CAPITALIZATION

INDEX

I. Definition

This preliminary report will deal with share structure of a company and will not, except where necessary, deal with alteration, reorganization, reduction by any means or for whatever cause of the capital of a company, or the form of share certificate. This paper therefore will discuss the types of shares now permitted under the existing Act and the approach taken in other jurisdictions with regard to the types of shares authorized. Throughout this paper authorized capital will mean the share structure of the company authorized in its memorandum and/or articles of association, since the word articles is used in some of the statutes to be discussed to cover what normally we in Alberta would describe as the memorandum of association. Except where necessary the problems with regard to issued capital or the reduction of capital will not be dealt with in this paper.

II. Brief History

Since our Act derives from the English Act of 1862 and the concepts of capitalization embodied in that Act were the

results of the history preceding it, sometimes described as the long struggle for limited liability, a brief history of the events preceding the English Act of 1862 will clarify some of the concepts contained in our existing Act and in the newer Acts in some jurisdictions.

Medieval Law knew two types of trading organization. The "Societas" which developed into the present day partnership, each partner being an agent for the other and liable to the full extent for the partnership debts, and the "Commenda" later formalized in the limited partnership act in England of 1907 in which an active partner was liable for all the debts of the venture and the financier who advanced money to it was only liable to the extent of his loan. The "Commenda" therefore did embody the principle of liability limited to the extent of one's investment. This concept was coupled with the active partner whose liability was unlimited. The guilds of merchants were not trading organizations but were regulatory organizations who simply regulated trade amongst themselves within which each member traded on his own account.

With the expansion of trade early in the 16th century Royal Charters conferring monopoly privileges as to area or to commodity or both on companies of merchant adventurers were granted by the Crown, however, each member traded with his own stock and on his own account subject to obeying the rules of the company. Incorporation therefore was not essential. The history of the East India Company is typical in its timing and in its approach. Granted a charter in 1600, any member could carry on trade privately although there did exist a joint stock to which members could subscribe if they wished in varying amounts. Until 1614 the profits arising out of the joint stock, made from

each voyage were distributed amongst the holders of the joint stock. From 1614 to 1653 the joint stock was subscribed for a period of years and from 1653 onwards a permanent joint stock was introduced. It was not however until 1692 that private trading was finally forbidden to the members and this type of company was thereafter called a Joint Stock Company. Liability was unlimited and the members of a Joint Stock Company did not achieve limited liability.

Early in the 18th century promoters acquired moribund charters and floated companies whose advertised purposes had little or nothing to do with the original purpose granted in the Charter cumulating in the South Sea bubble in 1720. Following the passage of the Bubble Act in that year, public confidence was destroyed in joint stock companies although they did not disappear completely. Enormous difficulties were placed in the way of obtaining charters and few joint stock companies were formed. The substitute being a Deed of Settlement Company which was an unincorporated company. The Deed Settlement Company did in fact achieve limited liability for its members by the sheer practical problems involved in chasing down a fluctuating membership and locating them in order to institute procedings, but in law there was no limitation on liability. In 1825 the Bubble Act was finally repealed but it was not until 1837 that a Chartered Companies Act was passed which did little to change the old law. The first Joint Stock Companies Act was passed in 1844 providing for registration of all new companies with more than 25 members, for incorporation by mere registration as opposed to obtaining a special act or charter and by providing a register of companies to which a great deal of information had to be deposited. Limited liability was still excluded under that Act.

A new Act passed in August 1855 did grant for the first time limited liability if the company had at least 25 members holding 10 pound shares on which at least 20% had been paid, not less than three-fourths of the nominal capital was subscribed and the word "limited" was added to the company's name. A further provision was that the Board of Trade approved of the auditors. The Act only lasted a few months when it was replaced by the Joint Stock Companies Act of 1856 removing all of these safeguards, and returning to the concept of unlimited liability. The Deed of Settlement Company continued to be used and abused.

In 1862 the various enactments were consolidated under the modern title of The Companies Act in which limited liability was finally achieved but at the cost of ~~any~~ VERY substantial disclosure. A Register of Companies was established together with a Registrar and while there was no provision in the 1862 Act of a minimum issued capital full disclosure had to be made of whatever capital was issued and the terms upon which it was issued, i.e. whether there were calls on shares accounts. A register of shareholders had to be kept and annual reports filed. Companies were required to use the word "Limited" after their name to warn the public of this strange concept. In practise substantial portions of authorized capital were issued although usually subject to call and this "Capital" of the company was a fund to which the creditors could look.

III. The Modern Concept

In modern times the amount of issued capital in the vast majority of the small private companies incorporated under the present Alberta Act is notional or minimal. This is in part due to modern income tax structure in that money

invested in the company in its issued capital cannot be returned to the investor without either a reorganization of the entire structure, a reduction of capital or liquidation of the company. Calls on shares have virtually disappeared. With the advent of no par value shares, shares are often issued for as little as one cent each in a private company so that the "Capital" of the company can be as little as ten cents.

The capitalization therefore of a modern company would seem to serve 3 functions:

1. A method of dividing the interests of the participants in the venture, for example, 10 out of 100 shares equals 10%.

2. In some instances, a method of providing financing for the company either by subscription for common shares on a public underwriting or by subscription for preferred shares (nowadays almost universally redeemable or convertible to common shares).

3. In certain particular circumstances a method of defining the rights of various groups in the venture, for example, the designation of non-voting common shares or specific righrs given to the holders of preferred shares upon the occurrence of certain events.

It is suggested that there are two basic and separate aspects of share structure to be examined: Firstly whether to provide for par value shares or no par value shares or either or both; and secondly, whether to attempt any other classification of shares into common, preferred or special within any proposed new Act.

IV. The Present Alberta Act

Under the provisions of Section 15(1) three types of companies may be incorporated under the existing Alberta Act. They are:

(a) a company limited by shares
(b) a company limited by guarantee
(c) a specially limited company.

The requirements with respect to share capital of a company limited by shares are set forth in paragraph 16(e) of the Act.

> **16. Company limited by shares.**—In the case of a company limited by shares, the memorandum shall, in the prescribed form, state
>
> (a) the name of the company, with "Limited" or "Ltd." as the last word thereof,
> (b) Repealed [1970, c. 21, s. 3]
> (c) the objects of the company,
> (d) that the liability of the members is limited, and
> (e) particulars of the share capital with which the company proposes to be incorporated, which may be
> (i) divided into shares of a fixed amount, or
> (ii) divided into shares without nominal or par value, or
> (iii) divided into shares comprised partly of one of the foregoing classes and partly of the other. [R.S.A. 1955, c. 53, s. 16; 1959, c. 10, s. 2; 1970, c. 21, s. 3]

The requirements with respect to capitalization of a company limited by guarantee are set forth in Section 17(d) of the Act.

