them in the capital of the parties hereto respectively and shall receive a certificate representing shares in the capital of the Amalgamated Corporation on the basis set forth in paragraph 16 of this agreement.
- 16 The by-laws of Corp1 shall be the by-laws of the Amalgamated Corporation until repealed, amended, altered or added to.
- 17 The parties hereto shall contribute to the Amalgamated Corporation all of their property and assets, subject to all of their liabilities as such exist immediately before the amalgamation herein contemplated.
- 18 The Amalgamated Corporation shall possess all the property, rights, privileges and franchises and shall be subject to all liabilities, including civil, criminal and administrative, all contracts, disabilities and debts of each of the parties hereto.
- 19 A conviction against, or ruling, order or judgment in favour of or against any of the parties hereto may be enforced by or against the Amalgamated Corporation. The Amalgamated Corporation shall be deemed to be the party plaintiff or the party defendant, as the case may be, in any civil action commenced by or against any of the parties hereto before the amalgamation herein contemplated becomes effective.
- 20 The amalgamation herein provided for shall take effect as of [DATE].
- 21 Upon the shareholders of each of the parties hereto approving the amalgamation in accordance with section 122 of the Act, the parties hereto shall complete and send articles of amalgamation

in the prescribed form to the Director under the Act providing for the amalgamation of the parties hereto pursuant to sections 120 and 121 of the Act.

- 22 This agreement may be terminated without cause or reason by the directors of each of the parties hereto at any time prior to the issue of a certificate of amalgamation under the Act.

IN WITNESS WHEREOF this agreement has been duly executed by the parties hereto as attested by the signatures of their proper officers.

SIGNED, SEALED AND DELIVERED

CORPORATION 1

Per: _____

CORPORATION 2

Per: _____

SCHEDULE “A”

Directors

Name	Address	Occupation	Tel. No.

Officers

Name	Address	Office

Appendix 9

SPECIAL RESOLUTION OF THE SOLE COMMON SHAREHOLDER OF CORPORATION 1

(hereinafter called the “Corporation”)

RESOLVED AS A SPECIAL RESOLUTION THAT:

1. The amalgamation of the Corporation and [CORPORATION 2] in accordance with the terms of the draft amalgamation agreement annexed hereto be and the same is hereby approved;
2. The Corporation be and it is hereby authorized to enter into and adopt the said amalgamation agreement;
3. Any one or more of the directors or officers of the Corporation be and is hereby authorized to sign and execute the said amalgamation agreement with such amendments thereto as he may approve, which approval shall be conclusively evidenced by his execution thereof; and
4. Any of the directors or officers of the Corporation be and is hereby authorized to do all things and execute all other instruments and documents necessary or desirable to carry out and give effect to the foregoing.

The foregoing special resolution is hereby consented to by the signature of the sole common shareholder of CORPORATION 1 pursuant to the New Brunswick *Business Corporations Act* this [DATE].

SHAREHOLDER OF CORPORATION 1

Per: _____

Appendix 10

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**BUSINESS CORPORATIONS ACT
FORM 6
ARTICLES OF AMALGAMATION
(SECTION 124)**

**LOI SUR LES CORPORATIONS COMMERCIALES
FORMULE 6
STATUTS DE FUSION
(ARTICLE 124)**

- 1 - Name of Corporation: **[Corporation]** Raison sociale de la corporation:
- 2 - The classes and any maximum number of shares that the corporation is authorized to issue and any maximum aggregate amount for which shares may be issued including shares without par value and/or with par value and the amount of the par value. Les catégories et le nombre maximal d'actions que la corporation peut émettre ainsi que le montant maximal global pour lequel les actions peuvent être émises y compris les actions sans valeur au pair ou avec valeur au pair ou les deux et le montant de la valeur au pair:

unlimited number of common shares without nominal or par value

- 3 - Restrictions, if any, on share transfers: Restrictions, s'il y en a, au transfert d'actions:
See Schedule - Restriction on Share Transfer
[See Appendix 5 for wording]

- 4 - Number (or minimum and maximum number) of directors: Nombre (ou nombre minimum et maximum) des administrateurs:
Minimum 1 Maximum 10

- 5 - Restrictions, if any, on business the corporation may carry on: Restrictions, s'il y en a, à l'activité que peut exercer la corporation:
none

- 6 - Other provisions, if any: Autres dispositions, s'il y en a:
See Schedule - Other Provisions
[See Appendix 5 for wording]

- 7 (a) - The amalgamation has been approved by special resolutions of shareholders of each of the amalgamating corporations listed in Item 9 below in accordance with Section 122 of the *Business Corporations Act*. ☒ a) - La fusion a été approuvée par les résolutions spéciales des actionnaires de chacune des corporations fusionnantes mentionnées à l'article 9 ci-dessous, conformément à l'article 122 de la *Loi sur les corporations commerciales*.
- (b) - The amalgamation has been approved by a resolution of the directors of each of the amalgamating corporations listed in Item 9 below in accordance with Section 123 of the *Business Corporations Act*. These Articles of Amalgamation are the same as the Articles of Incorporation of (name the designated amalgamating corporation): ☐ b) - La fusion a été approuvée par une résolution des administrateurs de chacune des corporations fusionnantes mentionnées à l'article 123 de la *Loi sur les corporations commerciales*. Ces statuts de fusion sont les mêmes que les statuts constitutifs de (raison sociale de la corporation fusionnante désignée): ☐

- 8 - Name of the amalgamating corporation the by-laws of which are to be the by-laws of the amalgamated corporation: Raison sociale de la corporation fusionnante dont les règlements administratifs sont devenus les règlements administratifs de la corporation issue de la fusion:

CORPORATION 1

9 - Name of Amalgamating Corporations Raison sociale des corporations fusionnantes	Corporation No. N°. de corporation	Signature	Date	Description of Office Fonction
CORPORATION 1	[#####]			President
CORPORATION 2	[#####]			President

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Corporation No. - N°. de corporation

Filed - Déposé

SN0252/440307 / 45-4107 (1/09)

ADDITIONAL INFORMATION FORM: Amalgamation of Business Corporations

The following information must accompany your amalgamation forms that are being sent to Corporate Registry

1) Information on the Business Number (BN)

Corporate Registry will contact CRA to advise them of your amalgamation. In order to determine the appropriate BN for the new amalgamated Corporation, the Canada Revenue Agency (CRA) will contact you to resolve any issues related to the BN. You will be contacted by CRA shortly.

If you are unsure if your business has a BN or you require information regarding the BN, please call the CRA at 1-800-959-5525 [French version 1 800 959-7775] or visit <http://www.cra-arc.gc.ca/bn/>

2) Additional Information**A. Language preference for correspondence:**

- ☐ English
☐ French

B. Person to contact regarding the application:

(It is recommended that the contact for amalgamations be the President (for smaller corporations), and the Chief Accountant, Financial Officer, Director or Vice-President (for larger corporations).

Name: _____

Position: _____

Telephone Area Code: _____ Telephone Number: _____

Fax Area Code: _____ Fax Number: _____

Email: _____

The above information is used to generate or confirm the BN, which serves as a common identifier for federal and provincial purposes. The Government of New Brunswick and the CRA have agreed to use the BN as a common business identifier. Over the coming months the New Brunswick government will continue to phase in use of the BN with provincial departments and agencies.

The following information, collected on the above form and on Service New Brunswick Corporate Registry forms will be sent to the CRA to confirm or create a BN:

- business or corporate name
- registration or incorporation dates
- owner or director names and their phone and fax numbers
- ownership type; physical and mailing address
- business phone and fax numbers
- contact names and their phone and fax numbers
- language preference

This information, including the BN, will also be retained in the Business Registration Service information system of SNB for administrative purposes and to facilitate future registrations. Corporate Registry will retain the BN, as well as information set out on its forms.

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Appendix 11

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BUSINESS CORPORATIONS ACT
FORM 4
NOTICE OF DIRECTORS OR
NOTICE OF CHANGE OF DIRECTORS
(SECTION 64, 71)



LOI SUR LES CORPORATIONS
COMMERCIALES
FORMULE 4
LISTE DES ADMINISTRATEURS OU
AVIS DE CHANGEMENT D'ADMINISTRATEURS
(ARTICLE 64, 71)

1 - Name of Corporation:

Raison sociale de la corporation:

ALMAGAMTED CORPORATION NAME

2 - The following persons became directors of this corporation: Liste des personnes devenues administrateurs de la corporation :

Effective Date Date d'entrée en vigueur	D/M	M/M	Y/A	
Name / Nom	Residential Address or Address for Service Adresse résidentielle ou adresse pour fin de signification			Occupation Téléphone
John Doe	123 Main Avenue, Moncton NB E2E 4W4			businessman 555-1234
Jane Doe	123 Main Avenue, Moncton NB E2E 4W4			homemaker 555-1234

3 - The following persons ceased to be directors of the corporation:

Liste des personnes qui ont cessé d'être administrateurs de la corporation :

Effective Date Date d'entrée en vigueur	D/M	M/M	Y/A	
Name / Nom	Residential Address or Address for Service Adresse résidentielle ou adresse pour fin de signification			

4 - The directors of the corporation now are :

Administrateurs actuels de la corporation :

Name / Nom	Residential Address or Address for Service Adresse résidentielle ou adresse pour fin de signification	Occupation	Téléphone
John Doe	123 Main Avenue, Moncton NB E2E 4W4	businessman	555-1234
Jane Doe	123 Main Avenue, Moncton NB E2E 4W4	homemaker	555-1234

Date	Signature	Description of Office Fonction
[DATE]		President

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Form 4 / Formule 4
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SND256/45-4119 (05/08)

Appendix 12

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**BUSINESS CORPORATIONS ACT
FORM 2
NOTICE OF REGISTERED OFFICE OR
NOTICE OF CHANGE OF REGISTERED OFFICE
(SECTION 17)**

**LOI SUR LES CORPORATIONS COMMERCIALES
FORMULE 2
AVIS DE DESIGNATION OU
AVIS DE CHANGEMENT DU BUREAU ENREGISTRÉ
(ARTICLE 17)**

