AUTHORIZED CAPITAL

The present Alberta Act permits the incorporation of three different types of companies under the provisions of section 15 (1). They are:

A) A company limited by shares
B) A company limited by guarantee
C) A specially limited company

Each of these company's has a slightly different requirement with regard to authorized capital which must be inserted in the memorandum of association. Under the provisions of section 16 (d) permits the authorized capital to be divided into shares of a fixed amount, divided into shares without normal or Par Value, or divided into shares partly of one and partly of the other. The provisions respecting authorized capital for a company limited by guarantee are set forth in section 17. It is possible under the provisions of section 17 to have a company without any authorized share of capital whatsoever but it may have a share capital. Section 19 contains the requirements for a specially limited company which can only have Par Value shares and can only be incorporate for specific purposes.

It is the present tentative recommendation that specially limited companies be abandoned. According to the registrar of companies she has not seen one incorporated for many many years and this is probably due to the introduction of no Par Value shares in the 1929 Act. It is also our tentative recommendation that companies limited by guarantee be used solely for non profit companies and that part 9 of the existing act not included in any companies act, and a separate non profit companies act be enacted very much along the lines of the proposed federal non profit companies act. Throughout all of the papers therefore unless specifically indicated otherwise we will be dealing with a company limited by shares.

Since this particular paper will also deal with alterations of capital attached to the paper you will find two balance sheets one for Little Widgets Ltd., a totally fictitous balance sheet, and one for International Widgets Ltd. with is the actual balance sheet of a large Canadian public company whose stock is traded on an exchange and in fact I believe is traded on Montreal, Toronto, and Vancouver.

I. KINDS OF SHARES

Historically the authorized and issued capital of a company was a fund to which the creditors of the company could look and has been described by Proffessor Garr as the price paid in the long struggle for a limited liability which culminated in the English Companies Act, 1862. Under that Act there was no requirement for a minimum issued capital but full disclosure had to be made of whatever capital was issued and the terms upon which it was issued. No Par Value shares did not appear until the English Act of 1929 which is basically the same Act with some amendments imported en bloce from Ontario that is our present Act. It became standard practice to issue shares with a Par Value of £10 or £1 and to be paid for approximately one tenth down and the remainder subject to call. According to the registrar of companies over 95% of the companies incorporated today are small private companies and primarily because of tax reasons issued capital is usually kept to a minimum and the shareholders advance money to the company which it may require by way of a loan. Since the registrar of companies charges a minimum fee on an authorized capital of $20,000.00 most companies are incorporated with an authorized capital of this amount, either with Par Value, which is not generally recommended under the provisions of the new Income Tax Act because of problems arising when dealing with contributed surplus, or almost any number of shares of no Par Value the aggregate consideration for which is $20,000.00.

After discussions with the registrar to ease the administration of the new Act he is presently in agreement with the concept of a flat charge for filing the memorandum and articles of the company no matter what the capitalization, of approximately $100.00, an annual report fee of $25.00, and abandoning the $2.00 charges completely. Since we have not yet got to securities or what liability will be placed upon the registrar what certificates he may issue, we have not yet discussed fees with regard to debentures.

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

1) a method of dividing the interests of the participants of the venture, 10 out of 100 issued shares equals 10%

2) in some instances a method of providing financing for the company either by subscription for common shares under an underwriting agreement or by subscription for preferred shares almost always redeemable or convertible to common shares.

3) in certain particular circumstances a method of defining certain rights of various groups in the venture. International Widgets Ltd. has two classes of common shares the class A are titled to dividends from post 1972 earnings, and the class B are entitled to dividends from 1971 undistributed income after the company has paid the 15% tax. The holder of one class can exchange at any time the number of his shares for shares for the other class. I did some calculations on this once prior to the $1,000.00 dividends or interest being tax free which was introduced in the budget of this year, and the dividing line came at about a 38% personal tax rate. Above this rate the holder would be better off trading his dividend for Class B shares.

Of the various which we are looking at for purposes of comparison the Australian Companies Act, which is a uniform Act for all of the States and was passed in 1961, permits Par Value shares only. The New British Columbia Act permits both. The New Ghana Act done by Proffessor Garr permits no Par Value shares only no matter that they are common shares or shares with special rights or redeemable shares. The Ontario Business Corporations Act permits both. The Canada Corporations Act permits no Par Value shares only whether common or carrying any special rights. Unlike the Ghana Act it does contain a provision requireing the price or the formula by which the price may be determined, that a company must pay to redeem a share, but the shares are no Par Value shares. The New York Act which follows ver closely to the U.S. Model Act, provides for both but from the periodicals I have read to date I would gather that Par Value common shares are seldom used.