> **17. (1) Company limited by guarantee.**—In the case of a company limited by guarantee the memorandum shall, in the prescribed form, state
>
> (a) the name of the company, with "Limited" or "Ltd." as the last word in its name,
> (b) the objects of the company,
> (c) that the liability of the members is limited, and

(d) that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding-up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(2) When the company has a share capital the memorandum shall also state the amount of share capital with which the com-

The requirements with respect to the capitalization of a specially limited company are set forth in Section 19(d) of the Act.

19. Specially limited company.—In the case of a specially limited company the memorandum shall, in the prescribed form, state

(a) the name of the company, with "Limited (Non-personal Liability)" as the last words in its name,

(b) that the objects of the company are restricted to prospecting for, locating, acquiring, managing, developing, working, and selling mines, mineral claims, and mining properties, and the winning, getting, treating, refining, and marketing of minerals therefrom, and to the exercise of the powers mentioned in section 20, subsection (3),

(c) that the liability of the members is limited and no personal liability will attach to any member, and

(d) the amount of share capital with which the company proposes to be registered and the division thereof into shares of fixed amount. [R.S.A. 1955, c. 53, s. 18; 1959, c. 10, s. 4; 1970, c. 21, s. 5]

Until such time as the committee decides that there is any reason to continue with a specially limited company, or to continue with a company limited by guarantee only which have no share capital whatsoever then the remainder of the discussion of The Alberta Act will refer to a company limited by shares which constitutes the overwhelming majority of the companies incorporated under the provisions of the Act in the last ten years.

These sections permit the use of either par value or no par value shares. There is nothing in these sections

which restricts the use of a no par value redeemable preferred share nor, under these sections, must a par value share be of any specific amount. Section 68(1), which reads as follows

> **68. (1) Shares without nominal or par value.**—The memorandum of any company, limited by shares, or limited by guarantee and having a share capital, may provide for the creation of the shares in the capital of such company without nominal or par value, and where it provides for preferred shares having a preference as to principal in addition to shares without nominal or par value, it shall state the amount of the preferred shares, the particular character of the preference, and the amount of each preferred share, which shall be one dollar or a multiple thereof.
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> **(2)** Every certificate of shares without nominal or par value shall have plainly stated upon its face the number of such shares that it represents and the number of such shares that the company is authorized to issue, and no such certificate shall express any nominal or par value for such shares.
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> **(3)** The issue and allotment of shares without nominal or par value authorized by this section may be made from time to time for such consideration as may be prescribed in the memorandum or articles, or as may be fixed by the board of directors in default of or subject to such prescription.
>
> **(4)** Any and all shares without nominal or par value and issued as authorized by this section shall be deemed fully paid and non-assessable and the holder of any such shares is not liable to the company or to its creditors in respect thereof.
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> **(5)** For the purpose of the computation of the prescribed fees and the fees payable under the Third Schedule, the memorandum or articles may state the maximum price or consideration for which shares without nominal or par value may be issued, and the authorized capital of every company (including an extra-provincial company) having shares without nominal or par value, shall, for the purpose of this and all other Acts, be the capital as ascertained under the provisions of that Schedule. [R.S.A. 1955, c. 53, s. 77; 1962, c. 9, s. 4; 1966, c. 18, s. 4; 1968, c. 13, s. 2; 1970, c. 21, s. 12]

has the unusual provision that if the company has no par value common shares then it must have par value preferred shares which shall be $1.00 or a multiple thereof. Presumably if the company had par value common shares it would be entitled to have no par value preferred shares. It is to be noted that the word "Common" is not used anywhere in the section nor is there any implication in the section that a preferred share does not carry a vote.

The expression "Common Share" is not defined any other place in the Act and while it seems odd it is possible within the provisions of the existing Act to have various classes of common shares some of which have a vote, some of which never have a vote, and some of which might have a vote under certain circumstances, leaving all these matters to the care and ingenuity of the solicitor of drafts of the memorandum and articles.

In order to enable the Registrar of Companies to establish the proper fees upon registration of the memorandum and articles, Section 68(5) provides for either an aggregate amount for which all of the no par value shares may be sold or a maximum amount for which each no par value share may be sold. It will be noted that in either case the memorandum must set out the number of par value shares which the company is authorized to issue.

The present Act defines "share" in Section 2(1) 31, as follows

> **31. "share"—"share" means share in the share capital of the company, and includes stock, except where a distinction between stock and shares is expressed or implied;**

The word "stock" is nowhere defined in the Act although used in the above definition.

Section 37(1)(c) refers to "stock" as does Section 37(2), whose only interest under the Act seems to be its use when used in reorganization of a Company and is currently the common technique on converting a private company to a public company. It may also be used to reorganize or readjust capital since par value shares under the Act cannot be sold by the company for less than their par value (although the company is entitled to pay

Consolidation, Subdivision, etc., of Share Capital

37. (1) **Consolidation, subdivision, etc., of share capital.**—A company having a share capital, if so authorized by its articles, may by special resolution alter the conditions of its memorandum as follows:

(a) it may increase its share capital by the creation of new shares of such amount, or of such number of new shares without nominal or par value, as it thinks expedient;

(b) it may consolidate and divide all or any of its share capital having a par value into shares of larger amount than its existing shares;

(c) it may convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination, or without nominal or par value;

(d) it may subdivide its shares having a par value, or any of them, into shares of smaller amount than its existing shares, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived.

(2) Where a company having a share capital has converted any of its shares into stock, all the provisions of this Act that are applicable to shares only cease to apply as to so much of the share capital as is converted into stock, and the register of members of the company, and the annual list of members to be filed with the Registrar shall be altered accordingly.

a commission on their sale) and it may be difficult for a company to find a buyer for its shares at par value. In such cases the company could convert all of its shares into stock and then convert the stock into shares of a lower par value or shares of no par value.

While the Act contains no definition of "common" shares or "preference" shares, some sections of the Act do refer to "preferred" shares. Thus we have the curious provision in Section 68(1) that if the company is authorized to issue shares of no par value, and in addition issues preferred shares, the preferred shares must be in amounts of $1.00 or multiples thereof. Presumably if the company had par value shares it could issue no par value preferred shares. I have been unable to find any reason for this.

> **68. (1) Shares without nominal or par value.**—The memorandum of any company, limited by shares, or limited by guarantee and having a share capital, may provide for the creation of the shares in the capital of such company without nominal or par value, and where it provides for preferred shares having a preference as to principal in addition to shares without nominal or par value, it shall state the amount of the preferred shares, the particular character of the preference, and the amount of each preferred share, which shall be one dollar or a multiple thereof.