1 - Name of Corporation - Raison sociale de la corporation :		2 - Corporation No. - N° de la corporation	
[AMALGAMATED CORPORATION]		[####]	
3 - Place and address of the registered office:		Lieu et adresse du bureau enregistré :	
123 Main Avenue, Moncton NB E2E 4W4			
4 - Effective date of change:		Date d'entrée en vigueur du changement :	
N/A			
5 - Previous place and address of the registered office:		Demiers lieu et adresse du bureau enregistré :	
N/A			

Date	Signature	Description of Office Fonction
[DATE]		PRESIDENT

SN025745-4105(06.08)

Appendix 13

STATEMENT

IN THE MATTER OF the *Business Corporations Act* (New Brunswick) and the Articles of Amalgamation of [CORPORATION 1] and [CORPORATION 2]

I, [NAME], of the City of [MUNICIPALITY], in the [PROVINCE/STATE] of [NAME OF PROVINCE/STATE], make the following statement pursuant to section 124(2) of the *Business Corporations Act*:

1. I am the [OFFICER TITLE] of [CORPORATION 1], one of the amalgamating corporations (hereinafter called the "Corporation") and as such, have personal knowledge of the matters herein declared;
2. It is proposed that the Corporation amalgamate under the provisions of the *Business Corporations Act* (New Brunswick) with [CORPORATION 2] to form an amalgamated corporation (hereinafter referred to as the "Amalgamated Corporation") under the name "[NAME OF AMALGAMATED CORPORATION]";
3. I have conducted such examinations and have made such inquiries and investigations as are necessary to enable me to make this statement; and
4. I have satisfied myself that there are reasonable grounds for believing that:
 - (a) the Corporation is, and the Amalgamated Corporation will be, able to pay its liabilities as they become due;
 - (b) the realizable value of the Amalgamated Corporation's assets will not be less than the aggregate of its liabilities and stated capital of all classes; and
 - (c) no creditor of the Corporation will be prejudiced by the amalgamation.

DATED this [DATE].

Name:

Title:

Appendix 14

SPECIAL RESOLUTION OF THE SHAREHOLDERS OF [corporation]

The undersigned, being all of the shareholders of [CORPORATION], a New Brunswick corporation (the “Corporation”), and being entitled to vote on the resolutions hereinafter set forth as if the same had been submitted at a meeting of the shareholders of the Corporation duly called and held for the purpose of acting on such resolutions, do hereby resolve as a special resolution, in lieu of a special meeting of the shareholders of the Corporation, as follows:

1. the Corporation apply pursuant to section 127 of the New Brunswick *Business Corporations Act* for authorization to apply for a certificate of continuance under the laws of Canada and the directors are authorized to make such applications;
2. the Corporation apply for a certificate of continuance continuing the Corporation under the *Canada Business Corporations Act* pursuant to section 187 thereof and the directors are authorized to make such application;
3. upon the issuance of the certificate of continuance and without affecting the validity of the incorporation and existence of the Corporation by and under its Charter and of any act under it, its Charter is hereby amended by deleting all of its provisions and substituting for them the provisions set out in the articles of continuance filed under the *Canada Business Corporations Act*; and
4. any one of the directors or proper officers of the Corporation be and he is hereby authorized to do all things and execute all instruments and documents necessary and desirable to carry out the foregoing.

DATED this [DATE]

THE LAW SOCIETY OF NEW BRUNSWICK

Directors and Registered Office

Chapter 4

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Directors and registered office

1. Directors

1.1 Introduction

Unless otherwise provided in the articles, by-laws or a unanimous shareholder agreement, the business and affairs of the corporation are managed by one or more directors (Subsection 60(1) of the NBBCA). Section 60(3) requires that Corporations whose shares are listed on a prescribed stock exchange must have at least three directors although to date no stock exchange has been prescribed for this purpose. The precise number of directors may be set out in the articles of incorporation, but this is not required. As an alternative simply a minimum and a maximum number of directors may be set out in the articles (Subsection 4(1) (e)).

The number of directors within a minimum and maximum prescribed in the articles must be set by by-law of the corporation unless the articles prescribe some other method of fixing the number (such as by a directors' resolution) (Subsection 60(2)). A by-law to change the number of directors made within the range specified by the articles must be approved by the directors and confirmed by an ordinary resolution of the shareholders, provided however that no reduction in the number of directors may be made if the votes cast against the motion would be sufficient to elect a director under the cumulative voting provisions of NBBCA (Section 70). A change to a provision affecting the number of directors set out in the articles may only be amended by articles of amendment requiring shareholder approval by a special resolution. Again in this case, no decrease in the number of directors may be effected if the votes cast against such motion would be sufficient to elect a director under the cumulative voting provisions (Section 70). No decrease in the number of directors shall shorten the term of an incumbent director (Subsection 70(1)).

Certain persons are disqualified from being the director of a corporation. No person who is under the age of 19, who is of unsound mind, who is not an individual, who is a bankrupt or who has been recently convicted of certain criminal offenses involving corporations or fraud is eligible to be a director (Subsection 63(1)). A director need not be a shareholder of the corporation unless the articles so provide (Section 63).

The first director(s) of the corporations will be set out in the Notice of Directors (Form 4) filed with the Articles of Incorporation (Subsection 64(1)). The director(s) named in that Notice will hold office from the date of incorporation until successors are elected by a meeting of the shareholders (Subsections 64(2), 64(3)).

Directors cease to hold office at the close of the first meeting of shareholders following their election (Subsection 64(2)). A director will also cease to hold office if he dies or resigns, if he is removed in accordance with section 67, or if he becomes disqualified under subsection 63(1). The normal rule is that a vacancy occurring on the board of directors may be filled by the board (Section 69). Within fifteen (15) days of any change being made among its directors, the corporation must file with the Director a Notice of Change of Directors (Form 4) (Section 71). See Appendix 1 for an example of a completed form of Notice of Change of Directors.

NBBCA imposes upon the directors a general duty to act honestly and in good faith and to exercise the care, diligence and skill of a reasonably prudent person in exercising their powers. They are also obliged to exercise those powers in the best interests of the corporation (Section 79). Directors are specifically made subject to personal liability to the corporation if they vote for or consent to any of the prescribed activities itemized in section 76 of NBBCA. The obligation of a director who finds himself or herself in a conflict of interest position with the corporation are set out in section 77 of NBBCA.

It should be noted that section 77 does not apply to a director or officer of a corporation in which all of the shares are owned by one person (Subsection 77(10)).

1.2 Cumulative Voting for Directors

Directors elected at a shareholders' meeting are elected by way of cumulative voting (Subsection 65(1)). This is the process whereby each share owned entitles the holder to cast a number of votes equal to the number of votes attached to that share multiplied by the number of directors to be elected. These votes can be cast for different candidates or concentrated in support of a single candidate. New Brunswick is the only Canadian jurisdiction where cumulative voting is compulsory. The effect of cumulative voting is to allow a substantial minority to concentrate their voting power and thereby increase the likelihood of having representation on the board of directors.

Example of Cumulative Voting Scenario

Assume that there are 9 positions and 1000 shares to be voted. As each share carries with it the right to 9 votes (i.e. one vote for each position to be filled) there are 9000 votes to be cast in all/

Without Cumulative Voting:

A group controlling a majority of shares for example, 60% (600) of the shares to be voted, could elect all 9 directors.

With Cumulative Voting:

The 40% minority can concentrate their votes among one or more candidates. The minority will have 3600 votes (9 x 400 shares) and are free to spread those votes among only 3 candidates, giving each candidate 1200 votes. The very best the majority can do is spread their 5400 votes (9 x 600 shares) among 6 candidates giving each 900 votes, thus at least equalling what the minority could do if they spread their 3600 among 4 candidates.

Formula for cumulative voting:

$$N \times \frac{S}{1 + P} + 1 = \text{total number of shares required}$$

N= the number of directors to elect

S= the total number of shares to be voted

P= the number of director positions to be filled

Applying the formula to the above example, to elect 4 of the 9 directors, only $(4 \times 1000 / 1 + 9) + 1 = 401$ shares out of a total of 1000 shares are required.

2. Directors' Liability

2.1 Introduction

The liability of directors of a corporation derives from the common law and from statute. At common law the main duties of directors, the breach of which could result in liability to the corporation, were:

- 1) duty to act honestly and in good faith and in the best interests of a company as a whole (the "fiduciary duty");
- 2) duty to exercise the degree of care and skill that a reasonably prudent person would demonstrate in the management of his own affairs (duty of skill);
- 3) duty to maintain the capital of the corporation for the benefit of the creditors.

The only way a shareholder could launch a suit for breach by the directors of these duties was to do so in the name of the corporation by "derivative" action.

Under the NBBCA the three categories of duty listed above were expanded and codified.

The transactions giving rise to directors' liability were extended and creditors and shareholders were given redress against the directors of the corporation without necessarily having to pursue the derivative form of action.

2.2 The Income Tax Act

There are potential liabilities for directors pursuant to other legislation. For example, Section 227.1 of the *Income Tax Act*. That section provides that where a corporation has failed to deduct or withhold certain required payments (such as income tax deducted from employees, Canada Employment Insurance Commission or CPP premiums), the directors of the corporation "at the time the corporation was required to deduct, withhold, remit or pay the amount, are jointly and severally liable ... to pay that amount and any interest or penalties relating thereto".

The section goes on to provide that a director is not liable unless certain steps are taken:

- 1) A certificate in respect of the corporation's liability has been registered in the Federal Court of Canada and execution for such amount has been unsatisfied in whole or in part;
- 2) The corporation has commenced liquidation or dissolution proceedings; or
- 3) The corporation is bankrupt.

Further protection is given to a director by subsection (3) which provides that directors are not liable where they "exercised the degree of care, diligence and skill to prevent the failure that a reasonable prudent person would have exercised in comparable circumstances." Any action against a director under Section 227.1 must be commenced within two years after the date on which that person ceased to be a director of the corporation.

2.3 Directors' Duties under the NBBCA

Section 79 specifies the fiduciary duty and the duty of skill, altering the duty of skill somewhat so that the degree of skill required is that of a reasonably prudent person in comparable circumstances. The duty to maintain the capital for the benefit of creditors is broken down by section 76 into the specific kinds of financial misconduct to be avoided. The measure of misconduct is a solvency test designed to keep the capital at a minimum level.

