AMALGAMATION AND CONTINUANCE

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I. INTRODUCTION

The term "amalgamation" is often used (in a vague, non-legal sense) to refer to a merger of two or more corporations. This "merger" can be accomplished in a number of ways including a purchase by one corporation of the shares of another, a purchase by one corporation of the assets of another, a dissolution or liquidation of one corporation into its parent and by either of the two procedures discussed in this paper, namely, "long-form" and "short-form" amalgamations. The term "amalgamation" is used in this paper to refer only to an amalgamation of two or more corporations under *The Business Corporations Act* ("SBCA,").

Amalgamations of the type found in most Canadian corporate statutes are fairly unusual.

The essence of an SBCA amalgamation is that two or more Saskatchewan corporations (the "amalgamating corporations") amalgamate and continue as one corporation (the "amalgamated corporation"). For legal purposes, it is generally recognized that the amalgamating corporations do not cease to exist but continue, and that the amalgamated corporation is not a new corporation. A number of analogies have been used to try to explain this somewhat abstract concept, such as streams coming together to form a river and strands of fibre intertwining to form a rope. The concept now generally accepted by the courts comes from Dickson J. in *Black & Decker*.

The effect of the statute, on a proper construction, is to have the amalgamating corporations continue without subtraction in the amalgamated corporation, with all their strengths and their weaknesses, their perfections and imperfections, and

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1 See Appendix A for amalgamation precedent documents. The precedents in Appendix A (Amalgamation) and Appendix B (Continuance) were prepared by Dan Anderson and Kurt Wintemute of MacPherson Leslie & Tyerman LLP for their Saskatchewan Bar Admission Course paper entitled "Corporate Changes" and are used herein with their kind permission and my thanks.
2 R.S.S. 1978, c. B-10, hereafter all section references are to the SBCA, unless otherwise indicated.
4 See *Black & Decker*.
5 *Black & Decker*, at p. 422.
their sins, if sinners they be. Letters patent of amalgamation do not give absolution.

However, the concept has been referred to as "sophistry" in Saskatchewan. 6

One important element of the concept that the amalgamating corporations do not cease and the amalgamated corporation does not constitute a new corporation is that all the assets, rights and liabilities of the amalgamating corporations flow into the amalgamated corporation; as opposed to a transfer of these assets, rights and liabilities. In other words, no transfer instruments are required and generally no sales taxes or transfer fees are payable (although this should be checked in each case) because assets and liabilities have not been transferred; they have simply become assets and liabilities of the amalgamated corporation.

Under the SBCA, the types of amalgamation can be divided into what are called "long-form" amalgamations and "short-form" amalgamations. These terms are not legal terms but are commonly used. Long-form amalgamations involve amalgamation agreements, shareholder approvals and dissent rights; short-form amalgamations do not. There are two kinds of short-form amalgamations, namely, vertical (between a holding corporation and wholly-owned subsidiaries) and horizontal (between wholly-owned subsidiaries of the same holding corporation).

II. IS AMALGAMATION PERMITTED?

Contracts to which an amalgamating corporation is party often contain restrictions on assignment or transfer without the consent of the other parties. Notwithstanding Crescent Leaseholds, it is generally recognized (for example) that the amalgamation of a tenant corporation does not constitute a transfer or assignment of the tenant’s lease. 7 Some contracts may contain more comprehensive language that might prohibit amalgamations, either generally or specifically (for example, loan agreements). Accordingly, all agreements of amalgamating corporations should

6 Crescent Leaseholds Ltd. v. Gerhard Horn Investments Ltd. (1982), 141D.L.R. (3d) 679 (Sask. Q.B.) ("Crescent Leaseholds").
be examined before the amalgamation process starts to see whether the amalgamation will constitute a default or, at least, require the consent of other parties to the agreement. In addition, some specific legislation might pertain to an amalgamation, for example where an amalgamating corporation holds a license or quota requiring government consent prior to amalgamation or a change in control. Finally, the charter documents of the amalgamating corporations should also be checked for restrictions.

Under the SBCA, Saskatchewan corporations may only amalgamate with other Saskatchewan corporations. However, the recently proclaimed British Columbia Business Corporations Act deals with several types of amalgamations including one where a British Columbia corporation may amalgamate with one or more foreign corporations, with the resulting amalgamated corporation being a British Columbia corporation. The British Columbia corporate legislation provides that a foreign corporation intending to amalgamate with a British Columbia corporation must be able to do so under the legislation of its home jurisdiction. Therefore, until the SBCA is amended to permit multi-jurisdictional amalgamations, export and import continuance procedures will be required to effect an amalgamation of a foreign corporation with a Saskatchewan corporation.

III. LONG-FORM AMALGAMATION

A. STATUTORY AUTHORITY AND PROHIBITIONS

The sections that deal with amalgamation in the SBCA are contained in Division XIV (fundamental changes). Sections 175 to 180 deal with corporate amalgamations. Section 175 provides that two or more corporations may amalgamate. Sections 176 and 177 address long-form amalgamations. Section 178 addresses short-form amalgamations. The policy of Division XIV is not to throw up roadblocks to corporate changes or to lock management into a rigid structural design, but rather to give a dissenting shareholder the right to opt out under section 184.

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8 Section 175.
(dissent rights) if the shareholder objects strongly enough to the proposed fundamental change.

Accordingly, the only statutory prohibitions on amalgamation are:

(a) the amalgamating corporations must each be, at the time of the amalgamation, incorporated, amalgamated or continued under the SBCA; and

(b) the amalgamating corporations must be in good standing with respect to the filing of returns and notices pursuant to the SBCA.

B. THE AMALGAMATION AGREEMENT

The amalgamation agreement is the most important document in a long-form amalgamation. An amalgamation agreement is not required in the case of either a vertical short-form amalgamation pursuant to subsection 178(1) or a horizontal short-form amalgamation pursuant to subsection 178(2).