Section 69 does deal with shares having a preferred deferred or other special right or restriction and does permit issuance of shares in a series for shares carrying any deferred preferred or special right or restriction. No allowance is made in the present Act for issuing "common" shares in a series.

Section 70 deals with a more particular type of share, namely a share which may, at the option of the company be redeemed and sets out some restrictions with respect to redemption which would probably be better dealt with at the time we deal with alteration, reorganization and reduction of capital. Nowhere in that section is the word "preferred" used.

V. Comparison with other Acts Derived From the English Companies Act

A. The Uniform Australian Act of 1961

The Act provides for the following classes of companies.

1. Limited Liability Companies.
   - (a) a company limited by shares
   - (b) a company limited by guarantee
   - (c) a company limited by both shares and guarantee

2. Unlimited Liability Companies.

3. No Liability Companies - restricted to mining companies only - if a member does not pay a call on a share his share is forfeited and sold and he is not subject to any liability even to the extent of an unpaid call.

In any case of share capital the capital must be shown in its division into shares of a fixed amount. There is no such thing as the no par value share under the Uniform Australian Companies Act. While uniformity confers many benefits to the business man, uniformity can create some problems. There has been a very substantial amount of discussion by legal writers, accountants and others over the past eight to ten years in Australia recommending that the Act be changed to provide for no par value shares. Since, however, the Act cannot be changed unless all of the states change it at the same time nothing has yet been achieved in this regard.

B. The Ghana Act

The Act provides for the incorporation for three different types of companies:

1. a company limited by shares
2. a company limited by guarantee
3. an unlimited company

All of which reflect the English historical background. The Act contains the following definitions for shares:

3. Securities and dealings therein.	"Shares"	Means the interests of members of a body corporate who are entitled to share in the capital or income of such body corporate.

"Preference Share"

48. In this Code the expression " preference share " means a share, by whatever name designated in the Regulations, which does not entitle the holder thereof to any right to participate beyond a specified amount in any distribution whether by way of dividend, or on redemption, in a winding up, or otherwise. Any other share is herein described as an " equity share ".

"Treasury Shares" in Section 59(3). This is an interesting definition and somewhat different from what is normally understood in our jurisdiction as a "Treasury Share".

(3) On redemption purchase acquisition or forfeiture shares shall be available for re-issue by the company unless the company by alteration of its Regulations cancels such shares. In this Code, such shares, until re-issued or cancelled, are described as " treasury shares ".

The Act provides that a company may purchase its own shares and it also provides for redeemable shares, both situations subject to two ill concepts namely the "Share Deal Account" and the "Stated Capital Account". "Treasury Shares" are defined as only those shares which have been reacquired by the company and by implication therefore and unless the regulations (memorandum and articles) provide otherwise when a company purchases its own shares or redeems shares these shares go back into what we would refer to as the authorized but unissued capital of the company.

The only type of shares permitted to be issued whether preference or common are no par value shares under the provision of Section 40.

40. (1) All shares created or issued after the commencement of this Code shall be shares of no par value.

Professor Gower's comments with respect to no par value shares are attached.

It will be noted however the Ghana Act does not impose an obligation upon the draftsman of the regulations

to set out any stated price at which redeemable shares are to be redeemed. The Act makes no provision for the issuance of shares in a series. It is interesting to note that Professor Gower carried the concept of no par value shares to its ultimate conclusion in that under the provisions of Section 40(2) all shares of any company incorporated prior to the implementation of the Act were to become no par value shares upon implementation of the Act, the only provision being that if shares had been issued subject to call the liability for the call still remains with respect to a company limited by shares. It will also be noted that the concept of a specially limited company was abandoned completely.

VI. The Newer Acts in Canada

A. Bill C213 - Bill C29

By and large the position of the two Bills are similar with respect to capitalization. Unless otherwise noted excerpts from Bill c-29 and are exactly or substantially the same as Bill C-213.

Only one kind of company may be incorporated under the Act and it is incorporated by filing articles of incorporation, the mandatory and permissive, contents of which are set out in section 6(2.02) (attached hereto).

The Act does not define "shares" or does it in any way attempt to define "common" shares or "preferred" shares. "Redeemable share" is defined in the main definition section

"redeemable share" «action rachetable»

"redeemable share" means a share issued by a corporation

(a) that the corporation may purchase or redeem upon the demand of the corporation, or

(b) that the corporation is required by its articles to purchase or redeem at a specified time or upon the demand of a shareholder;

Articles of incorporation

6. (1) Articles of incorporation shall follow the prescribed form and shall set out, in respect of the proposed corporation,

(*a*) the name of the corporation;

(*b*) the place within Canada where the registered office is to be situated;

(*c*) the classes and any maximum number of shares that the corporation is authorized to issue, and

(i) if there will be two or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class of shares, and

(ii) if a class of shares may be issued in series, the authority given to the directors to fix the number of shares in, and to determine the designation of, and the rights, privileges, restrictions and conditions attaching to, the shares of each series;

(*d*) if the right to transfer shares of the corporation is to be restricted, a statement that the right to transfer shares is restricted and the nature of such restrictions;

(*e*) the number of directors or, subject to paragraph 102(*a*), the minimum and maximum number of directors of the corporation; and

(*f*) any restrictions on the businesses that the corporation may carry on.

Additional provisions in articles

(2) The articles may set out any provisions permitted by this Act or by law to be set out in

(*a*) the by-laws of the corporation; or

(*b*) a unanimous shareholder agreement.

and "share" is defined for the purposes of Part X which deals with insider trading, as a voting share is in other words for the purposes of Part X only voting shares are involved. Very deliberately any attempted definition of common, preferred or any other class of share is omitted from the Act and left to the draftsman of the Articles.

All shares are no par value shares in the provisions of section 24 and where a company is continued under the provisions of this Act its shares automatically become par value shares.

PART V

CORPORATE FINANCE

Shares

24. (1) Shares of a corporation shall be registered and shall be without nominal or par value.

Transitional

(2) Where a body corporate is continued under this Act, a share with nominal or par value issued by the body corporate before it was so continued is, for the purpose of subsection (1), deemed to be a share without nominal or par value.

Class of shares

(3) The articles may provide for more than one class of shares and, if they so provide, there shall be set out therein the rights, privileges, restrictions and conditions attaching to the shares of each class.

Section 24(3) provides wide latitude in the type and kind of shares that may be issued. Section 24(4) covers the case of extremely faulty draftsmanship so at least one class of shares must have a vote.

Under provisions of section 25 shares are issued subject to the discussion as and must be issued as fully paid and non-assessable. There is also provision

that the share cannot be issued until it has been fully paid for. The whole concept of a call upon shares is abandoned. The provisions of section 25 are attached.