The directors' actions that can lead to liability for financial misconduct are:

- 1) a purchase, redemption or other acquisition of shares contrary to section 31, 32 or 33;
- 2) a commission contrary to section 40;
- 3) a payment of a dividend contrary to section 41;
- 4) financial assistance contrary to section 43;
- 5) a payment of an indemnity contrary to section 81; or
- 6) a payment to a shareholder contrary to section 131 or 166.

The other provisions of the NBBCA that may result in directors' liability are:

- 7) issuance of a share for a consideration other than money where the consideration received is less than the fair equivalent of the money that the corporation would have received if the share had been issued for money: NBBCA Section 76(1);
- 8) non-compliance with NBBCA, regulations, articles, by-laws or unanimous shareholder agreement: NBBCA Subsection 79(2) and Section 172;
- 9) failure to disclose conflicts of interest, liability to account for secret profits: NBBCA Section 77

- 10) false or misleading statements: NBBCA Subsection 175(2);
- 11) exercising the powers of directors oppressively or unfairly towards creditors, directors, officers, shareholders (any of whom may bring an action) NBBCA Subsection 166(2);
- 12) using specific confidential information in connection with a share transaction for the benefit or advantage of the director: NBBCA Subsection 83(1).

2.4 Defences for Directors

The NBBCA affords directors a number of defences. The most wide-ranging defence is given by subsection 80(3) which is as follows: A director is not liable under section 76 or 79 if he reasonably relies in good faith upon:

- a) financial statements of the corporation represented to him by an officer of the corporation or in a written report of the auditor, if any, of the corporation fairly to reflect the financial condition of the corporation; or
- b) a report of a lawyer, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by him.

Note that this defence applies to liability for breach of the fiduciary duty, duty of skill and care and for the items mentioned in paragraphs 1 to 8 above. One use of this defence will be for cases where a large dividend is proposed and the directors seek an accountant's opinion about whether the solvency test in section 41 of the NBBCA is satisfied.

There is a two-year limitation period for actions based on the directors' financial misconduct under section 76 and for offenses under the NBBCA. This applies to items 1 to 7 and item 10 above. There is also a limitation period for insider trading liability (item 12, above) which treats the action as one grounded on fraudulent misrepresentation for the purposes of the *Limitation of Actions Act*.

There is a special defence of "reasonable ignorance" for issuing a share for inadequate consideration under subsection 76(1) and for making false or misleading statements (items 7 and 10, above).

3. Registered Office

The corporation must have a registered office situated in New Brunswick. The address of the registered office in New Brunswick is set out in the Notice of Registered Office (Form 2) filed with the articles of incorporation (Subsection 17(2)).

A change of the address of the registered office may be effected by a resolution of the directors (Subsection 17(3)) and a notice of such change of address must be filed with the Director on Form 2 within fifteen (15) days of the change (Subsection 17(4)). (A completed example of a Notice of Change of Registered Office is set out in Appendix 2).

The records which a corporation is required to keep pursuant to section 18 of NBBCA would normally be maintained at the registered office. However the directors may direct that these records be kept at some other location in New Brunswick (Subsections 18(1), 18(2)).

Unless the by-laws of the corporation otherwise provide, (Subsection 72(2)), the meetings of the board of directors of the corporation are to be held at the registered office (Subsection 72(1)). (The by-laws may provide that directors' meetings be held anywhere inside or outside New Brunswick (Subsection 72(2)). Meetings of shareholders are not required to be held at the registered office. The by-laws, or in the absence of such a by-law, the directors may designate any place in New Brunswick as the location of a shareholders meeting (Subsection 84(1)). Shareholders' meetings may also be held outside New Brunswick with the unanimous consent of the shareholders (Subsection 84(2) or if so provided in the articles (Subsection 84(3)).

A notice or document required to be sent to or served upon a corporation may be sent by registered mail to the registered office of the corporation shown in the last notice of registered office filed with the

Director under section 17 and, if so sent, shall be deemed to be received or served at the time it would be delivered in the ordinary course of mail unless there are reasonable grounds of believing that the corporation did not receive the notice or document at that time or at all. (Section 178).

Appendix 1

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BUSINESS CORPORATIONS ACT
FORM 4
NOTICE OF DIRECTORS OR
NOTICE OF CHANGE OF DIRECTORS
(SECTION 64, 71)



LOI SUR LES CORPORATIONS
COMMERCIALES
FORMULE 4
LISTE DES ADMINISTRATEURS OU
AVIS DE CHANGEMENT D'ADMINISTRATEURS
(ARTICLE 64, 71)

1 - Name of Corporation:

Raison sociale de la corporation:

BARCO LIMITED

2 - The following persons became directors of this corporation:				Liste des personnes devenues administrateurs de la corporation :			
Effective Date Date d'entrée en vigueur	D/J 01	M/M 08	Y/YA 20				

Name / Nom	Residential Address or Address for Service Adresse résidentielle ou adresse pour fin de signification	Occupation	Telephone Téléphone
JANE E. DOE	123 Union Street, Saint John, NB A1A 2B2	nurse	765-4321

3 - The following persons ceased to be directors of the corporation:

Liste des personnes qui ont cessé d'être administrateurs de la corporation :

Effective Date Date d'entrée en vigueur	D/J 01	M/M 08	Y/YA 20
--	------------------	------------------	-------------------

Name / Nom	Residential Address or Address for Service Adresse résidentielle ou adresse pour fin de signification
John A. Smith	321 Union Street, Saint John, NB A1A 2B3

4 - The directors of the corporation now are :

Administrateurs actuels de la corporation :

Name / Nom	Residential Address or Address for Service Adresse résidentielle ou adresse pour fin de signification	Occupation	Telephone Téléphone
Jane E. Doe	123 Union Street, Saint John, NB A1A 2B2	nurse	765-4321
James M. Smith	543 Station Ave, Saint John, NB A2B 3C4	businessman	123-4567

Date	Signature	Description of Office Fonction
[date]		President

For Department Use Only / Réservé à l'usage du ministère

Form 4 / Formule 4
Filed / Déposé

SND256/45-4119 (06/03)

Appendix 2

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**BUSINESS CORPORATIONS ACT
FORM 2
NOTICE OF REGISTERED OFFICE OR
NOTICE OF CHANGE OF REGISTERED OFFICE
(SECTION 17)**

**LOI SUR LES CORPORATIONS COMMERCIALES
FORMULE 2
AVIS DE DESIGNATION OU
AVIS DE CHANGEMENT DU BUREAU ENREGISTRÉ
(ARTICLE 17)**

1 - Name of Corporation - Raison sociale de la corporation :

BARCO LIMITED

2 - Corporation No. - N° de la corporation

012345

3 - Place and address of the registered office:

**123 SMITH STREET
MONCTON, NB
E3E 2X2**

Lieu et adresse du bureau enregistré :

4 - Effective date of change:

[DATE]

Date d'entrée en vigueur du changement :

5 - Previous place and address of the registered office:

**123 UNION STREET
SAINT JOHN, NB
E1E 9F9**

Derniers lieu et adresse du bureau enregistré :

Date	Signature	Description of Office Fonction
[DATE]		PRESIDENT

SN025745-4105(05.08)

THE LAW SOCIETY OF NEW BRUNSWICK

Unanimous Shareholders Agreements

Chapter 5

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Unanimous shareholders agreements

1. Historical Review

1.1 Common Law Restrictions on Agreements

Unanimous Shareholder Agreements provide flexibility for the management and operation of closely held or private corporations. Under the provisions of both the Canada Business Corporations Act and the New Brunswick *Business Corporations Act* (the “NBBCA”), all the shareholders of a corporation may agree among themselves, or among themselves **and a person who is not a** shareholder, to restrict in whole or in part, the powers of the directors to manage the business and affairs of the corporation.

At common law shareholders of a corporation were able to enter into shareholders agreements which could contain covenants inter alia, as to the voting of the shares of the parties to the agreement, and such undertakings were specifically enforceable. However company law legislation created an uncertainty as to the extent to which shareholders could agree to restrict or interfere with the discretion of directors, even if all the shareholders of the corporation were parties to the agreement.

2. Definition of Unanimous Shareholder Agreements

The NBBCA does not contain a precise definition of a unanimous shareholders agreement. However Section 99(2) of the NBBCA describes a unanimous shareholder agreement as an agreement that restricts, in whole or in part, the powers of the directors to manage the business and affairs of the corporation.

The Alberta *Business Corporation Act* contains a somewhat more precise definition stating that a unanimous shareholders agreement includes an agreement that does any one of the following:

- a. regulates the rights and liabilities of shareholders, as shareholders, among themselves or between themselves and any other party to the agreement;
- b. regulates the election of directors;
- c. provides for the management of the business and affairs of the corporation, including the restrictions or abrogation, in whole or in part, of the powers of the directors;
- d. includes any other matter that may be contained in a unanimous shareholders agreement pursuant to any other provision of the Business Corporations Act.

3. Parties

Persons who may be parties to unanimous shareholders agreements are described in Section 99 of the NBBCA.

They are:

- a) all the shareholders of the corporation.
- b) the beneficial owner of all the issued shares of the corporation.
- c) a person who is not a shareholder.

d) a transferee of shares which are subject to a unanimous shareholders agreement.

- a) **All the shareholders.** It would seem that this means exactly what it says, all shareholders. Subsection 99(3) of the NBBCA connotes a distinction between the beneficial owner and the owner of record. One can only assume therefore that subsection 99(2) refers to all shareholders of record, voting and non-voting, as well as beneficial or non-beneficial holders.

Until otherwise amended or until there is jurisprudence to the contrary, all shareholders therefore should join in the agreement in order for it to have the force and effect under the NBBCA. The implications of this, however, should be studied in view of the liabilities incurred under subsection 99(5) of the NBBCA.