The basic argument against Par Value shares is that Par Value is meaningless since the value of the share will only on the rarest of occasions be equal to the Par Value. At the least Par Value is likely to confuse the unsophisticated holder and the worst can be abused. Any proposed new Alberta Act will of course exempt Banks under the Bank Act, Railways and probably Insurance Companies. Under the Bank Act Par Value shares are required and a glance at the balance sheet of any of the banks as contained in their annual reports will show a large figure for contributed surplus. The Royal Bank is presently going through a rights offering at $26.00 per share but the Par Value of the shares is $10,00.

RECOMMENDATION

It is our present recommendation that all shares being no Par Value shares whether they are common shares or shares carrying a special right or restriction and always provided that if the shares redeemable then the memorandum must set out

the price or a formula to determine the price at which the shar are redeemable.

COMMENT

RECOMMENDATION #2

It is also our present recommendation that all shares be paid for in case before they are issued but that a company be allowed to issue shares on time purchase plans providing the company receives a promissory note for the balance and the time of payment does not exceed two years.

COMMENT

II. ALTERATIONS OF AUTHORIZED CAPITAL

A) Special resolutions

B) Increase of authorized capital

C) Alteration or conversion of shares from one class to another or alteration of rights with respect to shares carrying special rights.

D) Special reductions of capital

   i) Section 70 on the Capital Redemption Reserve Fund

   ii) Section 112

E) Reduction of Capital

A) Special Resolutions

Any alteration of authorized capital is basically an alteration to the memorandum of association and the brief discussion here of special resolutions would apply not only in this topic but to any other topic regarding fundamental change. The concept of anything more than a majority vote seems to be totally unknown in the United States, there is no such thing as a special resolution in the New York Act, in the California Act or in the U.S. Model Act, nor have I stumbled across any discussion concerning a special resolution in my readings to date in any of the American Law. The other Acts vary from a 75% requirement to a 66 2/3% requirement but it seems to me that there are basically only two problems with regard to special resolutions. They are:

1) Who may propose it?
   This may vary from any director or any shareholder as in the Australian Act, the directors or 10% of the shareholders under section 134 of our Act, passed by the directors and confirmed by thirds of the shareholders as under the Ontario Act the directors or shareholders holding 5% of the issued shares under the New Canada Act, etc.
2) What is the magic number?

   COMMENT

B) Increase of Authorized Capital

Increase of Authorized Capital by itself involves no material change to the balance sheet, for instance if we look at the balance sheet for Little Widgets Ltd. and we increase the authorized capital from 10,000 common shares no Par Value to 100,000 common shares at no Par Value or create an additional

90,000 redeemable preferred shares of a Par Value of $10.00 each, no substantial change has taken on the balance sheet of the company until the shares have been issued and it is upon the issuance that the problem arises, namely, does an existing shareholder have a preemtive right to maintain his percentage equity by subscribing for a porportionate number of the new shares to be issued which would maintain that equity. This problem can of course arise wherever there is authorized but unissued share which is probably true in over 95% of the private companies presently incorporated under our Act. Under the provisions of section 37 of our Act a company may increase its authorized capital by a special resolution. The common law has not traditionally provided any great protection to shareholders in this regard with the exception of the narrow principle first set forth in Piercy v. S. Mills and Co. Ltd. 1920 1 Ch.77 where it was held that directors who allot shares to themselves for the purpose of retaining or gaining control of a company having lost it were acting in breach of their Feduciary relationship to their company. Where howver the directors already had control, and in any case in which the company needed or could use the additional funds to carry on its business, the courts have been very loath to interfere indeed. One of the first problems that all of us have faced in preparing a shareholders agreement is a covenant that the shareholders, acting as directors, will not alot shares other than on a pro rata basis. I think probably all of us have wondered one time or another whether such a covenant was binding upon the directors and I think the better view is that if the company were in trouble and needed the money, the directors probably are not bound since their first duty is towards the company. In most of the articles I have seen the allotment of shares is left solely in the discretion of the directors. Table A also contains this provision. I have seen articles of association were a preemptive right was given to the existing shareholders but this under our present act is left entirely

up to the decision of the incorporating shareholders and their solicitor.