Section 26 of the Act provides for a stated capital account which is the money or value received for all shares issued by a company subject to increase or decrease upon the company purchasing its own shares or redeeming its own shares. While the definition of "redeemable share" does not say so, section 34 states that the Articles must set forth a redemption price to be paid by the company, either a flat price or calculated according to a formula stated in the Articles.

Section 35 permits, as does the present Alberta Act, the company to accept a voluntary gift from its own shares. The Act permits issuance of shares in series and since there is no distinction other than that set out in the Articles, this would permit the issuing of common and preferred shares in a series.

Under the provisions of section 167 the Company may radically alter or reorganize its share capital but is classed as a fundamental change. The Act also contains provisions that holders of a certain class of shares are entitled to vote on any matter affecting that class of shares or variation of its rights. The rules that apply to fundamental change would probably cover the case of Ray McKenzie and Company (1916) 2 Ch. 450 where a resolution proposing a ratable reduction in the capital of both preferred and common shares was held not to "vary" the rights of the preference shareholders notwithstanding that in practical terms its effect was to cut their fixed dividend to the advantage of the holders of the common shares. The Act also contains provisions for a pre-empted right to existing shareholders. This would probably be

better dealt with in a later discussion of shareholders' rights as amongst themselves.

Stated capital account

26. (1) A corporation shall maintain a separate stated capital account for each class and series of shares issued, and the consideration received by the corporation for each share issued shall be added to the stated capital account maintained for the shares of that class or series.

PART XIV

FUNDAMENTAL CHANGES

Amendment of articles

167. (1) Subject to sections 170 and 171, the articles of a corporation may by special resolution be amended to

(*a*) change its name;

(*b*) change the place in which its registered office is situated;

(*c*) add, change or remove any restriction upon the business or businesses that the corporation may carry on;

(*d*) change any maximum number of shares that the corporation is authorized to issue;

(*e*) create new classes of shares;

(*f*) change the designation of all or any of its shares, and add, change or remove any rights, privileges, restrictions and conditions, including rights to accrued dividends, in respect of all or any of its shares, whether issued or unissued;

(*g*) change the shares of any class or series, whether issued or unissued, into a different number of shares of the same class or series or into the same or a different number of shares of other classes or series;

(*h*) divide a class of shares, whether issued or unissued, into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions thereof;

(*i*) authorize the directors to divide any class of unissued shares into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions thereof;

(*j*) authorize the directors to change the rights, privileges, restrictions and conditions attached to unissued shares of any series;

(*k*) revoke, diminish or enlarge any authority conferred under paragraphs (*i*) and (*j*);

(*l*) increase or decrease the number of directors or the minimum or maximum number of directors, subject to sections 102 and 107;

(*m*) add, change or remove restrictions on the transfer of shares; or

(*n*) add, change or remove any other provision that is permitted by this Act to be set out in the articles.

Termination

(2) The directors of a corporation may, if authorized by the shareholders in the special resolution effecting an amendment under this section, revoke the resolution before it is acted upon without further approval of the shareholders.

B. The Ontario Corporations Act

The Act permits under section 24 both par value and no par value shares. Section 26 of the Act contains both the definition of common shares and preference shares, and then goes on to section 27 to define "special shares" as follows:

> **26.** (1) **Common shares.**—The common shares of a corporation shall be shares to which there is attached no preference, right, condition, restriction, limitation or prohibition set out in the articles of the corporation, other than a restriction on the allotment, issue or transfer.
>
> **(2) Classes of shares.**—Except as provided in subsection (1) of section 37 where a corporation has one class of shares, that class shall be common shares and designated as provided in the articles.
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> [Subsec. (2) amended by 1972, c. 138, s. 8(1).]
>
> **(3) Idem.**—Except as provided in subsection (1) of section 37 where a corporation has more than one class of shares, one class shall be common shares, designated as provided in the articles, and the other shares shall be special shares and may consist of one or more classes of special shares and shall have attached thereto the designations, preferences, rights, conditions, restrictions, limitations or prohibitions set out in the articles.
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> [Subsec. (3) amended by 1972, c. 138, s. 8(2).]
>
> **(4) Preference shares.**—No class of special shares shall be designated as preference shares or by words of like import, unless that class has attached thereto a preference or right over the common shares. 1970, c. 25, s. 26.
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> **27.** (1) **Special shares.**—Each class of special shares may have attached to it preferences, rights, conditions, restrictions, limitations or prohibitions, including but not limited to,
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> (a) the right to cumulative, non-cumulative or partially cumulative dividends;
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> (b) a preference over any other class or classes of shares as to the payment of dividends;
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> (c) a preference over any other class or classes of shares as to repayment of capital upon the dissolution of the corporation or otherwise;
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> (d) the exclusive right to elect part of the board of directors;
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> (e) the right to convert the shares of that class into shares of another class or classes of shares;
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> (f) the right of the corporation at its option to redeem all or part of the shares of the class or the right of a shareholder at his option to require the redemption of all or part of his shares of the class.
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> [Clause (f) substituted by 1972, c. 138, s. 9.]

30. (1) Provision for first series in articles.—The articles may set forth the designation, preferences, rights, conditions, restrictions, limitations and prohibitions attaching to the first series to be issued in which case the special shares of the first series may be issued in accordance with the articles.

(2) Conditions to issue of series.—A series, other than one to which subsection (1) applies, shall not be issued until,

(a) the directors have by resolution fixed the designation, preferences, rights, conditions, restrictions, limitations and prohibitions attaching to the special shares of the series; and

(b) the statement referred to in section 31 has been filed with the Minister and the certificate of the Minister has been issued under section 31. 1970, c. 25, s. 30.

38. (1) Redemption, purchase or surender while insolvent.—A corporation shall not redeem or purchase special shares or accept mutual fund shares for surrender if the corporation is insolvent or if the redemption, purchase or surrender would render the corporation insolvent.

(2) Cancellation on redemption, purchase or surrender.—Special shares that are redeemed or purchased by a corporation are thereby cancelled, and the authorized and issued capital of the corporation are thereby decreased and the articles are amended accordingly.

[Subsec. (3) repealed by 1972, c. 138, s. 12.]

39. (1) Purchase of common shares.—A corporation may purchase any of its issued shares if the purchase is made for the purpose of eliminating fractions of shares or for the purpose of collecting or compromising indebtedness to the corporation.

(2) Idem.—Where authorized in its articles and subject to any restrictions contained therein, a corporation may purchase any of its issued common shares.

(3) Idem.—A corporation shall not purchase shares under this section if the corporation is insolvent or if the purchase would render the corporation insolvent.

