

**ARTICLES OF THE MANITOBA CORPORATIONS ACT (12 JUNE 2014)  
AS THEY PERTAIN TO DIRECTORS OF A CORPORATON**

**MANAGEMENT BY DIRECTORS**

**Duty to Manage or Supervise Management**

Subject to any unanimous member agreement, the directors shall manage, or supervise the management of, the business and affairs of a corporation.

**By-laws**

Unless the articles or by-laws or a unanimous member agreement otherwise provide, the directors may, by resolution, make, amend, or repeal any by-laws that regulate the business or affairs of the corporation.

**Member Approval**

The directors shall submit a by-law, or an amendment or a repeal of a by-law, to the members at the next meeting of members, and the members may, by ordinary resolution, confirm, reject or amend the by-law, amendment or repeal.

**Effective Date**

A by-law, or an amendment or a repeal of a by-law, is effective from the date of the resolution of the directors until it is confirmed, confirmed as amended or rejected by the members or until it ceases to be effective and, where the by-law is confirmed or confirmed as amended, it continues in effect in the form in which it was so confirmed.

If a by-law, or an amendment or repeal thereof is rejected by the members, or if the directors do not submit the by-law, amendment or repeal to the members as required, the by-law, amendment or repeal ceases to be effective and no subsequent resolution of the directors to make, amend or repeal a by-law having substantially the same purpose or effect is effective until it is confirmed or confirmed as amended by the members.

**Member proposal**

A member entitled to vote at an annual meeting of members may make a proposal to make, amend or repeal a by-law.

**MEMBERSHIP MEETINGS**

**Attendance at Meetings**

A director of a corporation is entitled to receive notice of and to attend and be heard at every meeting of the membership.

## **Calling Meetings of the Membership**

If there is not a quorum of directors, or if there has been a failure to elect the number or minimum number of directors required by the articles, the directors then in office shall forthwith call a special meeting of members to fill the vacancy and, if they fail to call a meeting or if there are no directors then in office, the meeting may be called by any member.

## **DIRECTOR REQUIREMENTS**

### **Qualifications of Directors**

The following persons are disqualified from being a director of a corporation:

- (a) anyone who is less than 18 years of age;
- (b) a person who is not an individual (ie declared mentally incompetent); and
- (c) a person who has the status of a bankrupt.

### **Residency**

At least 25% of a corporation's directors must be residents of Canada.

### **Deemed Directors**

If all of a corporation's directors have resigned or have been removed without replacement, a person who manages or supervises the management of the business and affairs of the corporation is deemed to be a director for the purposes of this Act.

### **Validity of Acts of Directors**

An act of a director is valid notwithstanding an irregularity in their election or appointment or a defect in their qualification.

## **TERMS OF DIRECTORS**

### **Ceasing to Hold Office**

A director of a corporation ceases to hold office when

- (a) they die or resign;
- (b) they are removed from office (including at the end of their fixed period of office); or
- (c) becomes disqualified.

### **Election of Directors**

Where the articles provide for election of directors,

- (a) the articles shall require a fixed number and not a minimum and maximum number of directors;

- (b) each member entitled to vote at an election of directors has the right to cast a number of votes equal to the number of votes attached to the shares held by him multiplied by the number of directors to be elected, and they may cast all those votes in favour of one candidate or distribute them among the candidates in any manner;
- (c) a separate vote of members shall be taken with respect to each candidate nominated for director unless a resolution is passed unanimously permitting two or more persons to be elected by a single resolution;
- (d) if a member has voted for more than one candidate without specifying the distribution of their votes among the candidates, they is deemed to have distributed their votes equally among the candidates for whom they voted;
- (e) if the number of candidates nominated for director exceeds the number of positions to be filled, the candidates who receive the least number of votes shall be eliminated until the number of candidates remaining equals the number of positions to be filled;
- (f) each director ceases to hold office at the close of the first annual meeting of members following their election;
- (g) a director may not be removed from office if the votes cast against their removal would be sufficient to elect him and the votes could be voted cumulatively at an election at which the same total number of votes were cast and the number of directors required by the articles were then being elected; and
- (h) the number of directors required by the articles may not be decreased if the votes cast against the motion to decrease would be sufficient to elect a director and the votes could be voted cumulatively at an election at which the same total number of votes were cast and the number of directors required by the articles were then being elected.