Of the Acts which we have examined the British Columbi Act contains a preemptive right which may not be waived for all companies other than a reporting company. In general a reporting company and a non reporting company are the same as private and public under our Act. The Canada Corporations Act provides for preemptive right only if the articles so provide and in any event even if the articles do so provide excepts shares issued for other than money, share dividends, option or conversion previlidges previously granted. The New York Act provides for a preemptive right but exempts considerations other than cash, merger or amalgamations, option or conversion privilidges previously granted, treasury shares if issued to raise capital, original authorized shares for two years from the date of incorporation. It is our feeling that even if the Act does contain a preemptive right it should exempt exemptions sooner to the New York Act and should in any event not apply to a public company whose stock is traded on an exchange since really the shareholder in such a company can always go into the market place to buy additional shares should he choose. It would have effect of limiting public companies financing by sale of additional shares, to rights offerings only. However the provision does have considerable merit when dealing with a private company because of the problems involved in preparing a shareholders agreement that will actually bind the directors. Even if the company is in trouble it seems to me that the shareholders should have the first right to provide the additional funds and to maintain their percentage equity in it. In the event that the recommendations providing for a flat fee for the incorporation of a company were accepted it may well be there will be far fewer cases in which private companies have authorized but unissued capital. It is also true that a preemptive right can work hardship in

cases in that the financial ability of the shareholders may differ but providing a shareholder has two years in which to pay for his shares this would in part overcome this difficulty.

RECOMMENDATION

That a preemptive right be embodied in the statute for private companies only and exempting share dividends option or conversion priviledges previously granted merger or amalgamation, quaere consideration other than cash, and always providing:

A) That the right could be waived unamously by all of the shareholders at any time,

B) That the time limit for a shareholder to exercise his preemptive right be not less than thirty days or more than sixty days.

COMMENT

C) Alteration and Conversion of Authorized Capital

If the Act provides only for no Par Value shares then there would be no necessity for the provisions contained in the Alberta and in any other Act that provides for Par Value and no Par Value shares, of converting from one to the other. If the Act provides for both I think it is the unanimous opinion of everyone that their should be a method of converting from one to the other such as is presently embodied in our Act in section 38 (1)a) iv and v, or presumably the provisions of section 37 (1)c) a conversion to stock and reconversion could be used for this purpose.

Section 37 (1)c) still remains the handiest vehicle for converting a private company of some substance with a small issued capital into a public company in the process of an underwriting agreement one of our main objectives in the entire concept of the new Act is flexibility and this is one area in which we hope to make as flexible as possible.

A problem does however arise on a variation of rights where the holders of the voting shares attempt to alter the rights of the holders of a special share which does not have voting rights. The rider to section 38 (1) which states that no preference or special priviledge attached to or belonging to any class of shares shall be interfered with except by a special resolution of the shareholders of that class, and the provisions of section 69 (2) which provide that a variation of rights must be confirmed by an order of the court after the special resolution of the special shareholders has been passed do provide some protection for the holders of such shares. A descending shareholder being a member of the 25% who voted against the resolution, has no rights whatsoever under our Act other than the possiblity of appearing in court at the time that the order is thought to be confirmed. The provisions of the English Act are very similar and the courts by in large have taken the view that the holder of the share must of been aware of this at the time that he bought it and that if 75% of the shareholders are in favour that is an end to the matter.

The Australian Act gives a right to 10% of the holders of such shares who did not vote for the resolution, to apply to the court on our own behalf to have the variation cancelled and this has resulted in a very large number of reported cases indeed on applications made by 10% of the descenting shareholde: The Ontario Act gives with one hand and takes away with the other. Section 189 (4) states that if the amendment is to delete or vary any preference right or condition the resolution

is not effective until it has been confirmed by 100% of the holders of such class of shares in writing, or by 95% of the holders of such class of shares at a meeting of which 21 days notice has been given. However the third subsection, subsection C states that if the article so provide than only a two thirds majority is required to pass the resolution of the special class of shareholders, it has been argued successfully in England that a special resolution to amend the articles, which does not in its self effect the rights of the special shareholders is not a variation of the rights in other words special resolution to amend the articles to provide a sixty six and two thirds vote is probably under our law now not a variation of the shareholders rights so that whatever earlier protection was given to them in this section is removed by the last subsection.