(4) Idem.—No purchase of shares shall be made under this section by a corporation unless the purchase is authorized by a resolution of the board of directors.

(5) Method of purchase.—Where a corporation purchases shares under subsection (2), the purchase shall be made at the lowest price at which, in the opinion of the directors, such shares are obtainable, and,

> (a) pursuant to tenders received by the corporation upon request for tenders addressed to all the holders of the shares of the class and the corporation shall accept only the lowest tenders; or
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> (b) from *bona fide* full-time employees and former employees of the corporation; or
>
> (c) where the shares to be purchased are of a body corporate that is offering its shares to the public, by purchase on the open market.
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> **(6) Idem.**—Where, in response to the invitation for tenders, two or more shareholders submit tenders at the same price and the tenders are accepted by the corporation as to part only of the shares offered, the corporation shall accept part of the shares offered in each tender in proportion as nearly as may be to the total number of shares offered in each tender.
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> [S. 39 substituted by 1972, c. 138, s. 13.]
>
> **40. (1) Cancellation on purchase.**—Shares or fractions thereof purchased under subsection (1) of section 39 are thereby cancelled and the authorized and issued capital are thereby decreased and the articles are amended accordingly.

C. The British Columbia Companies Act

The provisions of the British Columbia Companies Act with respect to capitalization and types of companies which may be incorporated are substantially the same as the Alberta Act with the only major difference being that the company may purchase its own shares as well as redeem a redeemable share. Any detailed study of the provisions of the British Columbia Act can probably be left until a final review of this matter.

VII. Conclusions and topics for Discussion

A. Preamble

In previous committee meetings we have established in discussion the general considerations to which we should give some weight in considering any proposed change. These are:

1. Business efficiency

    (a) Flexibility
    (b) Clarity
    (c) Simplicity (where and if possible)
    (d) Uniformity with other Canadian Acts

2. Ease of administration

3. Fairness to the parties concerned.

    (a) Creditors
    (b) Majority shareholders
    (c) Minority shareholders
    (d) "corporate citizenship"

A discussion of the capitalization of the company inevitably leads to the question of what kind of company should the Act permit to be incorporated. If we continue the concept of the specially limited company then the par value share have some meaning. However this concept is dropped as it has been in the Donner Act, Bill C-29 and the Ontario Business Incorporations Act then there is no need for a par value share. The concept of a specially limited company cannot exist under Bill C-29 since all shares must be fully paid for upon prescription and cannot be issued until they have been.

If the concept of a company limited by guarantee, which under the present Act may have a share capital or not is continued it really does not matter whether we have provision for par value and no par value or simply provision for no par value shares. As a logical conclusion therefore it would seem that one of the next topics to be examined fairly soon should be the tenth company which the Act will permit to be incorporated. The types of shares

stockbrokers, , accountants, lawyers all seem to have a somewhat different concept as to what is meant by the various tags that have been used in connection with shares. Thus under the present Act lawyers are inclined to use the plaintiff's authorized shares or authorized capital and issued shares or issued capital. Buying promoters and brokers are fond of the words treasury shares and eschrow shares. I suspect that the layman inevitably attaches to the word "common" a right to vote at all meetings of the shareholders and the concept of a Class A voting common share and a Class B non-voting common share probably tends to bewilder the layman. If the concept of permitting either par value or no value ordinary shares and permitting only par value preferred shares is continued as it is in the Ontario Act then it becomes necessary to define a preference share. A preference share is not defined in our present Act nor has it been defined judicially other than to point out the definite nature of the term.

> "The term 'preference shares' . . . is a somewhat indefinite term, having a commercial or popular rather than a strictly legal import. I find no case in Canada or England in which the term has been authoritatively defined, but a somewhat extended research leads me to the conclusion that, if a preference of any character whatsoever is given to the holder of a share, the circumstance that in other respects he is deprived of the usual rights belonging to a holder of common shares does not prevent his shares from being properly designated as preference shares." *Rubas* v. *Parkinson,* [1929] 3 D.L.R. 558 at 561.

Par value or no par value shares

The arguments of Professor Dower in favour of no par value shares of every type are attached. The comments of Mr. Dickerson with respect to Bill C-213 are as follows and it might be suspected are very similar to the comments of Professor Dower:

24(a)

24. In part 5.00 we have tried to take some of the mystery out of corporate finance by adopting some new terminology and by abandoning some concepts which have outlived their usefulness. The terms "authorized shares" and "stated capital" separate, first of all, the legal and the accounting aspects of corporate capital. Much confusion has been created in the past because these two concepts have been merged into something called "share capital", which the legal and accounting professions have tended to regard and define differently. Under the Draft Act it is not even mandatory for corporations to state in their articles of incorporation a fixed number of shares (i.e., "authorized shares") which can only be changed by amendment of the articles. Any corporation can impose this traditional ceiling on itself if it so wishes, but the Draft Act allows every corporation a choice. The abolition of the utterly useless idea of par value removes all kinds of difficulties, and so does the prohibition of the partly-paid share. Similarly, the new rules for redeemable shares remove a lot of complicated law. All these changes have been made without detracting from the flexibility of the corporate share as a commercial instrument. Indeed, we think that flexibility in corporate financing is improved under the Draft Act.

Non-voting shares

25. The non-voting share is something which has generated a good deal of discussion from time to time (see Lawrence Report, pp. 31-33). Most of the corporation Acts in Canada permit non-voting shares, although Ontario, since 1953, has provided that voting rights may only be restricted in "preference" shares ("special" shares in the new Ontario Act). Section 12(14) of the Canada Corporations Act is applied to require that even preferred shares must have the right to vote in certain circumstances.

26. The controversy over voting rights is largely confined to the question of whether "common" shares may be voteless; most writers do not object strongly to the elimination or restriction of voting rights on "preferred" shares. The argument therefore rests on the assumption that the terms "common" and "preferred" have a precise meaning, an assumption which we have rejected, along with the adjectives which we think are misleading. The Draft Act speaks only of "shares", although it recognizes that shares may be of different classes, with different terms and conditions attached to the shares in the different classes.

27. Ingenious corporate solicitors have not, of course, been defeated by those Acts which restrict the use of non-voting shares. The trick is simply to design a share which has voting rights in certain circumstances, but to ensure that, for practical purposes, those circumstances can almost never arise. The legal profession has been equal to the task, with the result that the protection given to shareholders by provisions such as those in the Ontario Act and in the Canada Corporations Act is largely illusory.