### **Incumbent Directors**

If directors are not elected at a meeting of members the incumbent directors continue in office until their successors are elected.

### **Unexpired Term**

A director appointed or elected to fill a vacancy holds office for the unexpired term of their predecessor.

### **Effective Date of Resignation**

A resignation of a director becomes effective at the time a written resignation is sent to the corporation, or at the time specified in the resignation, whichever is later.

### **Removal of Directors**

The members of a corporation may by ordinary resolution at a special meeting remove any director or directors from office.

## **Vacancy**

A vacancy created by the removal of a director may be filled at the meeting of the members at which the director is removed or filled, if not so filled by a quorum of directors, except a vacancy resulting from an increase in the number or minimum number of directors or from a failure to elect the number or minimum number of directors required by the articles.

## **Statement of Director**

A director who

- (a) resigns; or
- (b) receives a notice or otherwise learns of a meeting of members called for the purpose of removing him from office; or
- (c) receives a notice or otherwise learns of a meeting of directors or members at which another person is to be appointed or elected to fill their office as director, whether because of their resignation or removal or because their term of office has expired or is about to expire,

is entitled to submit to the corporation a written statement giving the reasons for their resignation or the reasons why they opposes any proposed action or resolution.

## **DIRECTOR MEETINGS**

### **Meeting of Directors**

Unless the articles or by-laws otherwise provide, the directors may meet at any place, and upon such notice as the by-laws require.

### **Quorum**

Subject to the articles or by-laws, a majority of the number of directors or minimum number of directors required by the articles constitutes a quorum at any meeting of directors, and, notwithstanding any vacancy among the directors, a quorum of directors may exercise all the powers of the directors.

### **Residency Requirements re Quorum**

Directors shall not transact business at a meeting of directors unless at least 25% of the directors present are residents of Canada or, if the corporation has three or fewer directors, at least one of the directors present is a resident of Canada.

However directors may transact business at a meeting of directors when the number of directors who are required to be residents of Canada is not present if:

- (a) a director who is a resident of Canada and is unable to be present approves in writing, or by telephonic, electronic or other communication facility, the business transacted at the meeting; and
- (b) the number of directors who are required to be residents of Canada would have been present had that director been present at the meeting.

### **Notice of Meeting of Directors**

A notice of a meeting of directors shall specify any matter that is to be dealt with at the meeting but, unless the by-laws otherwise provide, need not specify the purpose of the business to be transacted at the meeting.

### **Waiver of Notice**

A director may in any manner waive a notice of a meeting of directors; and attendance of a director at a meeting of directors is a waiver of notice of the meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

### **Adjournment**

Notice of an adjourned meeting of directors is not required to be given if the time and place of the adjourned meeting is announced at the original meeting.

### **One Director Meeting**

Where a corporation has only one director, that director may constitute a meeting.

### **Participation in Meeting by Electronic Means**

Unless the by-laws otherwise provide, a director may participate in a meeting of directors or of a committee of directors by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting if

- (a) all the directors of the corporation consent; and
- (b) the meeting is held in accordance with the regulations, if any.

For the purposes of this Act, a director who participates in a meeting by electronic means is deemed to be present at the meeting.

### **Delegation of a Managing Director or Committee**

Directors of a corporation may appoint from their number a managing director who is a resident of Canada or a committee of directors and delegate to such managing director or committee any of the powers of the directors.

## **Resident Majority**

If the directors of a corporation appoint a committee of directors, a majority of the members of the committee must be residents of Canada.