- b) **The beneficial owner.** In the case of a single shareholder he must make a declaration to the effect that he is the beneficial owner of all the shares and state unilaterally what control he wishes to exercise. This is often done in the case of a parent corporation and its wholly-owned subsidiary. Trustees and nominal holders of record are spared being drawn into the liabilities incurred under subsection 99(5) of the NBBCA in this situation. An example of such a shareholder declaration is found at Appendix 1.
- c) **A person who is not a shareholder.** This would include the corporation itself since often unanimous shareholder agreements contain restrictions on actions by the corporation without shareholder approval. It could also include directors or officers who are not shareholders. Subsection 79(2) of the NBBCA, however, states that every officer and director of a corporation shall comply with a unanimous shareholders agreement. Therefore non-shareholding directors or officers need not be parties to the agreement in order for it to be enforced against them. This provision also opens the door for the participation of any person, whom the shareholders may wish to, or allow to, join or perhaps who may demand to be a party, such as a creditor or lender. Subsection 99(5) of the NBBCA states that it is only a shareholder “who is a party,” to the agreement that incurs the liability.
- d) **A transferee of shares.** Subsection 99(4) of the Act provides that a transferee of shares, subject to such an agreement, shall be “deemed” to be a party to the agreement. However, pursuant to the *Securities Transfer Act*, for a purchaser of the shares to be bound by a unanimous shareholders agreement, he must have notice of the existence of the unanimous shareholders agreement. Consequently, reference to the unanimous shareholders agreement should be prominently noted on all share certificates. If shares are uncertificated, the *Securities Transfer Act* should be consulted to determine the proper manner to ensure that a purchaser has notice of the unanimous shareholders agreement. Some agreements call for transferees to enter into a participation agreement so as to specifically bind them to the shareholders agreement.

4. What should the Agreement Provide for

In determining what should be included in the agreement, the shareholders should consider what it is they wish to accomplish, in particular, to what extent do they wish to control the management of the corporation. They should also consider the extent to which they are prepared to accept the liabilities of directors, if they are not the directors or not actively involved in the management of the corporation.

Principally such an agreement can do the following:

- a) regulate the rights and liabilities of the shareholders and shareholders among themselves or between themselves and any other party who has an interest in the corporation, such as a creditor.
- b) regulate the election of directors and appointment of officers.

- c) regulate the number of votes necessary to pass resolutions of directors and shareholders.
- d) provide for the management of the business and affairs of the corporation, including the restriction or abrogation in whole or in part of the powers of the directors.
- e) provide for waiver of dissenting shareholder rights.
- f) any other matter provided for in the NBBCA.

A review of the NBBCA disclosed a number of provisions which are made subject to a unanimous shareholders agreement; for example,

Subsection 4(3) - The number of votes required for the passage of resolution either for directors or shareholders meetings.

Subsection 23(1) - To whom and when shares may be issued.

Subsection 27(7)(g) - Restriction with respect to pre-emptive rights.

Subsection 60(1) - The management of the business and affairs of the corporation and number of directors.

Subsection 61(1) - The amendment or repeal of by-laws.

Subsection 61(6) - The borrowing of money, creation of debt obligation, giving of guarantees and mortgaging the corporation's property.

Subsection 61(7) - The delegation of powers to a director, committee of directors, or an officer.

Subsection 69(4) - Filling vacancies on the board of directors.

Shareholders may agree amongst themselves in matters pertaining to their own rights and obligations as between themselves, but they cannot do so where such agreements may affect the rights and obligations of the corporation and its directors except to the extent specifically permitted by the NBBCA. Therefore in drafting a shareholders agreement, parties should perhaps confine themselves to those matters provided for in the NBBCA or the Articles by specific reference or as otherwise permitted at common law.

An example of a unanimous shareholders agreement is found at Appendix 2.

5. Liabilities - Shareholders - Directors

As we have seen, Subsection 99(5) of the NBBCA provides that a shareholder who is party to a unanimous shareholders agreement, not only acquires all the rights, powers and duties of a director to the extent of the agreement, but also incurs all the liabilities of a director. Shareholders who are passive investors should consider the obligations they assume by becoming parties to such agreements. If shares that are subject to a unanimous shareholders agreement are pledged to a bank or lending institution, then such lender should consider the liabilities it could assume if it enforces the pledge.

As mentioned previously, subsection 79(3) provides that no provision in a contract, the articles, the by-laws or a resolution relieves a director or an officer from the duty to act in accordance with the act

or the regulations or relieves them from liability for breach thereof. Although this duty is expressly subject to subsection 99(5), the extent to which an agreement restricts the powers of directors to manage, may not be all that clear. One would suspect that this could possibly be a major source of litigation.

Only directors are granted relief under subsection 99(5). Officers and persons who are non-shareholders along with nominal shareholders, trustees, transferors and, in some instances, holders of non-voting shares, might want to consider the need for indemnities or releases from the beneficial owners of the shares, if they are or required to be parties to, or become subject to, the unanimous agreement.

6. When should Unanimous Shareholders Agreements be used?

Whether or not a unanimous shareholders agreement is for your client depends on the particular situation. Private corporations are usually the blends of business, skill, personalities and relationships of the participants together with the blends of money, credit and services which each participant can offer. They are all different and imagination is often needed.

These agreements are convenient instruments for parent corporations wishing to exercise control over their subsidiaries. They can be equally convenient where control is evenly held and, in the opposite situation, where it is desirable to protect a minority shareholder from unilateral actions by a controlling shareholders.

These unanimous agreements can be useful where shareholders of a closely held corporation are strangers or possible competitors with one another, or where the directors or officers are not shareholders. The fact that these agreements are private in nature and not subject to public scrutiny, as in the case of articles, enables shareholders to maintain a degree of secrecy, yet maintain control over the management and operation of their corporations.

7. Summary

In summary therefore, a unanimous shareholders agreement enables the shareholders of a private or closely held corporation to agree, that some or all of the rights and powers of the directors of the corporation, may be exercised by the shareholders. The rights and powers with respect to which directors have been restricted in unanimous shareholders agreements, are vested in shareholders upon whom the duties of the directors are then imposed. The directors are thereby relieved of their duties and liabilities to the same extent. The NBBCA requires the directors to comply with the provision of any unanimous shareholders agreement, and their duties to manage the business and affairs of the corporation, are subject to any overriding provisions of the agreement.

The unanimous shareholders agreement recognizes the reality that in private corporations the shareholders may wish to vest management in themselves as the owners of the enterprise, notwithstanding they may be sharing the directorship of the corporation with third parties. The unanimous shareholders agreement is a constitutional document similar to the corporation's Articles of Incorporation and By-laws, yet it is contractual and private in nature, and it can govern shareholders personal or individual rights as well. In many ways it may be used to create an incorporated partnership that now has a statutory basis and force.

Appendix 1

UNANIMOUS SHAREHOLDER DECLARATION

WHEREAS the undersigned is the sole beneficial owner of all the issued and outstanding shares in the capital of [CORPORATION] (the “Corporation”), a corporation incorporated under the New Brunswick *Business Corporations Act* (the “NBBCA”);

AND WHEREAS this declaration shall be and be deemed to be a unanimous shareholder agreement restricting all the powers of the directors of the Corporation to manage the business and affairs of the Corporation, all in accordance with the provisions of section 99 of the NBBCA;

WITNESSETH that the undersigned sole shareholder of the Corporation does hereby declare that:

1. all of the powers of the directors of the Corporation to manage or supervise the management of the business and affairs of the Corporation including, without limitation, the power to pass resolutions and the power to make, amend or repeal by-laws that regulate the business or affairs of the Corporation are hereby terminated, and the beneficial owner or owners from time to time of all of the issued and outstanding shares in the capital of the Corporation shall hereafter have the sole power to manage or supervise the management of the business and affairs of the Corporation;
2. this declaration and the restriction of powers of the directors of the Corporation herein contained shall not affect any action, step, resolution or by-law duly taken, made, passed or consented to by the directors of the Corporation prior to the date of execution of this agreement;
3. throughout the term of this declaration, the directors of the Corporation shall be relieved of their duties and liabilities relating to the management or supervision of the management of the business and affairs of the Corporation to the extent that this declaration so restricts their powers;
4. the provisions of this declaration shall terminate upon the execution by the beneficial owner or owners of all of the issued and outstanding shares of the Corporation of an instrument terminating the provisions of this declaration;
5. upon the termination of this declaration, the powers of the directors of the Corporation to manage or supervise the management of the business and affairs of the Corporation, including, without limitation, the power to pass resolutions and the power to make, amend or repeal any by-laws that regulate the business or affairs of the Corporation shall be restored, the directors of the Corporation shall have the power to amend or repeal any resolution passed or by-law made by the shareholders of the Corporation during the term of this agreement and any resolution or bylaw passed or made by the shareholders of the Corporation during the term of this declaration shall remain in full force and effect, unless and until duly amended or repealed by the directors of the Corporation, and shall not be affected by the termination of this declaration; and
6. this declaration shall be governed by the laws of the Province of New Brunswick.

IN WITNESS WHEREOF the undersigned has executed this declaration as of [DATE].

[SHAREHOLDER]

per:.....

Appendix 2

UNANIMOUS SHAREHOLDERS AGREEMENT

THIS AGREEMENT made as of [DATE].