1. Statutory Requirements

Section 176 sets out, in wide terms, the required contents of an amalgamation agreement as follows:

176(1) Each corporation proposing to amalgamate shall enter into an agreement setting out the terms and means of effecting the amalgamation and, in particular, setting out:

(a) the provisions that are required to be included in articles of incorporation under section 6;

(b) the name and address of each proposed director of the amalgamated corporation;

(c) the manner in which the shares of each amalgamating corporation are to be converted into shares or other securities of the amalgamated corporation;

(d) if any shares of an amalgamating corporation are not to be converted into securities of the amalgamated corporation, the amount of money or securities of any body corporate

10 In an amalgamation, the shares of the amalgamating corporations are not issued or transferred, but rather are converted, see Koch Transport Ltd. v. Class Freight Lines Ltd. (1982), 135 D.L.R. (3d) 695 (Gnt. Div. Ct.).
that the holders of such shares are to receive instead of securities of the amalgamated corporation;

(e) the manner of payment of money instead of the issue of fractional shares of the amalgamated corporation or of any other body corporate the securities of which are to be received in the amalgamation;

(f) whether the bylaws of the amalgamated corporation are to be those of one of the amalgamating corporations and, if not, a copy of the proposed bylaws; and

(g) details of any arrangements necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated corporation.

(2) If shares of one of the amalgamating corporations are held by or on behalf of another of the amalgamating corporations, the amalgamation agreement shall provide for the cancellation of such shares when the amalgamation becomes effective without any repayment of capital in respect thereof, and no provision shall be made in the agreement for the conversion of such shares into shares of the amalgamated corporation.

The amalgamation agreement sets out the terms and means of effecting the amalgamation. These terms and means must include the provisions that are required to be included in articles of incorporation pursuant to section 6. Although an amalgamation agreement is not required for a short-form amalgamation, the proposed management of the amalgamated corporation (or its shareholders) may find benefit in being able to reference an amalgamation agreement that sets out the terms of the amalgamation as described above in section 176.

While sections 175 to 180 contemplate the protection of creditors of the amalgamating corporations, they are silent with respect to shareholder rights. A "three-cornered" amalgamation under which the shareholders of an amalgamating corporation would receive shares of a foreign corporation is permitted by clause 176(1)(d) since it authorizes shareholders to receive securities in any "body corporate" instead of securities in the amalgamated corporation.11

11 See Canada Business Corporations Act, (Re), 80 D.L.R. (4th) 619 (Ont. c.A.) ("Re CBCA").
2. Form of the Agreement

A simple form of amalgamation agreement is attached as Appendix A. Note that in an amalgamation where the shares of an amalgamating corporation are broadly-held, the recitals are primarily used for setting out the authorized share structure and issued shares of the amalgamating corporations.

(a) Articles of Amalgamation

Clause 176(l)(a) requires the amalgamation agreement to set out all the provisions that would be included in articles of incorporation under section 6. The common practice is to incorporate the draft articles of amalgamation into the amalgamation agreement as a schedule with a paragraph stating that the articles of amalgamation shall be in the form set out in the schedules to the agreement. The articles should be signed by at least one of the proposed first directors of the amalgamated corporation set out in the amalgamation agreement.

Although contained in the articles of amalgamation, the body of the amalgamation agreement should also set out the name of the amalgamated corporation. The name of the amalgamated corporation may be the name of one of the amalgamating corporations, in which case there is no need to reserve the name. If the name of the amalgamated corporation will not be the same as that of one of the amalgamating corporations, you will have to reserve the new name. You must observe the requirements of the Business Names Registration Act in reserving a new name and section 295, which provides.

295 If two or more corporations amalgamate, the amalgamated corporation may have:
   (a) the name of one of the amalgamating corporations;
   (b) a distinctive combination, that is not confusing, of the names of the amalgamating corporations; or
   (c) a distinctive new name that is not confusing.
If no name is requested, then the name of the amalgamated corporation will be the name created by adding "Saskatchewan Ltd." after its incorporation number. If the name is not the same as that of one of the amalgamating corporations, the agreement should recite that the name has been reserved, or that the name will be the amalgamated corporation's incorporation number followed by "Saskatchewan Ltd.".

In a vertical short-form amalgamation, the name of the amalgamated corporation must be that of the holding corporation. In a horizontal short-form amalgamation, the name of the amalgamated corporation must be that of the amalgamating corporation whose shares are not cancelled.

(b) First Directors of the Amalgamated Corporation

Clause 176(1)(b) requires that the amalgamation agreement contain the name and address of each of the proposed first directors of the amalgamated corporation. This information will also be required for the Notice of Directors filed with the application for amalgamation. You should also obtain the consents of the first directors of the amalgamated corporation to act as directors of the amalgamated corporation. Such consents can be provided to one of the amalgamating corporations or to the amalgamated corporation.

(c) Share Conversion

Under clauses 176(1)(c) to (e), the amalgamation agreement must set out how the issued shares of the amalgamating corporations will be converted upon amalgamation. Some tax advisors like to see the stated capital of the amalgamated corporation specifically set out in the amalgamation agreement.

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12 Clause 178(1)(b)(ii).
13 Clause 178(2)(b)(ii).
14 See below.
(d) Bylaws

Pursuant to clause 176(1)(f), the amalgamation agreement must state whether the bylaws of the amalgamated corporation are to be those of one of the amalgamating corporations. If this is not the case, then a copy of the proposed new bylaws of the amalgamated corporation must be attached as a schedule to the amalgamation agreement.