Under the New Canada Corporations Act a variation of rights is treated as a fundamental change it must be approved by a special resolution of the voting shareholders, and it must be approved by a special resolution of the holders of the class shares. A descending shareholder has the right to require the company buy him out. Because of the various restrictions as to when a company can buy its own shares the Canada Act contains a saving provision that the directors can revoke the resolution before it is acted upon since the company may not be in a position to buy out all of the discenting shareholders.

The New Ghana Act provides for a special resolution of 75% of the holders of the special shares and also provides for 15% of the holders of the shares to apply to the court to have the variation cancelled and it is interesting to note that this act is the only act which specifically sets forth Cannons of Constructions as to precisely what constitutes a variation of rights most of which were inserted by Proffessor

Garr to overcome a series of English decisions dealing with cool companies being wound up following nationalization were the holders of preferred shares who had received no dividends for some years had their shares converted to redeemable shares and were bought out and the remaining funds of the company distributed amongst the common shareholders. This problem of the preferred and accumulated but unpaid dividend has had a long and thorny history in the United States. The New York Act does provide for class voting on an amendment and does give a right to dissent and to compel the company to buy the disenting shareholders shares wherever the resolution would alter or abolish any preferential right, creat alter or abolish any provision with respect to redemption, alter or abolish any preemptive right, or excluse or limites the right of the holder to vote which he might previously have had under certain contingencies. It has apparently been argued successfully in the United States that cancellation of accumulated but unpaid dividends on preferred shares is not a variation of the rights attached to those shares.

RECOMMENDATIONS

1) It is the feeling of our committe that most business men really do not wish to get involved with the courts if at all possible and that giving a right to 10% or 7 1/2% or 15% of disenting shareholders to make an application to the court can seriously upset the timing of many legitimate business transactions. The committee is concerned about the magic number for a special resolution really hasn't made up its mind whether it should be. In view of the historical past we are inclined to stick with the 75%. If any remedy is to be given to a disenting shareholder at all it should be the remedy contained in the Canada Act and the New York Act namely that he can ask to be taken out of the ball game. Since this is

determinable. It is also the recommendation of the committee that the Act contain some basic Cannons of Construction as to what is a variation of rights to overcome a series of unfortunate decisions in the English courts.

COMMENT

D) Special Reductions of Authorized Capital

i) Section 70 and the Capital Redemption Reserve Fund

Under the provisions of section 70 redeemable shares, if fully paid for, may be redeemed out of profits otherwise available for distribution or the proceeds of a fresh issue to redeem the old issue by setting up in place of the issued share capital a notional fund known as the Capital Redemption Reserve Fund. Taking the balance sheet of Little Widgets Ltd. presuming that the company wishes to redeem 4,000 of its redeemable shares, the following are the correct balance entries, although in speaking to many accountants with National firms they sometimes disagree with this. This disagreement arises partly from the fact that Alberta is the only province which now provides for a Capital Redemption Reserve Fund of this nature. The new British Columbia Act provides for a Capital Redemption Reserve Fund but it is a compulsory sinking fund where the redeemable shares have a date upon which they must be redeemed. The balance sheet entries are:

1) Cash is reduced by $40,000.00 to become $42,000.00.

2) Issued Capital is reduced to 4,000 preferred shares at $10.00 each and becomes $40,000.00.

3) Retained earnings is decreased by $40,000.00 to become $86,500.00.

4) Immediately below retained earnings an entry should appear Capital Redemption Reserve Fund $40,000.00. More often than not I have simply seen a note one placed next to retained earnings and in the notes attached to the balance sheet mention is made of the Capital Redemption Reserve Fund of $40,000.00. However in order to keep a clear distinction between funds available for distribution and capital which can only be reduced under certain special circumstances it is my opinion that the designation of the Capital Redemption Reserve Fund on the face of the balance sheet more accurately reflects the financial position of the company in that only $86,500.00 is now available for distribution to the shareholders

5) a. Authorized capital is reduced by 4,000 redeemable preferred shares to become 6,000 redeemable preferred shares.

b. Authorized capital remains the same.