AMONG:

[**SHAREHOLDER NO. 1**], of the City of Moncton, in the
Province of New Brunswick (hereinafter referred to as
“Shareholder No. 1”)

OF THE FIRST PART

- and -

[**SHAREHOLDER NO. 2**], of the City of Moncton, in the
Province of New Brunswick (hereinafter referred to as
“Shareholder No. 2”)

OF THE SECOND PART

- and –

[CORPORATION], a corporation duly incorporated under the
laws of the Province of New Brunswick, having its registered
office at the City of Moncton, in the Province of New Brunswick
(hereinafter referred to as the “Corporation”)

OF THE THIRD PART

WHEREAS the parties hereto wish to establish their respective rights and obligations with respect to the shares of the Corporation and certain other matters as set forth in this agreement;

AND WHEREAS it is the intention of each of the parties hereto that this Agreement shall constitute an unanimous shareholders agreement with respect to the Corporation;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the respective covenants and agreements of the parties contained herein, the sum of One Dollar (\$1.00) now paid by each party hereto to each of the other parties hereto, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto, it is agreed as follows:

ARTICLE 1

DEFINITIONS AND PRINCIPLES OF INTERPRETATION

1.1 Definitions. *In this Agreement, unless something in the subject matter or context is inconsistent therewith:*

- (a) “**Affiliate**” means an affiliated body corporate as defined in the *Business Corporations Act* (New Brunswick) and the regulations thereunder, as amended from time to time.
- (b) “**Agreement**” means this unanimous shareholders’ agreement.
- (c) “**Arm’s Length**” has the meaning attributed thereto in the *Income Tax Act* (Canada) and the regulations thereunder, as amended from time to time.
- (d) “**Board**” means the board of directors of the Corporation as may be appointed from time to time.
- (e) “**Business**” means the business presently carried on by the Corporation
- (f) “**Business Day**” means any day, other than a Saturday or Sunday or holiday, on which Canadian chartered banks are open for business in Moncton, New Brunswick.
- (g) “**Corporate Shareholder**” means a body corporate that is a Permitted Transferee and that becomes a Shareholder
- (h) “**Corporation**” means [CORPORATION]
- (i) “**Dividend Policy**” means the dividend policy attached as Schedule “A”
- (j) “**Event of Default**” means, when used in relation to a Shareholder, that such Shareholder, or the principal of such Shareholder, has defaulted in the performance of its obligations pursuant to this Agreement or pursuant to any agreement entered into between such person and the Corporation and such default shall not have been cured within Twenty (20) Business Days after receipt by such Shareholder of a notice from the Board or any other party hereto asking such Shareholder to cure such default.
- (k) “**Generally Accepted Accounting Principles**” or “**GAAP**” means the current accounting principles recommended by the Canadian Institute of Chartered Accountants in the “CICA Handbook” at the relevant time, or in the event that the matter is not covered in the CICA Handbook, principles have general acceptance among accounting professionals at the relevant time.
- (l) “**Income Tax Act**” means the *Income Tax Act* (Canada) and the regulations thereunder, as amended from time to time.
- (m) “**Insolvency Event**” means, when used in relation to a Shareholder or the Principal of a Shareholder, that without the prior written consent of all of the other Shareholders:
 - (i) the Shareholder, or the Principal of the Shareholder, makes an assignment for the benefit of his or her creditors; or

- (ii) the Shareholder, or the Principal of the Shareholder, becomes bankrupt or, as an insolvent debtor, takes the benefit of any legislation now or hereafter in force for bankrupt or insolvent debtors; or
 - (iii) a receiver or other officer with like powers is appointed for the Shareholder, or the Principal of the Shareholder, or for the substantial part of the assets of the Shareholder, or the Principal of the Shareholder, unless the appointment of such receiver or other officer with like powers is being disputed in good faith and such proceedings effectively postpone enforcement of such appointment; or provided that an Insolvency Event shall be deemed not to have occurred if such Insolvency Event occurs through the failure of any of the other Shareholders to perform its or his obligations hereunder.
- (n) “**NBBCA**” means the New Brunswick *Business Corporations Act* and the regulations thereunder, as amended from time to time.
- (o) “**Permitted Transferee**” means, in respect of a Shareholder:
- i. a body corporate which is not a non-Canadian within the meaning of the *Investment Canada Act* of which such Shareholder is the sole registered and beneficial shareholder;
 - ii. a trust of which the Shareholder, spouse of such Shareholder and issue of such Shareholder or any combination thereof are the only beneficiaries and provided that such trust is not a non-Canadian within the meaning of the *Investment Canada Act*.
- (p) “**Person**” includes an individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, and a natural person in his capacity as trustee, executor, administrator or other legal representative.
- (q) “**Principal**” means:
- i. in respect of a Shareholder that is a body corporate and a Permitted Transferee of a former Shareholder, the former Shareholder that is the shareholder of such body corporate;
 - ii. in respect of a Shareholder that is a trust and a Permitted Transferee of a former Shareholder, the former Shareholder that is a beneficiary of such trust.
- (r) “**Shareholder**” means any person owning shares of the Corporation and is bound by the provisions of this Agreement and includes Shareholder No. 1 and Shareholder No. 2.
- (s) “**Shares**” mean the issued and outstanding shares in the capital of the Corporation as constituted as of the date hereof, any other shares in the capital of the Corporation the issuance of which is approved by the Shareholders pursuant to 0, any other securities into which such shares may be converted, exchanged, reclassified, redesignated, subdivided, consolidated or otherwise changed from time to time, any securities of any successor corporation to or a corporation continuing from the Corporation that such shares or other securities may be changed into or become as a result of an amalgamation, continuance, merger, consolidation, plan of arrangement or reorganization, statutory or otherwise, and any securities received as a stock dividend or other distribution on or in respect of such shares or other securities.

ARTICLE 2 REPRESENTATIONS AND WARRANTIES

2.1 Number and Class of Shares. *Each of the Shareholders warrant that he or she is the registered and beneficial owner of that number of the issued and outstanding Shares of the Corporation set out opposite their names below:*

<u>Name</u>	<u>Number of Shares</u>
Shareholder No. 1	100 common
Shareholder No. 2	100 common

2.2 No Other Shares. *The Corporation warrants that:*

- (a) the shares listed in Section 0 hereof are the only issued and outstanding shares of the Corporation; and
- (b) except as provided in this Agreement, no person has any agreement or option or right capable of becoming an Agreement for the purchase, subscription or issuance of any of the unissued shares of the Corporation.

2.3 Survival. The representations and warranties contained in this 0 shall survive the execution and delivery of this Agreement and, notwithstanding such execution and delivery and regardless of any investigation made by or on behalf of any Shareholder with respect thereto, shall continue in full force and effect for the benefit of each party hereto until the expiry of Three (3) years following the termination of the Shareholders' Agreement.

ARTICLE 3 BINDING ON THE CORPORATION

3.1 Agreement Binds Corporation. The Corporation, by its execution hereof, acknowledges that it has actual notice of the terms of this Agreement, consents hereto and hereby covenants with each of the Shareholders that it will at all times during the term hereof:

- (a) give or cause to be given such notices, execute or cause to be executed such deeds, transfers and documents as may from time to time be necessary or conducive to the carrying out of the terms and intent hereof;
- (b) do or cause to be done all such acts, matters and things as may from time to time be necessary or conducive to the carrying out of the terms and intent hereof; and
- (c) take no action that would constitute a contravention of any of the terms and provisions thereof.

ARTICLE 4

CONTROL, OPERATION AND FINANCE

4.1 Control. The Shareholders shall cause such meetings of the Corporation to be held, votes cast, resolutions passed, by-laws enacted, documents executed and all things and acts done to ensure the following continuing arrangements with respect to the operation and control of the Corporation:

- (a) The affairs of the Corporation shall be managed by a Board of Directors of two (2) members and shall at all times consist of one (1) nominee of Shareholder No. 1 and one (1) nominee of Shareholder No. 2.
- (b) Should any vacancy occur on the Board of Directors which results in Shareholder No. 1 or Shareholder No. 2 not then being represented by a nominee, such vacancy shall be filled forthwith by the appointment of a nominee by whichever one of them is not then represented.
- (c) The officers of the Corporation shall be:

- (i) President – Shareholder No. 1
- (ii) Vice-President and Secretary – Shareholder No. 2

and such additional officers as the Board of Directors may determine from time to time. Notwithstanding the foregoing, if an above-named officer resigns his or her office, then the Board of Directors shall be entitled to appoint a replacement.

- (d) Notice of any meeting of the Board shall be given to the directors not less than seven (7) days prior to such meeting. A quorum for a meeting of the Board of Directors shall be all directors provided that if there is not a quorum present or participating at any meeting of the directors, the directors present or participating at such meeting may adjourn the meeting to another date on not less than seven days' further notice to all of the directors and the directors that are present or participating at the reconvened meeting shall constitute a quorum.
- (e) Notice of any meeting of the Shareholders shall be given to the directors not less than seven (7) days prior to such meeting. A quorum for a meeting of shareholders shall be all Shareholders present or represented by proxy provided that if there is not a quorum present or participating at any meeting of the Shareholders, the Shareholders present or participating at such meeting may adjourn the meeting to another date on not less than seven days' notice to all of the Shareholders and the Shareholders that are present or participating at the reconvened meeting shall constitute a quorum.
- (f) Directors and Shareholders may participate in meetings of the Board or Shareholders, respectively, by means of such telephone or other communication facilities that permit all persons participating in the meeting to hear each other, and a Person participating in such a meeting by such means shall be deemed to be present at that meeting.
- (g) Except as may be otherwise provided in this agreement, all decisions of the Board and of the Shareholders shall be decided by a majority of votes cast (or by such greater percentage as may be required by law). The Chairman of meetings of the Board and shareholders shall not, in the case of an equality of votes, have an additional or casting vote in addition to his original vote or votes.

- (h) All contracts and documents binding the Corporation shall require the signatures of those individuals determined by the Board from time to time provided that if the Board does not make any other provision, all contracts and documents incurring of any single expenditure in excess of [\$10,000] or any expenditures which, in the aggregate, are in excess of [\$30,000] in any financial year of the Corporation shall require the signatures of each of Shareholder No. 1 and Shareholder No. 2.

4.2 Special Approval. None of the following actions:

- (a) any change of the articles or by-laws of the Corporation;
- (b) any change in the authorized or issued capital of the Corporation;
- (c) the entering into of any agreement or the making of any offer or the granting of any right capable of becoming an agreement to allot or issue any Shares of the Corporation;
- (d) any action which may lead to or result in a material change in the nature of the Business;
- (e) the entering into, or amendment of any existing, agreement, commitment or obligation with any Persons not dealing at Arms Length with the Corporation and its Shareholders except on normal commercial terms and conditions;
- (f) the borrowing of any money, the giving of any security or the making or incurring of any single capital expenditure in excess of [\$25,000] or any capital expenditures which, in the aggregate, are in excess of [\$50,000] in any financial year of the Corporation;
- (g) the taking of steps to wind-up or terminate the corporate existence of the Corporation;
- (h) the sale, lease, exchange or disposition of the entire undertaking or property or assets of the Corporation or any substantial part thereof;
- (i) the making of, directly or indirectly, loans or advances to, or the giving of security for or guaranteeing the debts of, any Person;
- (j) any change in the Dividend Policy;
- (k) the taking, holding, subscribing for or agreeing to purchase or acquire Shares in the capital of any body corporate;
- (l) the entering into of a partnership or of any arrangement for the sharing of profits, union of interests, joint venture or reciprocal concession with any Person;
- (m) the entering into of an amalgamation, merger or consolidation with any other body corporate;
- (n) any change in the salary or other remuneration paid or payable by the Corporation to any Person who does not deal at Arm's Length with the Corporation; or
- (o) changing the number of directors of the Corporation; shall be taken by the Corporation except with the consent of all of the Shareholders of the Corporation as evidenced by an instrument or instruments in writing signed by each such Shareholder.