28. In the Draft Act, voting rights are not singled out for special attention. They are only one of the usual rights which shares will have unless, where there are two or more classes of shares, voting rights have been eliminated or restricted in some way. At least one class of shares in every corporation must always have unrestricted voting rights. Part 14.00 provides, however, that even shares which are normally non-voting can nevertheless be voted on matters which affect fundamentally the shares of that class. Moreover, the holder of a non-voting share has the same right as any other shareholder to invoke the "dissent" provisions which require the corporation to buy back his shares. In our view it is for the prospective shareholder to decide whether he wants to buy shares that don't carry a right to vote. If, knowing the circumstances, he elects to buy such shares, there seems no compelling reason why the law should prevent him from doing so. The law should ensure, however, that the shareholder is given a voice on any proposal that is made to change his rights subsequently, and a chance, if he disagrees with the proposal, to withdraw from the corporation.

Mr. Dickerson's reasons for having only shares without any particular nomenclature attached to them are as follows.

PART V—CORPORATE FINANCE

Present law

Probably no provisions in the present Act are as unclear and as unsatisfactory as the sections relating to capital structure, shares, redemption of shares and dividends. Reflecting that the present law developed from several sources and on a piecemeal basis, the financial provisions are scattered throughout the Act, rendering difficult the resolution of even pedestrian problems. Some of the provisions such as those relating to bearer shares ("warrants") and series of shares are conceptually incomplete and thus engender much confusion. In addition, a number of concepts like partly paid shares and par value shares have simply become archaic, bearing little relation to contemporary market requirements and practices. Finally, there are those provisions that are altogether absent from the present law, such as rules relating to options and rights, acquisition by a corporation of its own shares, rules relating to accounting practices, and uniform insolvency criteria.

Proposed law

The provisions relating to the issue, redemption and reacquisition of securities by a corporation effect fundamental changes. The issue of shares subject to assessment and the issue of par value shares are both expressly proscribed, simplifying enormously the present law and reducing greatly the possibilities of misrepresentation, particularly in respect of par value shares. All consideration received for shares must be credited to a stated capital account. Any reference to concepts such as paid-in surplus or capital surplus is scrupulously avoided.

The provisions relating to shares in series, preemptive rights and options and rights, even if new, do not reflect any major change of policy, except that reference to warrants (bearer shares) is deliberately omitted. Rather, they purport to state briefly and clearly what is currently law or good practice. Similarly, the provisions relating to redemption or repurchase of redeemable shares and the payment of dividends are consolidated in one place, abridged and clarified. Aside from the fact that complete, continuous disclosure is required, very few constraints are placed on the rights, restrictions and conditions that may be attached to shares.

Completely new, however, is the right of a corporation to acquire its own shares, enabling a corporation better to adjust its financial structure to the needs of the business, parallel to the manner and for the purpose that corporations now acquire their own debentures in market transactions. Any reference to an acquisition "out of surplus" or "out of capital" is avoided. Instead, the terminology of the Income Tax Act is employed to determine whether a surplus exists; e.g., where assets would be more than aggregate liabilities and capital. In effect, if a surplus exists, a corporation may acquire its own shares up to the amount of that surplus, but subject to the same insolvency limitations that apply to dividend payments. Only in narrowly specified cases can a corporation without surplus acquire its own shares. And in either event, it must cancel the reacquired shares and reduce its surplus or capital accounts accordingly, thus eliminating the techniques of abuse that are commonly associated with a corporation's acquiring its own shares.

Two other provisions of Part V are particularly noteworthy. A number of commentators pointed out the impossibility of recalling, cancelling and reissuing all of the outstanding shares of existing corporations. A subsection was therefore added to s.24 to deem any par value shares to be no par value shares that comply with the law. A similar provision, subsection 181(7), further clarifies the status of outstanding shares.

The question of prohibited loans and guarantees as recommended by the Proposals also engendered considerable controversy. Several commentators pointed out that the Proposals, on the one hand, empowered a corporation to acquire its own shares, and then, on the other hand, continued very stringent rules about the corporation's lending money to persons on the security of its shares or for the purpose of buying its shares. The prohibited loans provisions have therefore been recast to permit such financial assistance in narrowly specified cases irrespective of the corporation's financial position and to permit financial assistance in all other cases, but subject to strict solvency standards that

It has been suggested that one of the arguments against a no par value is the imposition of a tax in some jurisdictions and that the par value share is taxed on the par value while the no par value share may be taxed on book value or market value which could result in a higher tax. However it could equally result a lower tax and the par value share be taxed at more than it is worth. If it has any merit the tax is based on the value of the shareholders proportion of his equity in the business organization and would probably be more accurately reflected if no par value shares than with par value shares.

B. Recommendations

1. All shares being no par value shares.

2. Shares be issued subject to payment only in cash or in property (property not to include a promissory note or other form of indebtedness) and that there be no such thing as _____ shares.

3. That no attempt of definition of common preferred shares be embodied in the Act other than for the following purposes:

(a) provisions applying to redeemable shares;

(b) insider provisions.

4. That any new Act require the Articles or memorandum to set out the price at which a redeemable share is to be redeemed or a formula used to determine such a price.

5. That the provisions regarding a "stated capital" account or similar provisions to Bill C-29 be embodied in the Act.

In examining these recommendations against the criteria established, I cannot see how the use of par value shares in any real way adds to the flexibility of a business organization, and certainly having no par value shares only provides for clarity and simplicity. Uniformity with other Canadian Acts is now impossible since Bill C-29 does not permit par value shares in any event. There is a slight edge to uniformity with other provincial Acts in that both the British Columbia Act and the Ontario Business Corporations Act both permit par value shares.

Insofar as ease of administration is concerned, the present provision of section 58 of our Act requiring a maximum amount per share or a maximum aggragate amount at which no par value shares can be sold seems cumbersome and unweildy and I believe has only been inserted in order that the Registrar may determine his fee proportionate to the capitalization of the company being incorporated. It would ease the administration of the Act if there were a simply flat fee for every corporation but if it were desired to keep the graduated rate of fee depending on the size of the corporation this could be accomplished by simply charging fees with respect to the number of shares in having a minimum fee.

3. Arguments for and against the concept of no par value shares only

The concept of no par value shares for every type of share in the company does come closer to the modern concept of a share representing a proportion of the owner's interest in the endeavour. In this sense it is not misleading to creditors or to majority or minority shareholders and probably less misleading than a par value share.

VIII. Related Subjects

A. Alteration of CApital

1. Reorganization, redemption, purchase by company of its own shares, over subscription, fundamental change.

2. Form of share certification

1. Should the certificate show whether it represents a share having a vote or not. If the share is redeemable should the certificate show at what price or the formula used to determine the price.