There is no question the English common law since the case of in re surple which has been followed in Canada clearly sets forth that redeemable shares once redeemed disappear and are no longer part of the authorized capital. However, section 70 of our Act flies in teeth of the common law and so far as I can see makes step 5 optional which is why I have shown it as 5a or 5b, depending upon the wording of the resolution. Even more curious if one examines all of section 70 is that these shares having been redeemed may then be issued as a bonus to the shareholders and the whole process gone through again. This is sometimes referred to as the

rolling wheel and is perfectly possible for Little Widgets in a series of eight transactions of $10,000.00 each to reduce its capital by cancelling all of the redeemable preferred shares and never have a Capital Redemption Reserve Fund exceeding $10,000.00 at any time. It is submitted that this is contrary to the intent of the section but that is perfectly possible under the present wording of the section. Without going through the rolling wheel Act it is a convenience if the company wishes to do this over a period of years and say redeem 2,000 of the redeemable preferred shares for a year for four years. It would then have a Capital Redemption Reserve Fund of $80,000.00 and could apply to the court under the provisions dealing with reduction of capital to extinguish the Capital Redemption Reserve Fund and transfer the monies in it to retained earnings available for distribution.

RECOMMENDATION

The section is unique in the Acts in count of confusion amongst both practising lawyers and accountants, the ability to use the rolling wheel opens up possible abuses in reduction of capital and the entire section should be abandoned. Going further it is felt that the new act should draw a clear line between funds available for distribution and funds of a capital nature which are not. As will be seen in the paper dealing with the company buying its own shares this becomes a very important section. It is interesting to note that in the Australian Act which have a somewhat similar section but better worded as to what happens to the shares upon redemption, and because they Australian Act permits only Par Value shares, the funds to be used in the redemption of preferred shares must first come from the "share premium account" (substitute contributed surplus).

COMMENT

ii) Section 112 of the Alberta Act

Fundamentally this section converts a fully paid shar into a partly paid share with the balance subject to call. It has been a convenient emergency tool for practitioners who hav paid out the money and didn't quite know how or what to do to cover the interim either because of a delay in obtaining an order reducing capital or for some other reason. Like a payment under section 70 once the payment has been made an applic tion can be made at leisure to the court to extinguish the liability with respect to the share capital not paid up under the provisions of section 38 (1)b) i).

RECOMMENDATION

If we determine that all shares in the company must be fully paid shares then this section would be inconsistent. So far as I am aware it seldom used and its absence will not be widely regretted.

COMMENT

iii) Donation to the Company by way of Voluntary Gift

36 (1)c)

This seamingly simple and certainly convenient provision in our Act should be retained. It certainly covers nicely the situation which I once bumped into when my client purchased a company in specific proportions thinking there was 100 shares issued and it turned out having checked all the minutes that there were 101. It was a help to be able to give the one share back to the company. The Ontario Business Corporations Act , the British Columbia Act and The Canada Act

all permit a gift to the company, providing there is no consideration paid whatsoever. Curiously enough The Australian Act does not permit it at all. The Ghana Act permits it but it includes the same sections that deal with the company buying its own shares and place a limit of 15% of the issued capital that may be donated back to the company or purchased by the company.

I started this section with the words "seemingly simple" and its when we come to the balance sheet entries that are necessary that simplicity starts to disappear. Presuming that for good and valid reasons which we know not of, one of the shareholders of Little Widgets wishes to make a voluntary gift to the company of 100 common shares. The left hand side of the balance sheet does not change at all though just what does happen to the right hand side of the balance sheet because certainly the issued capital is now 4,900 common shares and the dollar figure should $4,900.00. This would certainly be true in the case of Par Value shares and would, I suggest, be equally true in the case of no Par Value shares. Under presently excepted accounting principles a $100.00 comes contributed surplus and you will notice in the balance sheet of Internationa Widgets, which is an actual balance sheet, the split between retained earnings and contributed surplus. For what it is worth it has been generally accepted by the registrar of companies that a donated share becomes part of the original authorized but unissued capital and in the examples where I have seen this section used I have never seen the authorized capital reduced by the number of shares donated to the company.

Let us presume for a moment that Little Widgets was a G.M. dealership, G.M. require share capital to be subscribed for the company and will not accept shareholders loans and let us presume that the issued capital consists of 30,000 common shares at $1.00 each. Forgetting for the moment whatever

problems may arise with G.M., and presuming that the shareholders donated back 29,900 shares to the company, if this money did not become contributed surplus it could immediately be paid out by way of dividend since the only other place on the balance sheet to put the entry would be retained earnings.