(e) Catch-all

Finally, under clause 176(1)(g) the amalgamation agreement must contain "details of any arrangements necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated corporation". These details can include any number of items, such as:

(a) the agreement of each amalgamating corporation to amalgamate under the provisions of the SBCA and to continue as one corporation under the terms and conditions set out in the agreement;
(b) the date and time of the amalgamation, if it is to be effective as of a specific date;
(c) a statement that rights of creditors against the property, rights and assets of the amalgamating corporations and all liens thereon will be unimpaired by the amalgamation.
(d) a statement that all the properties, rights and interests of each of the amalgamating corporations continue to be the properties, rights and interests of the amalgamated corporation, without requiring any deeds, transfers or conveyances.
(e) a statement that all debts, liabilities and obligations of each of the amalgamating corporations will attach to and be assumed by the amalgamated corporation and

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15 Although not a statutory requirement, common sense dictates that the amalgamating corporations must agree to amalgamate.
16 You should also consider adding a provision allowing the directors of the amalgamating corporations to fix a later date and time at their discretion. Of course, the actual effective date of amalgamation will be the date set out on the certificate of amalgamation (section 180).
may be enforced against it;

(f) the names and titles of the first officers of the amalgamated corporation;

(g) the mechanics of canceling and substituting share certificates on the share conversion;

(h) the location of the registered office of the amalgamated corporation (although this information must be in the Notice of Registered Office filed with the application for amalgamation);

(i) if the amalgamation is between arm's length amalgamating corporations, the amalgamating corporations will likely require extensive conditions in the amalgamation agreement to be satisfied before the submission of the application for amalgamation to the Director; and

(j) a provision permitting the directors of any of the amalgamating corporations to assent to any alteration or modification of the amalgamation agreement before the amalgamation is effective.

The amalgamation agreement should also contain a provision permitting the directors of an amalgamating corporation to terminate the agreement at any time before the amalgamation is perfected. Capitalizing on the immunity from contractual liability granted by section 177(6) is prudent since an amalgamating corporation may not wish to proceed with amalgamation where a large number of its shareholders dissent and thereby make unexpected demands on the liquidity of the amalgamating corporation. Subsection 177(6) provides each amalgamating corporation with liability protection where dissenting shareholders render the amalgamation impracticable.

C. SHARE CONVERSION

Subsection 175(1) requires that the amalgamation agreement specify how the issued shares of each amalgamating corporation will be converted for one or more of money, securities of the amalgamated corporation, or securities of another corporation.

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17 These conditions will likely mirror those found in an arm's length share purchase agreement.
18 Section 177(6).
1. Cancellation of Shares Held by other Amalgamating Corporations

Please note that subsection 176(2) provides that if shares of one of the amalgamating corporations are held by, or on behalf of, another of the amalgamating corporations, the amalgamation agreement must provide for the cancellation of those shares upon amalgamation without any repayment of capital in respect thereof. No provision may be made in the amalgamation agreement for the conversion of such shares for money or securities of any corporation.

Subsection 176(2) merely reminds the amalgamating corporations of proper accounting procedures. For example, if one amalgamating corporation owns shares in another amalgamating corporation and those shares were not cancelled pursuant to the amalgamation agreement, then one of the assets of the amalgamated corporation would be shares in itself. Therefore, in the absence of this provision, the amalgamation could be used to put into effect an indirect reduction of the capital of the amalgamated corporation.

2. Conversion of Shares in Wholly-Owned Subsidiaries

If wholly-owned subsidiaries are amalgamating with their parent corporation, the conversion of shares on the amalgamation is quite simple. Each old share of the parent amalgamating corporation can be converted to one identical share of the amalgamated corporation. The shares of the wholly-owned subsidiaries are simply cancelled. This type of amalgamation is generally carried out as a vertical short-form amalgamation under subsection 178(1).

If wholly-owned sister-corporations are amalgamating, the conversion of shares is carried on a one-for-one basis where each share of an amalgamating corporation is converted into an identical share of the amalgamated corporation. A "wholly-owned sister-corporation" is one where the amalgamating corporations have the same shareholder(s). This type of amalgamation is generally carried out as a short-form horizontal amalgamation under section 178(2).

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19 See the general prohibition on a corporation owning shares in its own capital in subsection 30(1).
3. Conversion of Shares in More Widely-Held Amalgamating Corporations

Problems in share conversion arise when different amalgamating corporations have different shareholders, especially if the corporations are at arm's length. Where the shares of an amalgamating corporation are more widely held, it is necessary to work out the share conversion ratios as between the shareholders of the amalgamating corporations. There are a number of considerations that come into play in determining these ratios.

The first step is to determine the value of each amalgamating corporation. This will involve the tax advisors for the amalgamating corporations and business people assessing the value of assets, the amount of liabilities, business prospects, earnings, tax matters, etc. After the values of the amalgamating corporations between themselves are determined, the number of shares of the amalgamated corporation to be issued on conversion of the shares of each amalgamating corporation can be determined. This summary is oversimplified and a number of other factors could be involved, depending on the circumstances. For example, conversion ratios may vary depending upon the rights and restrictions attached to each class of issued shares of each amalgamating corporation and those to be issued by the amalgamated corporation upon conversion.

Take note that it is very important that the notice of meeting and information circular or other material sent to the shareholders for the meeting to approve the amalgamation contain complete details of the share conversion. This information should set out an explanation of how the share conversion ratios were determined.

4. Conversion into Other Securities

Shares of an amalgamating corporation can be exchanged not only for shares of the amalgamated corporation but also for other securities of the amalgamated corporation. The word "security" is defined in clause 2(1)(bb) as "a share of any class or series of shares or a debt obligation of a corporation and includes a certificate evidencing such a share or debt obligation". Clause 2(1)(1) defines "debt obligation" to mean "a bond, debenture, note or other evidence of indebtedness or
guarantee of a corporation, whether secured or unsecured".

5. Conversion into Money

Shares of an amalgamating corporation can be converted into money. This merely raises the issue of determining the value of the shares being converted into money.

6. Three-cornered Amalgamations

A "three-cornered amalgamation" is an amalgamation whereby the shares of an amalgamating corporation are converted into securities of a corporation other than the amalgamated corporation (the "3rd-corner corporation"). Aside from valuing the amalgamating corporations, a three-cornered amalgamation adds the issue of determining the value of the 3rd-corner corporation and its shares or other securities.

Unfortunately, it is not clear precisely how shares or other securities of the 3rd-corner corporation are issued to the shareholders of the amalgamating corporations so that they are fully paid. In other words, how can the 3rd-corner corporation issue shares unless it has received full consideration for the shares?