3. If the certificate carries special rights and restrictions should these be shown on the certificate.

4. Application to existing companies for contents of annual report.

1. This section is important and far-reaching. The case for no par shares, already known in Belgium and North America, seems overwhelming. Even at the commencement of the company's life par values may be arbitrary and misleading since shares may be issued at a premium or even (through an issue for a consideration other than cash) at a disguised discount. Thereafter they become totally arbitrary; a so-called £G1 share may, if the company has made losses, be worth anything from zero to £G1 and, if it has made profits and ploughed them back, be worth anything from £G1 to infinity. The retention of the misleading £G1 symbol is an endless source of complication and confusion, both to the sophisticated and, especially, to the unsophisticated investor who is apt to think that he is getting a bargain if he buys a £G1 share for 10s. and that he has been cheated if he is made to pay 30s. If Ghanaians are to be encouraged to invest in shares, everything should be done to make it clear to them that a share is simply a share in the fluctuating value of a business and not a piece of paper worth the value endorsed upon it.

The reason for requiring shares to be given a nominal value is purely historical; it was thought to be a convenient device for measuring the member's liability at a time when it was envisaged that shares would be of large nominal value (say, £G100) of which a substantial proportion would be left uncalled. It is now customary for shares to have a low nominal value (£G1 or less), for the whole to be called up shortly after issue, and, frequently, for the issue price to be greater than par. With this change in practice par values have outlived whatever usefulness they may have had.

2. The case for no-par shares is conveniently summarised in the report of the Gedge Committee (Cmd. 9112 of 1954) which recommended their introduction in England (*see* also No. 29 of the Practice Notes of the Incorporated Accountants' Research Committee). It was clear from the discussions which I have had that their introduction would be welcome in Ghana.

3. In three respects my recommendations go further than those of the Gedge Committee:

(*a*) I suggest that all shares (preference and ordinary) should be no par;
(*b*) I recommend that they should be compulsory, not optional; and
(*c*) I provide for the automatic conversion of shares already issued.

These three matters can most conveniently be discussed together.

4. Originally I had thought that it might be better to proceed cautiously and to make no par shares optional (not compulsory) as recommended by the Gedge Committee. But after lengthy consideration I have changed my mind. If this conservative line were followed the two greatest advantages of the reform—simplicity and comprehensibility—would be sacrificed. It would be necessary for the Code to contain provisions for both par and no par shares and for the public to learn to understand both. Both would continue to exist indefinitely side-by-side and conservatism might cause professional advisers to continue with par shares rather than to adopt the more logical and simpler alternative. In a country like England, in which there are hundreds of thousands of companies with millions of par shares, a sudden and complete switch to no par shares may be hardly practical. But Ghana at present has only a few hundred companies and not many shares. The present presents a unique opportunity. If it is grasped it may enable Ghana to simplify and modernise its company law and to provide an attractive model which other countries might envy. If the opportunity is lost now it may be lost for ever. And I am satisfied that no par shares would be acceptable and welcome to foreign investors.

5. An additional word should, perhaps, be said about Preference Shares. It is true, of course, that if a share merely confers a right to a fixed dividend and a fixed return of capital, par values are relatively unmisleading. But even with them, it by no means follows that a £G1 share will be worth £G1. If the stated dividend is higher than current interest rates and the capital and income are well covered it will be worth more. If, however, the dividend is lower than current rates or there is inadequate cover it will be worth less and may be worth nothing. It is not to be forgotten that even a preference share is not a debt security; dividends can only be paid out of profits and in a winding up capital can only be returned after creditors have been paid in full. Nor are all preference shares of the type referred to above. If they are participating, either as regards income or capital, their value may fluctuate almost as wildly as ordinary shares.

The Gedge Committee thought, nevertheless, " that a fixed dividend must have a relation to the sum on which it is paid and that that, as well as the repayment of a fixed sum in a winding up, is out of keeping with the concept of no par value:" (Cmd. 9112, para. 40). This, with respect, appears to be a further illustration of the confusion which par values have caused. A share dividend is not " paid on a sum " it is paid on a share. It is true that under the present practice the share is given an arbitrary value and the dividend (preference or otherwise) expressed (often with highly misleading results) as a percentage of that value. But it can just as well, indeed far better, be expressed as a fixed sum (1s., 2s. 6d., etc.) per share. And the preferred repayment on a winding up can equally well be expressed as a fixed sum (£G1, 25s., etc.) per share.

Hence I am convinced that no par need not, and should not, be restricted to equity shares

6. For the above reasons I am equally convinced that existing par shares should b converted, but it is a difficult problem to decide how this can best be accomplished. Ideally existing companies should register new Regulations in which the shares would be converte to no par, and it is to be hoped that most of them will do this. But it is impracticabl to compel them to do so; their members can hardly be forced to vote for the necessar resolutions. My suggested solution in subsection (2) is less than ideal, for it will mean tha existing Memoranda and Articles will not give a completely accurate picture of the shar capital. But I think and hope that it will prove workable and the best solution in the circum stances. I would again emphasize that at-present the problem lies within a small compass there are no widespread shareholdings as yet.

7. It must be pointed out that I have not been in a position to consider the implications o this reform on the wording of other existing legislation. It may well be that consequentia alterations will be needed elsewhere; *e.g.*, in the income tax legislation. I have regarded it a my task to recommend what I regard as the best company law for Ghana; if my recommenda tions are accepted other legislation will have to be made to conform.

8. The introduction of no-par shares involves the substitution of the concept of " state capital " in lieu of " share capital ". The implications of this are worked out in sections 66 *et seq*

9. In my recommendations regarding the contents of balance sheets (*see* Fourth Schedule I have made suggestions which should meet the objections to no par shares raised by the T.U.C in their evidence to the Gedge Committee.

Issue of shares

Com Law

CAPITALIZATION
PART II

Increase of Capital

This part will be dealt with in a somewhat different manner than the previous part dealing with Alteration of Capital. In order to speed up the "overview" this part will contain schedules showing the section numbers of the Acts and the relevant provisions under headings. This will greatly reduce the amount of typing and the amount of copying. While it may not be an adequate method in dealing with some topics (one that comes to mind is a company buying its own shares), I recommend that wherever we can use it profitablly to get through the overview we do so to point out the main problems and get on with the main work at hand. Presumably comments will be forthcoming.

When we speak of increase of capital we are actually speaking of two different possible concepts. The first is an increase in the authorized capital of the company which creates no great problem until we come to the second which is an increase in the issued capital of a company. An increase in the authorized capital of the company until something is done with that authorized capital creates only a technical change with respect to the company and an alteration to its balance sheet that is totally unimportant since it is not one of the actual figures used in balancing the companies accounts. It is upon the issuance of the increased capital that our main problem in this topic arises, namely, does an existing shareholder have a pre-emptive right to maintain his precentage equity by subscribing for the proportionate number of new shares to be issued which would maintain that equity. The problem can of course also arise wherever there is authorized but unissued capital, a situation which is probably true in 90 per cent of the private companies presently incorporated under the Alberta Act. However this topic does raise the problem since it is difficult to conceive of

a company going to the trouble and expense of increasing its authorized capital unless it intends to issue at least part of it.