RECOMMENDATION

That the section be retained providing that the company treats the donation as contributed surplus and that, for clarity, the shares become part of the original authorized but unissued capital. (iv) cancellation of authorized but unissued shares 36 (1)b). The committee can see no reason to change this section. (v) The sections reproduced below and I invite you all to tell me what it means.

> **36. (1) Alteration of share capital.**—A company having a share capital, if authorized by its articles, may by special resolution
>
> **(d)** cancel paid-up shares that are acquired by a company on a distribution of the assets of another company under liquidation proceedings, and, if the resolution so provides, diminish the amount of its share capital by the amount of the shares cancelled, or in the case of shares without nominal or par value, by the number of shares cancelled.
>
> **(2)** The powers conferred by this section may, if the articles so provide, be exercised by ordinary resolution of the company or by resolution of the directors.
>
> **(3)** A cancellation of shares pursuant to this section shall not be deemed to be a reduction of share capital within the meaning of sections 38 to 41.

I think it means that if company B holds shares in Company A, and company B is bound up and its assets distributed in specie company A then becomes in effect the holder of some of its own shares, it can then cancel those shares. If this is what it means then it should be retained as a convenience (vi) section 252 (1)c) and (2) of the New British Columbia Act these sec-

tions are repoduced below none of the other companies acts which we haye examined contain a similar provision which to my mind is excellent and covers a problem where a large block of shares have been issued in estro. There is no doubt that such shares had been issued because they almost invariably carry a vote. But if the estro conditions are not met within the terms of the estro agreement then there should be some way to cancel these shares rather than having this large block of voting stock hanging around in the woodwork.

Cancellation of shares and diminution of capital.

252. (1) Every company may alter its memorandum by resolution of its directors

(*c*) cancelling shares of a reporting company that have been held in escrow pursuant to an escrow agreement required by the Commission, and that are surrendered for cancellation pursuant to that agreement

and diminishing the authorized capital accordingly.

(2) No company shall return any cash, property, or other consideration paid to it for any shares referred to in clause (*c*) or subsection (1), unless

(*a*) the return is first authorized by special resolution; or

(*b*) the terms of the escrow agreement

(i) were approved by special resolution before the allotment of the shares; and

(ii) require the return.

(3) Sections 253 and 254 do not apply to a cancellation of shares under this section. 1973, c. 18, s. 252.

COMMENT

E. REDUCTION OF CAPITAL

The present Alberta Act contains very broad provisions for the reduction of capital as set out in section 38 (1)b). To summarize this section and next three succeeding sections a company may reduce capital by a special resolution which must be confirmed by an order of the court. The court may insist upon the company advertising or informing all of its creditors and may insist on the company publishing the reasons and causes for the reduction of the capital. Section 39 (5) permist the court to dispense with advertising for creditors. Section 41 (1) makes it clear that once the order and the minute had been registered there is no liability on the shareholder as a contributory but does provide a saving provision for a creditor who is unaware of the proceedings.

While the opening words of section 38 (1)b) are very broad two classic examples are retained in subsections 2 and 3 an example, namely that a company may cancel any paid up share capital that is lost or unrepresented by available assets or that it may pay off share capital that is in excess of the wants of the company.

Presuming that Little Widgets Ltd. is going to reduce its capital by cancelling 4,000 preferred shares at $10.00 each and authorizing the repayment to the holders thereof of their Par Value the blance sheet entries would be:

1) Cash would be reduced by $40,000.00 to $42,000.00.
2) The issued capital would be reduced by 4,000 preferred shares and by $40,000.00
3) The authorized capital would be reduced by 4,000 shares and would become 6,000 shares, since there is no saving provision as there is in section 70 and these shares would be cancelled. Little Widgets could of cost reduce its capital by paying off 99¢ on each of its common shares and still leav the 5,000 common

shares outstanding at 1¢ each.

The Alberta Act contains no test or guidance to the court within its provisions nor do they set any standards or rules with regard to the redemption of redeemable shares to which ones are to be redeemed if not all.