## **Limits on Authority**

No managing director and no committee of directors has authority to

- (a) submit to the members any question or matter requiring the approval of the members;
- (b) fill a vacancy among the directors or in the office of auditor;
- (c) issue securities except in the manner and on the terms authorized by the directors;
- (d) declare dividends;
- (e) purchase, redeem or otherwise acquire shares issued by the corporation;
- (f) pay commissions;
- (g) approve a management proxy circular;
- (h) approve any financial statements; or
- (i) adopt, amend or repeal by-laws.

## **Resolution in Lieu of Meeting (ie e-Mail Votes)**

A resolution in writing, signed by all the directors entitled to vote on that resolution at a meeting of directors or committee of directors, satisfies all the requirements of this Act relating to meetings of directors and is as valid as if it had been passed at a meeting of directors or committee of directors and is effective from the date specified in the resolution, but that date shall not be prior to the date on which the first director signed the resolution.

A copy of every such resolution shall be kept with the minutes of the proceedings of the directors or committee of directors.

## **LIABILITY OF DIRECTORS**

### **Financial Liability**

Directors of a corporation who vote for or consent to a financial resolution while they were a director and up to two years after they cease to be a director are jointly and severally liable, to restore to the corporation any amounts so distributed or paid and not otherwise recovered by the corporation.

### **Disclosure of Interested director Contract (Conflict of Interest)**

A material contract between a corporation and one or more of its directors or officers, or between a corporation and another person of which a director or officer of the corporation is a director or officer or in which they has a material interest, is neither void nor voidable by reason only of that relationship or by reason only that a director with an interest in the contract is present at or is counted to determine the presence of a quorum at a meeting of directors or committee of directors that authorized the contract, if the director or officer disclosed their interest in, as the case may be, and the contract was approved by the directors or the members and it was reasonable and fair to the corporation at the time it was approved.

A director shall disclose in writing to the corporation or request to have entered in the minutes of meetings of directors the nature and extent of their interest where the director is:

- (a) is a party to a material contract or proposed material contract with the corporation; or
- (b) is a director or an officer of or has a material interest in any person who is a party to a material contract or proposed material contract with the corporation;

The disclosure required shall be made by a director:

- (a) at the meeting at which a proposed contract is first considered; or
- (b) if the director was not then interested in a proposed contract, at the first meeting after they becomes so interested; or
- (c) if the director becomes interested after a contract is made, at the first meeting after they becomes so interested; or
- (d) if a person who is interested in a contract later becomes a director, at the first meeting after they becomes a director.

### **Duty of Care of Directors**

Every director of a corporation in exercising their powers and discharging their duties shall

- (a) act honestly and in good faith with a view to the best interests of the corporation; and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

### **Duty to Comply**

Every director and officer of a corporation shall comply with this Act and the regulations, the articles and by-laws, and any unanimous member agreement.

No provision in a contract, the articles, the by-laws or a resolution relieves a director or officer from the duty to act in accordance with this Act or the regulations or relieves him from liability for a breach thereof.

### **Dissent/Deemed Consented**

A director who is present at a meeting of directors or committee of directors is deemed to have consented to any resolution passed or action taken thereat, unless

- (a) they requests that their dissent be or their dissent is entered in the minutes of the meeting; or
- (b) they sends their written dissent to the secretary of the meeting before the meeting is adjourned;

A director who votes for or consents to a resolution is not entitled to dissent.

A director who was not present at a meeting at which a resolution was passed or action taken is deemed to have consented thereto, unless within seven days after they becomes aware of the resolution they causes their dissent to be placed with the minutes of the meeting; or sends their written dissent to the secretary of the meeting.

### **Defence of Reasonable Diligence**

A director is not liable, if the director exercised the care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances, including reliance in good faith on

- (a) financial statements of the corporation represented to the director, by an officer of the corporation or in a written report of the auditor of the corporation, to reflect fairly the financial condition of the corporation; or
- (b) a report of a person whose profession lends credibility to a statement made by the professional person.

### **Remuneration**

Subject to the articles, the by-laws and any unanimous member agreement, the directors of a corporation may fix the remuneration of the directors, officers and employees of the corporation.