4.3 Accounting Records. Proper books of account shall be kept by the Corporation and all entries shall be made therein of all matters, terms, transactions and things as are usually written and entered into books of account in accordance with GAAP and each of the Shareholders shall at all times furnish to the others correct information, accounts and statements of and concerning all transactions pertaining to the Corporation without any concealment or suppression.

4.4 Accountants. The accountants of the Corporation shall be [●] or such other firm of chartered accountants as the Shareholders unanimously appoint from time to time (the “Accountants”). The Accountants shall, at the fiscal year end of the Corporation, prepare financial statements for such fiscal year, including a balance sheet, a statement of earnings and retained earnings and a statement of source and application of funds, together with accountants’ comments thereon. For the foregoing purposes, such Accountants shall have access to all books of account, records and all vouchers, cheques, papers and documents of or which may relate to the Corporation, including those of the Shareholders to the extent to which such books, records, vouchers, cheques, papers and documents relate to the Corporation.

4.5 Bank Accounts. The Corporation shall maintain a bank account or bank accounts at such bank or trust company as the Board shall from time to time determine. All bank accounts shall be kept in the name of the Corporation and all cheques, bills, notes, drafts or other instruments shall require the signatures of such individuals as the Board may from time to time determine provided that if the Board does not make any other provision, all cheques, bills, notes, drafts or other instruments shall require the signatures of each of Shareholder No. 1 and Shareholder No. 2. All monies received from time to time for the account of the Corporation shall be paid immediately into those bank accounts for the time being in operation, in the same drafts, cheques, bills or cash in which they are received and all disbursements on account of the Corporation shall be made by cheque on such bank or trust company.

ARTICLE 5 DIVIDEND POLICY

5.1 Subject to Section 41 of the NBBCA, the Corporation shall declare dividends in accordance with the Dividend Policy and the Shareholders shall cause such meetings of each of the Shareholders of the Corporation to be held, votes cast, resolutions passed, by-laws enacted, documents executed and all things and acts done in order to give effect to the Dividend Policy.

ARTICLE 6 RESTRICTIONS ON TRANSFER OF SHARES OF CORPORATION

6.1 No Dealing with Shares. Each of the Shareholders covenants that it will not sell, assign, donate, encumber, transfer, mortgage, pledge, charge, subject to a security interest, hypothecate, or otherwise dispose of or in any way whatsoever directly or indirectly, deal with the ownership of any of the Shares now or hereafter beneficially owned by it, except in accordance with the terms of this Agreement, or except with the prior written unanimous consent of the other Shareholders.

6.2 Transfer to Permitted Transferee. Notwithstanding the provisions of Section 0 and any other provisions of this Agreement which restrict the disposition of or dealing with Shares, a Shareholder shall at any time or from time to time have the right, without the approval of the other Shareholders, to dispose of all or any portion of the Shares held by such Shareholder to a Permitted Transferee, provided that at the time of such disposition:

- a) Such Permitted Transferee shall agree with the other parties to this Agreement in writing and in form and substance satisfactory to the other Shareholders, acting reasonably, to assume and be bound by all of the terms and obligations contained in this Agreement as if such Permitted Transferee had entered into this Agreement in the place and stead of the Shareholder from whom such shares are acquired;
- b) the Permitted Transferee agrees to remain a Permitted Transferee of the Shareholder from whom such shares were acquired for so long as the Permitted Transferee is a registered and beneficial owner of any shares of the Corporation; and
- c) the Shareholders receive in form and substance satisfactory to them, acting reasonably, evidence that the Permitted Transferee is a Permitted Transferee of the Shareholder from whom shares of the Corporation are to be acquired and that the Agreements referred to in Subsections a) and b) above, are legal, valid and binding obligations of the Permitted Transferee.

6.3 Continuing Liability of Shareholders. Notwithstanding a disposition of shares of the Corporation to a Permitted Transferee, the disposing Shareholder shall *vis à vis* the other parties to this Agreement remain liable as principal debtor under all covenants of such disposing Shareholder contained in this Agreement, and the disposing Shareholder agrees to unconditionally guarantee to the other parties to this Agreement the due performance by the Permitted Transferee of all obligations imposed on such Permitted Transferee under this Agreement.

6.4 Certain Transfers Ineffective. Any transfer of Shares attempted to be made other than in accordance with the provisions of this Agreement shall be void and of no effect.

ARTICLE 7 SURVIVORSHIP ARRANGEMENT

7.1 Purchase on Death. Upon the death of a Shareholder (hereinafter in this 0 called the “Deceased”), the remaining Shareholders (hereinafter in this Article and 0 called the “Purchasers”) shall purchase all of the Shares of the Corporation (the “Purchased Shares”) beneficially owned by the Deceased (hereinafter in this Article called the “Vendor”) upon and subject to the terms and conditions hereinafter set forth.

7.2 Purchase Price.. The purchase price for the Purchased Shares shall be equal to the greater of:

- (a) The aggregate proceeds of the insurance payable to the Corporation on the life of the Deceased; and
- (b) The aggregate of the purchase prices otherwise determined in accordance with the provisions of 0 hereof for the Purchased Shares of the Corporation.

7.3 Payment. The aggregate purchase price for the Purchased Shares shall be paid as follows:

- (a) As to amount equal to the greater of
 - (i) Fifty Percent (50%) of the purchase price; and
 - (ii) The aggregate amount of proceeds from the insurance on the life of the Deceased payable to the Corporations,

payable within One (1) business day following the Time of Closing; and

- (b) The balance in thirty six (36) equal consecutive monthly installments together with interest on the principal balance from time to time outstanding at a rate per annum, calculated monthly, not in advance, both before and after default and judgment and as well after as before maturity, which is equal to the Prime Bank Rate. Such interest shall be payable at the same times as payments of principal, the first of such installments of principal and interest to become due and payable One (1) month after the Date of Closing (as defined in this Article), with interest at the aforesaid rate computed from the Date of Closing. The aforesaid Prime Bank Rate shall be determined on the Date of Closing and on each payment date thereafter to apply with respect to the balance of the purchase price outstanding until the next payment date.

7.4 Closing. The closing of the transaction of purchase and sale contemplated by this Article shall take place at the Place of Closing, at the Time of closing, on the date (the “Date of Closing”) which shall be the latest of:

- a) The date which is Ninety (90) days after the relevant death;
- b) The date which is Ten (10) days after the purchase prices for all of the Purchased Shares are finally determined in accordance with the provision of 0 hereof;
- c) The date upon which the Corporation has received any proceeds of insurance payable on the life of the Deceased.

7.5 Insurance Proceeds. Immediately following the Time of Closing, the insurance proceeds payable to the Corporation, if any, on the life of the Deceased shall be divided to the Purchaser(s) of the Purchased Shares and to the extent the capital dividend account (as defined in the *Income Tax Act* (Canada)) of the Corporation has been increased as a result of its receipt of the insurance proceeds, be paid out of the Corporation’s capital dividend account. Such Purchaser(s) shall use such proceeds to pay the purchase price for the Purchased Shares of the Corporation.

7.6 Multiple Purchasers. If there are more than one Shareholder purchasing Purchased Shares, the proportion of shares to be purchased by each Shareholder shall be in proportion to the Shares owned by each such purchasing Shareholder.

7.7 Restructuring. The Shareholders agree to restructure any purchase pursuant to this 0 or pursuant to 0 in any manner that may be advantageous to the Vendor from an income tax perspective, including, without limitation, the purchase of shares of a Corporate Shareholder instead of the purchase of the shares owned by the Corporate Shareholder, provided the Purchaser is reimbursed by the Vendor for any additional income tax or other cost associated with such restructuring.

ARTICLE 8

Disability; BANKRUPTCY

8.1 Offer Events. If:

- (c) an Insolvency Event occurs; or
- (d) a Shareholder suffers a marriage breakdown and any Shares of the Corporation or Corporate Shareholder become subject to any order under any matrimonial property legislation;

the Shareholder subject to the Insolvency Event or subject to a marital order shall by notice in writing (the “Offer”) offer to sell all of the Shares of the Corporation (hereinafter in the Article called the “Purchased

Shares”) beneficially owned or controlled by such Shareholder (the “Offeror”) to the other Shareholder (s) (in this Article called the “Offeree”), upon and subject to the terms and conditions hereinafter set forth.

8.2 Acceptance Period. The Offer shall not be revocable except with the consent of the Offeree and shall be open for acceptance by the Offeree for a period of Thirty (30) days from the date upon which such notice was received or deemed to be received by the Offeree. If the Offer is accepted by the Offeree or one or more thereof in respect of all of the Purchased Shares, then the Offeror (the “Vendor”) shall sell and the Offeree (the “Purchaser”) shall purchase the Purchased Shares upon the terms and conditions herein set forth.

8.3 Purchase Price. The purchase price for the Purchased Shares shall be determined in accordance with the provisions of 0 hereof.

8.4 Payment. The purchase price for the Purchased Shares shall be paid as follows:

- (a) Twenty-Five Percent (25%) thereof at the Time of Closing; and
- (b) the balance in thirty six (36) equal consecutive monthly instalments together with interest on the principal balance from time to time outstanding at a rate per annum, calculated monthly, not in advance, both before and after default and judgment and as well after as before maturity, which is equal to the Prime Bank Rate. Such interest shall be payable at the same times as payments of principal, the first of such instalments of principal and interest to become due and payable One (1) month after the Date of Closing (as defined in this Article), with interest at the aforesaid Prime Bank Rate computed from the Date of Closing. The aforesaid Prime Bank Rate shall be determined on the Date of Closing and on each payment date thereafter to apply with respect to the balance of the purchase price outstanding until the next payment date.