One common form of three-cornered amalgamation is where the 3rd-corner corporation has a wholly-owned subsidiary which amalgamates with a target corporation and the shareholders of the target corporation receive shares of the 3rd-corner corporation and the 3rd-corner corporation receives shares of the amalgamated corporation upon conversion of its shares in its amalgamating wholly-owned subsidiary corporation (whew!). It may be argued that the increased value of the 3rd-corner corporation's now amalgamated wholly-owned subsidiary corporation is good consideration for the issue of the shares of the 3rd-corner corporation. In any event, the 3rd-corner corporation would have to be a party to the amalgamation agreement and covenant to issue shares on the amalgamation.
Another approach is to have the 3rd-corner corporation issue shares for good consideration to the amalgamating corporation whose shareholders will receive those shares of the 3rd-corner corporation upon amalgamation. In this case, the amalgamation agreement must provide that on amalgamation, the shares of the 3rd-corner corporation shall be transferred to the shareholders of that amalgamating corporation.

7. Other Considerations

Shares of an amalgamating corporation can be exchanged for anyone or more of shares or other securities of the amalgamated corporation, shares or other securities of some 3rd-corner corporation, and money. Nothing in the SBCA prohibits shares of the same class of an amalgamating corporation being converted to different shares or securities. For example, some shares could be converted into money and other shares could be converted into securities of a 3rd-corner corporation. However, you must always be aware of the case law relating to "squeeze-out amalgamations", the general fairness requirements for amalgamations and section 234 (oppression remedy), and the class vote of shareholders.

The wording of clause 176(l)(d), indicates that an amalgamation agreement might be used to terminate a minority shareholder's participating shares because the clause recognizes that shareholders may be compelled to receive money or securities of a corporation other than the amalgamated corporation?1 However, there is some dispute over the use of an amalgamation to thwart minority rights granted to shareholders elsewhere in CBCA model corporate legislation.22

In Carleton Realty, the court held that minority shareholders have a property right in their shares that cannot be forcibly taken away without their consent, no matter what price may be offered. In Carleton Realty, the court issued an interlocutory injunction to prevent the holding body corporate from squeezing out the minority shareholders of a subsidiary corporation by amalgamating the corporation and offering the minority shareholders preference shares in the

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20 See subsection 25(3).
amalgamated corporation (which were redeemable at the option of the corporation) in conversion for common shares in one of the amalgamating corporations. In *Burdon*, the court noted that Parliament did not enact section 183(3) of the CBCA (section 177(3) SBCA) and the other amalgamation provisions of the CBCA to evade the intent of section 206(2) (section 188 SBCA). The court held that subsection 206(2) of the CBCA set out the only way to force out minority shareholders where an offeror acquires less than all of the shares of a target corporation pursuant to a take-over bid. Accordingly, the court would not allow the offeror to do indirectly what it was unsuccessful in doing directly through its take-over bid.

**D. ARTICLES OF AMALGAMATION**

The authorized share capital of the amalgamated corporation should be at least large enough and contain the necessary classes and series of shares to permit the necessary conversion of shares upon amalgamation. The articles of amalgamation of the amalgamated corporation must be attached to the amalgamation agreement, so you will have to prepare the articles in advance of the shareholder meeting (or consent resolution) to approve the amalgamation agreement. Preparation of the articles of amalgamation cannot wait until the time of filing the application for amalgamation. Of course, the articles must comply with section 6.

It is not necessary to prepare articles of amalgamation for short-form amalgamations. In a vertical short-form amalgamation the articles of the amalgamated corporation are the articles of the amalgamating holding corporation (*i.e.*, the parent corporation).23 In a horizontal short-form amalgamation, the articles of the amalgamating corporation whose shares are not cancelled are the articles of the amalgamated corporation.24

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23 Paragraph 178(l)(b)(ii).
24 Paragraph 178(2)(b)(ii).
E. NOTICE OF DIRECTORS & NOTICE OF REGISTERED OFFICE

Under subsection 179(1), a notice of directors and notice of registered office for the amalgamating corporation must be filed with the Director of Corporations Branch at the time of filing of the articles of amalgamation. The Notice of Directors must state the names, addresses, occupation and residency of the first directors of the amalgamated corporation, as may be set out in the amalgamation agreement.25 The Notice of Registered Office must set out the address of the registered office of the amalgamated corporation.26

F. STATUTORY DECLARATIONS OR ARRANGEMENT

To carry out an amalgamation in the normal course, a statutory declaration of an officer or director of each of the amalgamating corporations must be obtained and filed with the Director of Corporations Branch.27 Even if an individual is a director or officer of two or more of the amalgamating corporations, he or she must swear a separate affidavit with respect to each of the amalgamating corporations of which he or she is a director or officer.

There are two parts to the statutory declaration required under subsection 179(2):

(2) The articles of amalgamation shall have attached thereto a statutory declaration of a director or an officer of each amalgamating corporation that establishes to the satisfaction of the Director that:

(a) there are reasonable grounds for believing that:
   (i) each amalgamating corporation is and the amalgamated corporation will be able to pay its liabilities as they become due; and
   (ii) the realizable value of the amalgamated corporation's assets will not be less than the aggregate of its liabilities and stated capital of all classes; and

(b) there are reasonable grounds for believing that:
   (i) no creditor will be prejudiced by the amalgamation; or

25 Section 101 and subsection 179(1).
26 Subsections 19(2) and 179(1).
27 Subsection 179(2).
(ii) adequate notice has been given to all known creditors of the amalgamating corporations and no creditor objects to the amalgamation otherwise than on grounds that are frivolous or vexatious.

The statutory declaration must state that the director or officer making the declaration believes, and has reasonable grounds for believing, the statements set out in clauses 179(2)(a) and (b). Clause 179(2)(a) requires each amalgamating corporation to establish to the satisfaction of the Director that it is solvent (within the meaning of that concept as described in clause 179(2)(a)) and that the amalgamated corporation will be solvent upon amalgamation. In addition, clause 179(2)(b) requires each amalgamating corporation to establish to the satisfaction of the Director that there are reasonable grounds for believing either that no creditor will be prejudiced by the amalgamation or that adequate notice of the amalgamation has been given to all known creditors of the amalgamating corporations and no creditor objects to the amalgamation otherwise than on grounds that are frivolous or vexatious. If these statements can be made in the declaration, then it is not necessary to go any further. However, the director or officer will have to be satisfied, under all the circumstances of the amalgamation, that he or she can make those statements in solemn form. In this regard, note that the director or officer must have "reasonable grounds" for belief.