All of the Acts which have been dealt with in the previous section permit a company to increase its authorized capital. The attached schedule shows the section number in each of the various acts, who may propose the resolution, the type of resolution required in order to authorize the increase and the percentage of vote required for that resolution. None of the Acts classify an increase in the authorized capital of the company as a fundamental change giving the pre-existing shareholders a right to dissent. Nor do any of the Acts require court approval for a resolution increasing the authorized capital. It must be remembered that we are speaking in part of an increase of existing capital not the creation of a new and different class of shares or any variation of any right attached to a special class of shares. Providing the resolution has been duly passed and a certified copy has been filed with the appropriate authority the resolution is effective.

Schedule II attached to the paper indicates which of the Acts which we have dealt with earlier ~~in body of~~ contain any premptive right.

One of the first clauses commonly inserted in a shareholders agreement in a private company incorporated under the Alberta Act is a specific provision dealing with the allotment of shares. In the absence of any contrary provision in the articles of assoction shares may be issued and alloted as the directors determine and the discretion of the directors in this regard is not usually restricted. It is interesting to note that article four of Table A simply states that shares shall be under

the control of the directors who may allot or otherwise dispose of the same to such persons on such terms and conditions and at such times and for such consideration as the directors may think fit.

This unfettered power of the directors has been limited somewhat by the courts in a series decisions starting with Piercy v. S. Mills & Company Limited (1920) 1 Ch. 77. In this case certain directors of the company who had lost voting control, unabashedly allotted sufficient shares to themselves in order to insure that they retained voting control. Apparently it was a seesaw battle because they did this on two seperate occasions. The company did not require additonal working capital and the court held that this was a breach of the fiduciary relationship the directors owed the company in that the allotment of shares was simply for the benefit of the directors to retain control of the company. The case has been followed consistently in Canada wherever it has been made apparent to the court that the sole purpose of the allotment of shares to directors was in order that they could retain control after they had lost voting control. It is interesting to note that the protection granted by the courts has not been extended on any broad basis; thus ~~for the~~ directors who had ~~found~~ control and chose to allot shares their decision was upheld no matter to whom they allotted the shares; and in any case where the directors could show that the capital was needed the courts had been loath to set aside any allotment of share no matter to whom it was made. In my own experience I have seen articles of association of a private company which contained a premptive right, but I have not seen them very often. I suspect that in a vast majority of cases a solicitor incorporating the company is acting for his own client and ~~file~~ while a provision for a premptive right contained in the articles may be considered, it is sometimes deliberately omitted.

A premptive right by itself presupposes an equal ability to contribute money by all of the shareholders and can, in the event that one of the shareholders simply doesn't have the funds available, be used to redistribute the equities in a company. The only method of ~~during~~ this possible abuse of a premptive right would be to ~~commit~~ PERMIT a purchase of shares over time. The opposing view is that adults should not get into a table stake poker game way beyond their limits or they are courting disaster.

It appears to me that ~~the~~ a distinction should be drawn between a company whose stock is traded on a stock exchange and one whose is not. In the case of any public company whose stocks are traded on an exchange the shareholder has a perfectly adequate means of maintaining his percentage equity in the company simply by buying more stock. Indeed he would probably be forced to resist the blandishments of customers men in brokerage offices attempti to sell him more shares. Such a requirement for a company with a large number of shareholders would seem to me to be only cumbersome since the shareholder has a method of protecting his percentage of equity should he desire so to do.

For the purposes of discussion I would therefore make the following recommendations:

(1) That a premptive right be given to shareholde in private or closely held corporations.
(2) That such right could be waived in the articles of association of the company
(3) That such right could be waived unanimously by all of the shareholders of the company at any one time.
(4) That the time limit for a shareholder to exercise his premptive right be not less than 35 days

SCHEDULE 1

ACT	SECTION #	TYPE OF RESOLUTION	RESOLUTION MAY BE PROPOSED BY	% OF VOTES REQUIRED FOR RESOLUTION	IS POWER NECESSARY IN ARTICLES
ALBERTA	37(1)(a)	Special Resolution	Directors or 10% of Shareholders under sec. 134	75%	Yes, but article can be amended
AUSTRALIA	62(1)(a)	Ordinary	A Director or any Shareholder	Majority	Yes, but article can be amended
B.C.	250	Special or any other if provided for in Articles	Director or one or more shareholders holding 1/20 of issued shares	Special 75%	No
GHANA	22 and 57(1)(a)	Special	A Director or Directors or Private Company-2 or more members with over 10% Public Company-members holding 1/20	75%	No
Ontario Business Corp. Act	189(1)	Special	Passed by Directors and Confirmed by 2/3 of shareholders	2/3	No
Bill C-29	167(1)(d)	Special	Directors or Shareholders holding 5% of issued shares	2/3	No

SCHEDULE 1

ACT	SECTION #	TYPE OF RESOLUTION	RESOLUTION MAY BE PROPOSED BY	% OF VOTES REQUIRED FOR RESOLUTION	IS POWER NECESSARY IN ARTICLES
NEW YORK	801(b)(7)	Ordinary	Director and Shareholders authorized by By-laws	Majoirty	No
U. S. MODEL	58(e)	Ordinary	Director and Shareholders authorized by By-laws	Majority	No

INCREASE IN CAPITALIZATION

SCHEDULE II

ACT	SEC. #	PRE-EMPTIVE RIGHT GIVEN	EXCEPTIONS	COMMENT
ALBERTA		No		May be given by Articles
AUSTRALIA		No		May be given by Articles
B.C.	40	Yes	Reporting Co.	Court may validate allotment under sec. 263. Right may not be waived
GHANA		No		May be given by Articles
ONTARIO		No		Sec. 44 specifically permits inclusion in the Articles
BILL C-29	28	Yes but only if Articles so provide	See comment	Even if the Articles do provide for a pre-emptive right It does not apply for shares issued for other than money 2. Share dividends 3. Option or conversion privileges previously granted
NEW YORK	622(b)(c)	Yes	See comment	(1) Consideration other than cash (2) Merger or amalgamation (3) Option or conversion privileges previously granted (4) Treasury shares if issued to raise needed capital (5) Original authorized shares for 2 years from the date of incorporation
U.S. MODEL	26	Positvely No		But 26 A is shown as an alternative