8.5 Closing. The closing of the transaction of purchase and sale herein contemplated shall take place at the Place of Closing, at the Time of Closing, on the date (herein after in the Article called the “Date of Closing”) which is the date which is the later of Thirty (30) days following:

- a) the occurrence of the event set forth in Section 0 giving rise to the right to purchase under this 0; and
- b) the determination of the Purchase Price for the Purchased Shares of the Corporation in accordance with 0.

8.6 Multiple Purchasers. If there are more than one Shareholder purchasing the Purchased Shares, each Shareholder will have the right to purchase the Purchased Shares in proportion to the Shares owned by each such purchasing Shareholder or in such other proportion as agreed by each such purchasing Shareholders.

8.7 Death. If a Principal or an Offeror dies at any time before the Time of Closing of a transaction of purchase and sale pursuant to the provisions of this Article, the provisions of 0 shall apply and the provisions of this Article (save and except this Section) shall be of no further force and effect.

ARTICLE 9 VALUATION

9.1 Valuation. Upon an event giving rise to the transaction of purchase and sale, then an independent business valuator, to be agreed upon by the Shareholders shall determine the Fair Market Value of the Corporation. If the Shareholders fail to choose an independent business valuator within Thirty (30) days following the said event, then each shall submit the name of a valuator with an independent national firm of Chartered Accountants and the business valuator shall be chosen by draw from such names. The determination of the Fair Market Value of the Corporation made by the independent business valuator shall, for the purposes of this agreement, be binding and effective upon the Shareholders. In arriving at such valuation, the valuator shall take into account and apply generally accepted accounting and valuation principles without any discount being applied for a minority interest. The valuation arrived at by the valuator, made as an expert and not as umpire or arbitrator, shall be final and binding and no appeal shall lie therefrom.

9.2 Share Value. The value for each Share of the Corporation shall be determined by dividing the Fair Market Value of the Corporation by the total number of issued and outstanding Shares

9.3 Purchase Price. The purchase price for the Shares being purchased and sold pursuant to 0 and 0 hereof shall be the value of each such Share determined pursuant to Section 0 hereof multiplied by the number of such Shares being purchased and sold.

ARTICLE 10 INSURANCE

10.1 Insurance Policies. The parties hereby acknowledge that, in order to ensure that sufficient funds will be available for the purposes of 0 hereof, the insurance policies, particulars of which have been set forth in Schedule “B” hereto and initialled by the life insured under each policy, have been obtained. The parties further acknowledge and agree that the provisions of this Article shall apply to any such policies and to any additional policy or policies of insurance which may be obtained, provided that particulars of such additional policy or policies are endorsed on Schedule “A” hereto and initialled by the life insured under each such policy.

10.2 Maintain Insurance. The Corporation shall pay, when due, any premiums in connection with the benefits payable to it under such policies and shall maintain in good standing at all times such policy or policies and shall not deal in any manner with such policy or policies and, without limiting the generality of the foregoing, shall not assign, transfer, dispose of, surrender, borrow upon or in any way encumber its rights in such policy or policies.

10.3 Collection of Proceeds. Upon the death of the life insured under any of the said policies during the term of this agreement, the Corporation shall collect the proceeds thereof as soon as possible and shall hold such proceeds in trust and shall pay and apply such proceeds or the amount thereof required in cash or by certified cheque in and towards the payment of the purchase price of the Shares of the Deceased is a Shareholder upon the Date of Closing (as such terms are defined in 0 hereof) as the whole or part payment (depending on the amount of the said proceeds of insurance) of the amount required to be paid upon the said Date of Closing in accordance with the provisions of this Agreement for the purchase of the said Shares.

10.4 Termination. In the event that this Agreement should be cancelled by the consent of the parties hereto, or if the life insured of the insurance policies set out in Schedule “B” hereto shall cease to be a

Shareholder of the Corporation (other than by reason of death) the said insurance policy shall be transferred to the life insured of the said policies, in consideration for the payment of the cash surrender value thereof, or if there be no cash surrender value, then for the sum of One Hundred Dollars (\$100.00) for each such policy; together, in either event, with the full amount of any unexpired prepaid premiums for each such policy.

ARTICLE 11

RIGHT OF FIRST REFUSAL

11.1 Notice of Proposed Sale. If any Shareholder (hereinafter in this 0 referred to as the “Offeror”) receives a *bona fide* written offer (hereinafter in this 0 referred to as the “Offer”) from any Person dealing at Arm’s Length with the Offeror to purchase all but not less than all of the Shares beneficially owned by any members of such Shareholder, which is acceptable to such Shareholder, such Shareholder shall give notice of such Offer (hereinafter in this 0 referred to as the “Notice”) to the Corporation and to the other Shareholder(s) and shall set out in the Notice the number of Shares to be sold pursuant to the Offer (hereinafter in this 0 referred to as the “Offered Shares”) and the terms upon which and the price at which (hereinafter in this 0 referred to as the “Purchase Price”), such Offered Shares will be sold pursuant to the Offer.

11.2 Right to Purchase Offered Shares. Upon the Notice being given, the other Shareholder(s) (hereinafter in this Section 0 referred to as the “Offerees” and each such Shareholder referred to as an “Offeree”) shall have the right to purchase all, but not less than all, of the Offered Shares for the Purchase Price in such proportion to the number of Shares owned by them or as otherwise agreed among them.

11.3 Notice of Purchase and Additional Purchases. Within Twenty (20) Business Days of having been given the Notice, the Offerees shall give notice to the Offeror and to the Corporation whether they wish to purchase the Offered Shares. If the Offerees wish to purchase all, but not less than all, of the Offered Shares, the transaction of purchase and sale shall be completed in accordance with the terms set out in the Notice.

11.4 Default in Transferring Shares. If the Offeror makes default in transferring the Offered Shares to the Offerees in accordance with the terms set out in the Notice, the Secretary of the Corporation or other authorized officer of the Corporation is authorized and directed to receive the purchase money and to thereupon cause the name of the Offeree to be entered in the registers of the Corporation as the holder of the Shares purchasable by him or her. The said purchase money shall be held in trust by the Corporation on behalf of the Offeror and not commingled with the Corporation’s assets, except that any interest thereon shall be for the account of the Corporation. The receipt by the Secretary of the Corporation for the purchase money shall be a good discharge to the Offeree and, after his name has been entered in the registers of the Corporation in exercise of the aforesaid power, the validity of the proceedings shall not be subject to question by any person. On such registration, the Offeror will then be entitled to receive, without interest, the purchase price received by the Secretary of the Corporation.

11.5 Sale to Third Party. If the Offerees do not give notice in accordance with the provisions of Section 0 that they are willing to purchase all of the Offered Shares, the rights of the Offeree, subject as hereinafter provided, to purchase the Offered Shares shall forthwith cease and determine and the Offeror may sell the Offered Shares to the third party purchaser within One Hundred and Twenty (120) days after the expiry of the Twenty (20) Business Day period, specified in Section 0, for a price not less than the Purchase Price and on other terms no more favourable to such Person than those set forth in the Notice, provided that the Person to whom the Offeror’s Shares are to be sold agrees prior to such transaction to be bound by this Agreement and to become a party hereto in place of the Offeror with respect to the Offered Shares. If the Offered Shares are not sold within such One Hundred and Twenty (120) day period on such

terms, the rights of the Offeree pursuant to this Section 0 shall again take effect and so on from time to time.

11.6 “Piggyback” Rights. In the event that an Offeror proposes to sell the Offered Shares to a third party pursuant to Section 0 (hereinafter referred to as the “Third Party”), the Offeror shall, within Thirty (30) days following the expiry of the Twenty (20) Day Period referred to in Section 0, give written notice (the “Piggyback Notice”) of the identity of the Third Party and the price and other material terms of the transaction to each of the Offerees. Each Offeree may, not later than Five (5) Business Days after receipt of the Piggyback Notice, deliver to the Offeror a notice in writing invoking the provisions of this Section 0 (a “Piggyback Demand”). The delivery by an Offeree of a Piggyback Demand shall be irrevocable and shall bind such Offeree to sell all but not less than all of the Shares (the “Piggyback Shares”) owned by such Offeree, in accordance with the provisions of this Section 0.

11.7 “Piggyback Offer”. If an Offeree delivers a Piggyback Demand, then, before completing any sale, the Offeror shall cause the Third Party to deliver to such Offeree a bona fide offer in writing (the “Piggyback Offer”) to purchase from such Offeree the Piggyback Shares. The Piggyback Offer will be binding upon the Third Party and shall contain only such terms and conditions as are identical to those upon which the Offeror proposes to sell to the Third Party the Offered Shares pursuant to Section 0, provided that the offer price per Piggyback Share, which shall be specified in the Piggyback Offer, shall be the same consideration as, or the cash equivalent of, the consideration per Offered Share at which the Offeror proposes to sell to the Third Party the Offered Shares pursuant to Section 0. The closing date and other closing arrangements for the purchase and sale transaction between such Offeree and the Third Party shall be specified in the Piggyback Offer and shall be the same, mutatis mutandis, as those specified between the Third Party and the Offeror.

ARTICLE 12

Drag Along

12.1 “Drag Along”. If a Shareholder receives a bona fide offer from a Third Party (hereinafter in this Section 0 the “Offer”) to purchase all of the Shares held by the Shareholder, which Offer the Shareholder (hereinafter in this Section 0 the “Offeree”) wishes to accept, such Shareholder may by notice to the other Shareholder(s) require the other Shareholder(s) to either to sell their Shares pursuant to the Offer or to elect within ten (10) days of receipt of the notice to purchase all of the Shares held by the Offeree at the same price and on the same terms as specified in the Offer. The notice shall contain sufficient details about the Offer to enable the Shareholder(s) to make an informed decision under this Section 0, including but not limited to the identity of the Third Party and the proposed consideration .

ARTICLE 13

PRE-EMPTIVE RIGHTS

13.1 Any Shares to be issued by the Corporation shall be first offered by the Corporation, at a subscription price determined or fixed by the Board, to all the Shareholders as nearly as may be in proportion to the number of Shares of each class owned by them immediately prior to the date of such offer.