If the directors and officers of an amalgamating corporation are unable to swear the appropriate statutory declaration, then consideration may be given to proceeding with the amalgamation as an "arrangement" pursuant to section 186.1. "Arrangement" is defined in clauses 186.1(1)(b) and (c), respectively, as including:

(a) an amalgamation of two or more corporations; and
(b) an amalgamation of a body corporate with a corporation that results in an amalgamated corporation subject to the SBCA.
The arrangement provisions of the SBCA permit an insolvent corporation to apply to a court for an order approving an amalgamation where "it is not practicable" for the corporation to effect the amalgamation under sections 175-180. For the purposes of an arrangement proceeding, a corporation is considered insolvent if:

(a) it is unable to pay its liabilities as they become due; or
(b) the realizable value of the assets of the corporation is less than the aggregate of its liabilities and stated capital of all classes.

The foregoing insolvency test is directly comparable to that found under clause 179(2)(a) as a requirement of the statutory declaration of each amalgamating corporation.

If it is necessary to make an application to the Court for approval of an arrangement, the Court will have the power under subsection 186.1(4) to make any interim or final order it thinks fit, including:

(a) an order determining the notice to be given to any interested person or dispensing with notice to any person other than the Director;
(b) an order appointing counsel, at the expense of the corporation, to represent the interests of the shareholders;
(c) an order requiring a corporation to call, hold and conduct a meeting of holders of securities or options or rights to acquire securities in such manner as the court directs;
(d) an order permitting a shareholder to dissent under section 184; and
(e) an order approving an arrangement as proposed by the corporation or as amended in any manner the court may direct.

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28 Subsection 186.1(3).
29 Subsection 186.1(2).
The Director must be notified of the intention to resort to section 186.1 and is entitled to be heard at the application for the interim or final order sought by the applicant.\textsuperscript{30}

If the applicant is successful and an order is issued for the amalgamation of two or more corporations, you will have to file articles of arrangement in prescribed form with the Director together with a notice of directors and notice of registered office.\textsuperscript{31} Upon receipt of articles of arrangement, the Director shall issue a certificate of arrangement in accordance with section 255.\textsuperscript{32} Pursuant to subsection 186.1(8), the arrangement (or amalgamation in this example) becomes effective on the day shown in the certificate of arrangement.

G. NOTICES TO CREDITORS

If the director or officer making the statutory declaration under subsection 179(2) cannot state that no creditor will be prejudiced by the amalgamation, then the corporation may decide to provide adequate notice to its creditors of the amalgamation instead of proceeding under section 186.1. The requirements of "adequate notice" are set out in subsection 179(3) as follows:

\begin{itemize}
\item[(3)] For the purposes of subsection (2), adequate notice is given if:
\begin{itemize}
\item[(a)] a notice in writing is sent to each known creditor having a claim against the corporation that exceeds $1,000;
\item[(b)] a notice is published once in a newspaper published or distributed in the place where the corporation has it registered office and reasonable notice thereof is given in each province in Canada where the corporation carries on business; and
\item[(c)] each notice states that the corporation intends to amalgamate with one or more specified corporations in accordance with this Act and that a creditor of the corporation may object to the amalgamation within thirty days from the date of this notice.
\end{itemize}
\end{itemize}

\textsuperscript{30} Subsection 186.1(5).
\textsuperscript{31} Subsection 186.1(6).
\textsuperscript{32} Subsection 186.1(7).
Accordingly, each of the notices to creditors must contain two items:

(a) a declaration of the particular amalgamating corporation's intention to amalgamate and the names of the amalgamating corporations; and

(b) a statement that any creditor of the particular amalgamating corporation who intends to object to the amalgamation must provide to the corporation a written notice of objection within 30 days after the date of the notice.

If a creditor provides to the amalgamating corporation a written notice of objection within the 30 days after the date of the notice by the amalgamating corporation that is not frivolous or vexatious, then the amalgamation cannot proceed until that issue has been dealt with and the director or officer is able to swear the required statutory declaration.

Obviously, if subsection 179(3) has come into play, an amalgamation application affecting the amalgamating corporation must not be submitted to the Director for filing until more than 30 days have expired from the date of the notice.

H. THE MECHANICS OF A LONG-FORM AMALGAMATION

Section 177 sets out the mechanics of long-form amalgamation.

1. Director Meetings and Resolutions

Directors' resolutions approving the amalgamation and adopting the amalgamation agreement (and approving its execution) should be passed. You should also take care to draw section 115 to the attention of the board of directors of the amalgamating corporation.
2. Shareholder Meeting or Consent Resolution

(a) Shareholder Entitlement to Vote

After preparation of the amalgamation agreement, it must be sent to all shareholders for consideration. Subsection 177(1). The notice requirements for shareholder meetings apply to a meeting called to consider an amalgamation. Subsection 129(1). The notice of the meeting of shareholders must include or be accompanied by a copy or summary of the amalgamation agreement and notify shareholders of their dissent rights under section 184. Clause 177(2)(a). Furthermore, notice of the meeting to consider the amalgamation agreement must contain sufficient details of the proposed amalgamation to permit a shareholder to form a reasoned judgment thereon. Subsection 129(6).

The amalgamation agreement must receive approval of the shareholders of each amalgamating corporation by special resolution. Subsection 177(5). A special resolution requires the affirmative vote of not less than two-thirds of the votes cast thereon. Clause 2(I)(ff). Note that under clause 129(6)(b), the text of the special resolution must be included with the notice of meeting of the shareholders. All shareholders of the corporation have the right to vote in respect of an amalgamation even if all classes of shares do not ordinarily have a right to vote, but a class of shareholders has a right to vote separately as a class only if the amalgamation agreement in some way derogates from the rights of the class.