The Ontario Act contains provisions dealing with which shares are to be redeemed if only a part are to be redeemed and contains a solvency test that the company shall not redeem if it is insolvent or if the redemption would render it insolvent. This same test applies to any reduction of capital. Under the new Canada Act a corporation cannot redeem shares or reduce its capital unless it can meet a double barrelled test, namely:

A) That the corporation is, or would after the payment be, unable to pay its liabilities as they become due (which is a current liability test,) or

B) That the realizable value of the corporations assets would after the payment made be less than the aggregate of its liabilities and the amount that would be required to pay the holders of the shares that have a right to be paid on redemption or liquidation rateably with or prior to the holders of the shares to be purchased or redeemed. It is interesting to note the phrase "realizable value" since this seems to be a step away from the historical cost basis presently used on all balance sheets. With continuing inflation this is a problem that is bothering the accounting profession considerably since showing fixed assets at historical costs may not present a true picture of the value of the companies assets.

The New York Act contains an interesting provision with regard to the redemption of shares and what happens to them on their redemption depending primarily on the source of funds used for their redemption. If the shares have been redeemed out of stated capital the shares are cancelled if they are redeemed out of distributable surplus they may be

retained as treasury shares (authorized but unissued) or they may be cancelled depending on the wording of the resolution.

RECOMMENDATION

The members of the committee have felt that without any statutory test whatsoever the reduction of capital sections may be abused. They are also concerned with the skill and competence of the tribunal to approve a reduction of capital in all circumstances and particularly without any help from the statutes. It is our recommendation therefore that a test somewhat similar to the test contained in the Canada Corporations Act be provided for in the statute namely that a company must be able to meet its current liability and that the reduction will not impair the overall capital position of the company. The phrase "realizable assets" used in the Canada Act causes us some concern which can be succinctly stated in our worry about the quality in consistency of appraisa techniques at the present.

COMMENT

INTERNATIONAL WIDGETS LTD.

	1974
ASSETS	*(in t*
Current Assets	
Cash and short-term commercial notes	$ 36,945
Marketable investments, at cost less amounts written off (quoted market value $44,486,000)	39,396
Accounts, advances and tolls receivable	216,592
Inventories (note 1)	312,511
	605,444
Investments In And Advances To Associated And Other Companies (note 2)	325,989
Fixed Assets	
Property, buildings and equipment, at cost	1,181,269
Accumulated depreciation (note 1)	(496,234)
	685,035
Other	
Preproduction ($38,791,000), exploration ($20,404,000) and other expenditures deferred (note 1)	85,544
Debenture and revenue bond discount and financing expenses, at cost less amortization	5,284
	90,828
	$1,707,296 $

	1974	1
LITIES		*(in thousands*
at Liabilities		
dvances	$ 62,422	$ 25,6
ts payable	202,967	193,7
ayable	72,676	30,8
ıe within one year (note 3)	84,489	83,8
	422,554	334,1
ed Liabilities And Holdbacks Payable	6,804	5,2
Provided Not Currently Payable (note 1)	101,460	56,8
erm Debt (note 3)	383,680	335,5
y Interest In Subsidiaries	99,952	44,1
olders' Equity		
stock (note 4)		
rized: 40,000,000 shares of no par value		
l: 24,442,441 shares (note 4(a))	84,739	81,4
ıted surplus	5,043	5,04
l earnings	615,042	502,50
	704,824	589,04
Company's pro rata interest in its shares y subsidiary and associated companies	(11,978)	(11,35
	692,846	577,68
	$1,707,296	$1,353,58

LITTLE WIDGETS LTD.

Balance Sheet as at December 31, 1974.

Assets			Liability and Sharholder Equity	
Current			**Current**	
Cash and Deposits		$ 82,000.00	Accounts Payable	$ 95,000.00
Accounts Receivable (Net)		120,000.00	Demand Bank Loan	60,000.00
Inventory		145,000.00	Current Ptn Long term debt	13,000.00
Prepaid Expense		4,000.00	Estimated Income tax Payable	22,000.00
		$ 361,000.00		$ 190,000.00
Fixed Assets at Cost			Shareholders' Loans	40,000.00
Land and buildings	$180,000.00		Mortgage	72,500.00
Machinery and equipment	95,000.00		~~Accumulated Surplus~~ RETAINED EARNINGS.	126,500.00
Automotive	24,000.00		**Capital Authorized**	
	$209,000.00		10,000 common shares n.p.v.	
Less Acc. Dep.	66,500.00		10,000 redeemable preferred shares , par value $10.00 each	
		142,500.00	**Capital Issued**	
Good Will		20,000.00	5,000 common shares at $1.00 each	5,000.00
		$513,500.00	8,000 preferred shares at $10.00 each	80,000.00
				$ 513,500.00