13.2 It shall be a condition precedent to the issuance of any Shares that the Person to whom such issuance is proposed shall, prior to such issuance, execute and deliver an agreement in form and on terms satisfactory to the Board of the Corporation, whereby such Person agrees to be bound by the provisions hereof as if he or it were an original party hereto and such Person shall thereupon have the same rights, and shall be subject to the same obligations and restrictions, as a Shareholder hereunder.

ARTICLE 14

NON-SOLICITATION/CONFIDENTIALITY

14. Shareholder Covenants. Each Shareholder covenants and agrees with the other parties hereto and with the Corporation that he will not, while a Shareholder and while any Permitted Transferee of his is a Shareholder and for a period of Three (3) years thereafter (without the prior written consent of the Corporation and the other parties hereto), directly (i) divulge to any Person the name of any customer or client of the Corporation; (ii) knowingly solicit, interfere with or endeavour to entice away from the Corporation any customer, client or any person in the habit of dealing with the Corporation; and (iii) interfere with or knowingly entice away or otherwise attempt to obtain the withdrawal of any employee, independent contractor or sub-contractor of the Corporation. The Corporation may apply for or have an injunction restraining breach or threatened breach of the covenants herein contained.

14.1 Confidentiality. All confidential records, material and information and copies thereof, and all trade secrets (and without restricting the generality of the foregoing, including inventions, discoveries and methods of processing and production) concerning the business or affairs of the Corporation (collectively, “Proprietary Information”) shall remain the exclusive property of the Corporation. Each Party shall not divulge the contents of such Proprietary Information to any Person (except to the Corporation, the Corporation’s qualified employees, and the Corporation’s accountants, solicitors or other professionals) and each party shall not, at any time, use the contents of such Proprietary Information for any purpose whatsoever, except for the exclusive benefit of the Corporation. Each party hereto acknowledges that unauthorized disclosure of such Proprietary Information will cause irreparable harm to the Corporation which monetary damages cannot adequately compensate and that the Corporation shall be entitled to an injunction restraining any such unauthorized, or threatened unauthorized, disclosure.

For the purposes hereof, “confidential records, material and information” includes information known or used by the Corporation in connection with its business, including but not limited to any formula, design, prototype, compilation of information, data, program, code, method, technique or process, information relating to any product, device, equipment or machine, information about or relating to the Corporation’s customers and the Corporation’s markets and marketing plans, present and future, information about or relating to the Corporation’s potential business ventures, financial information of all kinds relating to the Corporation and its activities, all inventions, ideas, and related material, but does not include any of the foregoing which is or becomes a matter of public knowledge.

ARTICLE 15

ARBITRATION

15.1 Arbitration. If any dispute or controversy shall occur between the parties hereto relating to the interpretation or implementation of any of the provisions of this Agreement, such dispute shall be resolved by arbitration. Such arbitration shall be conducted by a single arbitrator. The arbitrator shall be appointed by agreement between the parties or, in default of agreement, such arbitrator shall be appointed by a Judge of the Court of Queen’s Bench (New Brunswick) upon the application of one of the said parties. The arbitration shall be held in Moncton, New Brunswick. The procedure to be followed shall be agreed by the parties or, in default of agreement, determined by the arbitrator. The arbitration shall proceed in accordance with the provisions of the *Arbitration Act* (New Brunswick). The arbitrator shall have the power to proceed with the arbitration and to deliver his award notwithstanding the default by any party in respect of any procedural order made by the arbitrator. It is further agreed that such arbitration shall be a condition precedent to the commencement of any action at law. The decision arrived at by the arbitrator, howsoever constituted, shall be final and binding and no appeal shall lie therefrom. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

ARTICLE 16 RIGHT TO INFORMATION

16.1 Right to Information. The parties covenant and agree that each party shall be provided from time to time with all such information and documentation regarding the business and affairs of the Corporation as is necessary to permit each party to continue to be informed, on a timely basis, of all material matters regarding the Corporation. Each party shall cause the Corporation to provide the other parties and his or her representatives with unrestricted access to all of the books, records and personnel of the Corporation for such purpose. All financial statements prepared in respect of the Corporation, both audited and unaudited, whether annual, quarterly or monthly, shall be provided to each party forthwith after such statements have been prepared.

ARTICLE 17 UNANIMOUS SHAREHOLDERS' AGREEMENT

17.1 Removal of Directors' Powers, Duties, etc. So long as this Agreement is in force, and to the extent that this Agreement specifies that any matters may only be or shall be dealt with or approved by or shall require action by the Shareholders, the Board shall be relieved of all of their rights, duties, powers, obligations and discretions as directors with respect to the management of the business and affairs of the Corporation including, without limitation, all of their rights, duties, powers, obligations and discretions as directors pursuant to the provisions of the Corporation's incorporating statute and all such rights, duties, powers, obligations and discretions removed from the Board shall be entrusted to the Shareholders.

ARTICLE 18

TERMINATION

18.1 Termination. This agreement (other than such rights and obligations as the parties have become liable for and other than the provisions of 0) shall terminate and be of no further force and effect upon the Corporation on the first of the following events to occur:

- a) upon the agreement in writing of all of the Shareholders of the Corporation; and
- b) upon there being only One (1) Shareholder of the Corporation.

ARTICLE 19 GENERAL CONTRACT PROVISIONS

19.1 Share Certificates. All certificates for Shares of the Corporation shall have the following legend endorsed thereon forthwith after the execution of this Agreement and from time to time thereafter:

"The securities represented by this certificate are subject to the provisions of a Shareholders' Agreement entered into among [Shareholder No. 1], [Shareholder No. 2] and [Corporation] which agreement contains restrictions on the right to transfer, pledge or otherwise deal with the securities. A copy of the agreement is available for inspection from the Secretary of the Corporation"

19.2 Notices. All notices, requests, demands or other communications (collectively, “Notices”) by the terms hereof required or permitted to be given by one party to any other party, or to any other person shall be given in writing by personal delivery or by registered mail, postage prepaid, or by facsimile transmission to such other party as follows:

if to Shareholder No. 1: ●

if to Shareholder No. 2: ●

or at such other address as may be given by such person to the other parties hereto in writing from time to time. If any party bound hereby or any Permitted Transferee hereunder shall not have given the parties hereto Notice setting forth an address for the giving of Notices, the Notice for such Person shall be deemed to have been properly given if given in accordance with the terms hereof as if given to the Transferor(s) of such Shares.

All such Notices shall be deemed to have been received when delivered or transmitted, or, if mailed, Forty-Eight (48) hours after 12:01 a.m. on the day following the day of the mailing thereof. If the Notice shall have been mailed and if regular mail service shall be interrupted by strike or other irregularities, such Notice shall be deemed to have been received Forty-Eight (48) hours after 12:01 a.m. on the day following the resumption of normal mail service, provided that during the period that regular mail service shall be interrupted all Notices shall be given by personal delivery or by facsimile transmission.

19.3 Additional Documents. The parties shall sign such further and other documents, cause such meetings to be held, resolutions passed and by-laws enacted, exercise their vote and influence, do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part thereof.

19.4 Counterparts. This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall be but one and the same instrument.

19.5 Time of the Essence. Time shall be of the essence of this Agreement and of every part hereof and no extension or variation of this Agreement shall operate as a waiver of this provision.

19.6 Entire Agreement. This agreement constitutes the entire Agreement between the parties with respect to all of the matters herein and its execution has not been induced by, nor do any of the parties rely upon or regard as material, any representations or writings whatever not incorporated herein and made a part hereof and may not be amended or modified in any respect except by written instrument signed by the parties hereto.

19.7 Enurement. This Agreement shall enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors, legal representatives and permitted assigns.

19.8 Currency. Unless otherwise provided for herein, all monetary amounts referred to herein shall refer to the lawful money of Canada.

19.9 Headings for Convenience Only. The division of this Agreement into articles and sections is for convenience of reference only and shall not affect the interpretation or construction of this Agreement.

19.10 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of New Brunswick and the federal laws of Canada applicable therein and each of the parties hereto agrees irrevocably to conform to the non-exclusive jurisdiction of the Courts of such

Province. The parties hereto confirm that it is their wish that this agreement and all documents relating thereto, including notices, be drawn up in the English language. Les parties aux présentes confirment leur volonté que ce contrat de même que tous documents, y compris tous avis, s'y rapportant soient rédigés en langue anglaise.

19.11 Gender. In this Agreement, words importing the singular number shall include the plural and vice versa, and words importing the use of any gender shall include the masculine, feminine and neuter genders.

19.12 Calculation of Time. When calculating the period of time within which or following which any act is to be done or step taken pursuant to this Agreement, the date which is the reference date in calculating such period shall be excluded. If the last day of such period is not a Business Day, then the time period in question shall end on the first Business Day following such non-Business Day.

19.13 Legislation References. Any references in this Agreement to any law, by-law, rule, regulation, order or act of any government, governmental body or other regulatory body shall be construed as a reference thereto as amended or re-enacted from time to time or as a reference to any successor thereto.

19.14 Severability. If any Article, Section or any portion of any Section of this Agreement is determined to be unenforceable or invalid for any reason whatsoever that unenforceability or invalidity shall not affect the enforceability or validity of the remaining portions of this Agreement and such unenforceable or invalid Article, Section or portion thereof shall be severed from the remainder of this Agreement.

19.15 Termination of Prior Agreements. All agreements among the parties hereto regarding the organization and affairs of the Corporation and/or the sale of any Shareholder's Shares under certain circumstances, whether written or oral, are hereby terminated.

19.16 Transmission by Facsimile. The parties hereto agree that this Agreement may be transmitted by facsimile or such similar device and that the reproduction of signatures by facsimile or such similar device will be treated as binding as if originals and each party hereto undertakes to provide each and every other party hereto with a copy of the Agreement bearing original signatures forthwith upon demand.

IN WITNESS WHEREOF the parties have duly executed this Shareholder Agreement as of the day and year first above written.

[Shareholder No. 1]

[Shareholder No. 2]

[CORPORATION]

By: _____

SCHEDULE "A"
DIVIDEND POLICY

The Corporation shall distribute pro rata to the Shareholders in each fiscal year a minimum of [%] of the net profit of the Corporation determined in accordance with GAAP.

SCHEDULE “B”
INSURANCE POLICIES