A "class" of shares refers to its literal meaning as the whole class of shares, such as all holders of common shares. A "class" of shares does not mean that the majority and minority shareholders must vote as separate classes because they lack a commonality of interests. Section 234 (oppression remedy) protects the minority shareholders' divergent interests from abuse by the

33 Subsection 177(1).
34 Subsection 129(1).
35 Clause 177(2)(a).
36 Clause 177(2)(b).
37 Subsection 129(6).
38 Subsection 177(5).
39 Clause 2(I)(ff).
40 Subsection 177(3).
41 Subsection 177(4).
In most cases, the holders of the shares of a class or series of shares will receive shares of the amalgamated corporation with virtually identical rights and restrictions on the conversion of their shares on amalgamation. If this is the case, it is very unlikely that the rights of the shareholders will be seen to have been derogated upon amalgamation. However, if the shareholders receive shares or other securities of a 3rd-comer corporation or receive other kinds of securities, then the question should be more carefully considered.

Essentially, the SBCA provides each class and series of shares (where there is some derogation from the rights of the class or series, see section 170) with the power to block an amalgamation.

(b) Shareholder Meeting Requirements

If an amalgamating corporation must hold a meeting of its shareholders to adopt an amalgamation agreement, then the SBCA expressly requires that the amalgamating corporation send notice of the meeting to each shareholder at least the prescribed number of days before the date of the meeting. The minimum prescribed period is 21 days.

Subsection 177(2) provides the amalgamating corporations with a choice as to the type of information relating to the amalgamation agreement that is provided to the shareholders along with the notice of meeting. The notice can be accompanied by either:

(a) a copy of the amalgamation agreement; or
(b) a summary of the amalgamation agreement in sufficient detail to permit the shareholders to form a reasoned judgment concerning the matter.

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42 Subsection 177(2).
43 Subsection 129(1).
3. Filings

In order to effect any amalgamation, the amalgamating corporations must file with the Director of Corporations Branch articles of amalgamation, a notice of directors, a notice of registered office for the amalgamated corporation, the required statutory declarations and the prescribed fee. If the amalgamation is a long-form amalgamation, Form 9 indicates that the package delivered to the Director must also include the amalgamation agreement. However, regardless of Form 9, the Director no longer requires the filing of a copy of the amalgamation agreement.

4. Withdrawal

An application for amalgamation can be withdrawn any time after it is filed with the registrar under section 179 and before the amalgamating corporations are amalgamated. In other words, where the application for amalgamation is filed requesting amalgamation to be effected on a date later than the date the application is filed.

Withdrawal of an application can be done by any amalgamating corporation. If done by an amalgamating corporation it must be done by an authorized signing authority for the corporation, for example a director or officer of one of the amalgamating corporations or a solicitor acting on behalf of one of the amalgamating corporations.

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44 Subsection 179(1).
45 Subsection 179(2).
46 see Form 9.
47 Subsection 179(1).
IV. GENERAL

All of the amalgamating corporations must be in good standing with respect to the filing of annual returns and notices under the SBCA. If they are not, the Director may refuse to accept any filing relating to the amalgamation. You should also double check to ensure that the corporation branch records show the same share holdings in the amalgamating corporations as is reflected in the amalgamation agreement or that the wholly owned subsidiaries are in fact wholly owned according to the Director's records.

V. SHORT-FORM AMALGAMATIONS

Short-form amalgamations are amalgamations between closely-related corporations. There are two kinds of short-form amalgamations, namely, vertical short-form amalgamations and horizontal short-form amalgamations.

Short-form amalgamations neither require amalgamation agreements nor the passage of special resolutions. A short-form amalgamation may be approved by directors' resolutions only. Short-form amalgamations do not give rise to a right of dissent.

A. VERTICAL SHORT-FORM AMALGAMATIONS

Section 178(1) provides that a holding corporation and one or more of its wholly-owned subsidiary corporations may amalgamate and continue as one corporation without complying with the requirements of an amalgamation agreement and shareholder adoption thereof described in sections 176 and 177.

Note subsections 2(4) and 2(5) which provide:

(4) A body corporate is the holding body corporate of another if that other body corporate is its subsidiary.
(5) A body corporate is a subsidiary of another body corporate if:
    (a) it is controlled by:
(i) that other body corporate;
(ii) that other body corporate and one or more bodies corporate each of which is controlled by that other body corporate; or
(iii) two or more bodies corporate each of which is controlled by that other body corporate; or

(b) it is a subsidiary of a body corporate that is a subsidiary of that other body corporate.

Note in particular clause 2(5)(b) which would appear to provide that a wholly-owned subsidiary can be a wholly-owned subsidiary of another corporation which itself is a wholly-owned subsidiary of a holding corporation. In other words, when read with subsection 178(1), a second-level wholly-owned subsidiary can amalgamate with what is, in effect, its grandparent holding corporation, and so on.

Under clause 178(1)(a), the amalgamation must be approved by a directors’ resolution of each amalgamating corporation. The resolution of the directors of each amalgamating corporation, in addition to approving the amalgamation generally under subsection 178(1), must also provide:

(a) that the shares of the amalgamating wholly-owned subsidiary corporation shall be cancelled upon amalgamation, without any repayment of capital;
(b) that the amalgamated corporation shall have as its articles, the articles of the holding corporation; and
(c) that the amalgamated corporation shall not issue any securities in connection with the amalgamation.

The net result is that, after the amalgamation, the amalgamated corporation is virtually identical to the amalgamating holding corporation, with the same name, directors, registered office, authorized share structure and shareholders.
B. **HORIZONTAL SHORT-FORM AMALGAMATIONS**

Subsection 178(2) provides that two or more corporations that are wholly-owned subsidiaries of the same holding corporation may amalgamate and continue as one corporation without complying with the requirements of an amalgamation agreement and the shareholder adoption thereof described in sections 176 and 177.

Clause 178(2)(a) provides that a horizontal short-form amalgamation must be approved by a directors' resolution of each of the amalgamating corporations. The resolutions of the amalgamating corporations, while approving the amalgamation generally under subsection 178(2), have three additional requirements:

(a) the resolution must require the cancellation upon amalgamation of the shares of all but one of the amalgamating corporations, without any repayment of capital;

(b) the resolution must require that the amalgamated corporation have, as its articles, the articles of the amalgamating corporation whose shares were not cancelled; and

(c) the resolution must provide that the stated capital of the amalgamating subsidiary corporations whose shares were cancelled shall be added to the stated capital of the amalgamating subsidiary corporation whose shares were not cancelled.

The net result is that, after the amalgamation, the amalgamated corporation is virtually identical to the amalgamating corporation, the shares of which were not cancelled, with the same name, directors, registered office, authorized share capital and shareholders.

C. **FILINGS**

As noted above, the articles of amalgamation are sent to the Director together with a notice of registered office, a notice of directors, statutory declarations and the prescribed filing fee.
VI. AMALGAMATION ITSELF

A. WHEN IS AN AMALGAMATION EFFECTIVE?

The time of the amalgamation cannot be earlier than the date and time that the articles of amalgamation are filed with the Director. If the effective date is not to be the date of filing, then the effective date and time of the amalgamation will be the later date and time specified in the application for amalgamation. The ability to establish a later date (and time) is particularly important in amalgamations because the great majority of amalgamations are aimed at financial year-ends of the amalgamating corporations, many of which are December 31, with the result that many proposed amalgamations are to be effective on January 1, a statutory holiday.

B. THE DIRECTOR OF CORPORATIONS BRANCH

After the amalgamation is effective, the Director must issue a certificate of amalgamation showing the names of the amalgamating corporations, the name of the amalgamated corporation and the date of the amalgamation.

While the Director has discretion to decline to issue a certificate of amalgamation under section 179(4), the Director must exercise that discretion within the restrictions set out under the amalgamation sections of the SBCA. The restrictions placed on the Director's discretion are found in the informational hurdles that the amalgamating corporations must clear to the Director's satisfaction. The Director may well be entitled to review all of the proceedings involved in an amalgamation to ensure full compliance with the SBCA and the protection of creditors. However, the provisions of the SBCA related to amalgamation do not vest in the Director any discretion to veto amalgamations where the shareholders are not adequately protected, in the Director's opinion. The amalgamation provisions do not provide for shareholder protection beyond dissent rights and the oppression remedy.

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48 Subsection 179(4).
49 See Re CECA.
50 See, for example, subsection 179(2).
The Director will furnish to the amalgamated corporation the certificate of amalgamation and a certified copy of the amalgamated corporation's articles. The Director will also strike the name of each amalgamating corporation from the register of corporations pursuant to subsection 290(1). In addition, the Director will publish a notice of the amalgamation in the Saskatchewan Gazette.

C. EFFECT OF AMALGAMATION

At the time amalgamating corporations are amalgamated and continue as the amalgamated corporation, a number of changes come into effect. Section 180 provides that on the date shown in a certificate of amalgamation:

(a) the amalgamation of the amalgamating corporations and their continuance as one corporation become effective;

(b) the property of each amalgamating corporation continues to be the property of the amalgamated corporation;

(c) the amalgamated corporation continues to be liable for the obligations of each amalgamating corporation;

(d) an existing cause of action, claim or liability to prosecution is unaffected;

(e) a civil, criminal or administrative action or proceeding pending by or against an amalgamating corporation may be continued to be prosecuted by or against the amalgamated corporation;

(f) a conviction against, or ruling, order or judgment in favour of or against, an amalgamating corporation may be enforced by or against the amalgamated corporation; and

(g) the articles of amalgamation are deemed to be the articles of incorporation of the amalgamated corporation and the certificate of amalgamation is deemed to be the certificate of incorporation of the amalgamated corporation.
Pretty straightforward. At the time of amalgamation, the property, rights and interests of each amalgamating corporation continue to be the property, rights and interests of the amalgamated corporation. This is the hallmark of amalgamation.

At the time of amalgamation, the amalgamated corporation continues to be liable for the obligations of each amalgamating corporation. Any existing cause of action, claim or liability to prosecution is unaffected. A legal proceeding being prosecuted or pending by or against any of the amalgamating corporations may be prosecuted, or its prosecution may be continued, by or against the amalgamated corporation. A conviction against, or a ruling, order or judgment in favor of or against, any of the amalgamating corporations may be enforced by or against the amalgamated corporation. However, common sense and case law suggests that in the absence of ratification either in the amalgamation agreement or elsewhere at amalgamation, the amalgamation will terminate any existing unanimous shareholder agreements in respect of the amalgamating corporations.

In the absence of a statutory provision for the revocation of a certificate of amalgamation, a court has no power to revoke the certificate of amalgamation. The court may refuse an application for judicial review of the Director's power to issue a certificate of amalgamation on the grounds that the proper process for obtaining director approval was not followed and that the

51 See *Yustin Construction Ltd., Re* [1986] 0.1. No. 28 (ant. S.c.). However, would be prudent for a secured party of an amalgamating corporation to file a financing change statement under *The Personal Property. Security Act*, 1993 (Saskatchewan) to maintain perfection of a security interest in the personal property of the amalgamating corporation in the amalgamated corporation; but see *Heidelberg Canada Graphic Equipment Ltd. v. Arthur Anderson Inc.* (1992), 4 P.P.S.A.C. (2d) 116 (ant. Gen. Div).

52 See *Witco*. A statement of claim issued in the name of an amalgamating corporation prior to amalgamation was not struck out as against the amalgamated corporation because the issuance of the certificate of amalgamation does not extinguish the corporate identity of the amalgamating corporations.

53 See *R. v. Armco Canada Ltd.* (1975), 24 C.C.c. (2d) 147 (ant. H.C); varied (1976), 30 c.C.C. (2d) 183 (C.A); leave to appeal to S.C.c. refused (1976), 30 c.C.C. (2d) 183n (S.c.C). Where two convicted corporations are amalgamated, that fact alone does not affect the accountability of the amalgamated corporation for the illegal activities of the amalgamating corporations. However, for sentencing purposes, a court is entitled to take into account the conduct of each amalgamating corporation prior to amalgamation and the amalgamated corporation subsequent thereto.

54 See *Sportscope Television Network Ltd. v. Shaw Communications Inc.* (1999), 46 BLR. (2d) 87 (ant. Gen. Div.).

amalgamation is not in the best interests of the corporation. However, if an amalgamation is set aside as improper, creditors of the amalgamated corporation will have recourse against each amalgamating corporation (and possibly the directors of those corporations who wrongfully brought about the amalgamation).

As a matter of income tax law, the amalgamated corporation is considered a new corporation and the amalgamating corporations are considered predecessor corporations. The corporate law theory is different. On the date of the certificate of amalgamation, the amalgamating corporations amalgamate and continue as one corporation. The articles of amalgamation and certificate of amalgamation are considered the articles and certificate of incorporation for the purposes of the SBCA. The amalgamated corporation acquires the assets and assumes the liabilities of the amalgamating corporations without a new acquisition by a new entity, which connotes a beginning of title or possession in the acquirer.

D. DISSENT RIGHTS

Section 184 provides that a shareholder of an amalgamating corporation may send a notice of dissent to that amalgamating corporation in respect of an amalgamation otherwise than under section 178 (short-form amalgamations). In a nutshell, the section 184 dissent right means that a dissenting shareholder can have the shares which are the subject of the notice of dissent (the "notice shares") purchased by the amalgamating corporation or, more likely, by the amalgamated corporation, at their fair value. Note that if a shareholder holds two or more classes of shares in an amalgamating corporation, the shareholder must dissent in respect of all shares of a class but not necessarily all classes of shares. Note with caution the timing requirements on the exercise
and reply to an exercise of the section 184 dissent right. Failure to comply with the strict timing
on can result in the alteration or loss of some or all of the dissenting shareholder's rights under
section 184.

Each amalgamating corporation must ensure that it complies with clause 177(1)(b) with respect
to the delivery of material advising shareholders of their rights of dissent (whether or not there is
an actual meeting) for legal and practical reasons. For reasons of cost under section 184, an
amalgamating corporation may not want to carry out an amalgamation if too many shareholders
dissent. This is one reason why amalgamation agreements generally allow the amalgamating
corporations to discontinue the amalgamation at the directors' discretion.

No dissent rights arise in a short-form amalgamation.

VII. POST-AMALGAMATION MATTERS

Once the amalgamation is effective, the post-amalgamation steps should be completed.

A. RESOLUTIONS

Notwithstanding subsection 99(1.1) which exempts an amalgamated corporation from the
requirements of subsection 99(1), it is prudent to have the board of directors or shareholders (as
the case may be) of the amalgamated corporation pass resolutions of the amalgamated
corporation to deal with the following:

(a) to confirm the location of the registered office of the amalgamated corporation;
(b) to confirm the appointment of the officers of the amalgamated corporation;
(c) to adopt a new form of share certificate;
(d) to approve the issue of any shares (or other securities) on the share conversion
described in the amalgamation agreement;
(e) to adopt a corporate seal (whether or not the amalgamated corporation has a new
name);
(f) to adopt new banking resolutions; and
(g) to appoint, or waive the appointment of, an auditor.

B. MISCELLANEOUS FILINGS & MATTERS

If any of the amalgamating corporations is extra-provincially registered in another jurisdiction, it will probably be necessary (depending on the jurisdiction) to file an update in the foreign jurisdiction advising of the amalgamation.\textsuperscript{61} The filing requirement will differ from jurisdiction to jurisdiction.

In respect of the promoters or prospective directors of the amalgamated corporation, also note the liability limiting effect of subsections 14(2) to (4) which provide:

Pre-incorporation and pre-amalgamation contracts
(2) A corporation may, within a reasonable time after it comes into existence, by any action or conduct signifying its intention to be bound thereby, adopt a written contract made before it came into existence in its name or on its behalf, and upon such adoption:
   (a) the corporation is bound by the contract and is entitled to the benefits thereof as if the corporation had been in existence at the date of the contract and had been a party thereto; and
   (b) a person who purported to act in the name of or on behalf of the corporation ceases, except as provided in subsection (3), to be bound by or entitled to the benefits of the contract.

Application to court
(3) Except as provided in subsection (4), whether or not a written contract made before the coming into existence of a corporation is adopted by the corporation, a party to the contract may apply to a court for an order fixing obligations under the contract as joint or joint and several or apportioning liability between or among the corporation and a person who purported to act in the name of or on behalf of the corporation and upon such application the court may make any order it thinks fit.

Exemption from personal liability
(4) If expressly so provided in the written contract, a person who purported to act in the name of or on behalf of the corporation before it came into existence is not in any event bound by the contract or entitled to the benefits thereof.

\textsuperscript{61} In Saskatchewan, the extra-provincial corporation must file the articles of amalgamation under clause 271(1)(b).
C. REGISTERED OFFICE

You should set up the corporate records for the amalgamated corporation at its registered office and place therein:

(a) a copy of the articles of amalgamation;
(b) the certificate of amalgamation;
(c) the notice of directors filed for amalgamation purposes;
(d) the notice of registered office filed for amalgamation purposes;
(e) a copy of the statutory declarations under subsection 179(2);
(f) an executed copy of the amalgamation agreement;
(g) the post-amalgamation directors' resolutions of the amalgamated corporation;
(h) the post-amalgamation shareholders' resolutions of the amalgamated corporation;
and
(i) any consents to act as director (even if signed before the amalgamation).

You should also make entries in the share register of the amalgamated corporation dealing with any conversion of shares on a long-form amalgamation. Do not forget to make similar entries in the share registers of the amalgamating corporations to show the details of the conversion and of any cancellation of inter-corporate shareholdings. Thereafter, the minute books for the amalgamating corporations should be closed.

You should cancel the share certificates representing shares of the amalgamating corporations and prepare new share certificates representing shares of the amalgamated corporation for issuance by the amalgamated corporation. While not strictly necessary, you should probably cancel and replace the share certificates representing the shares of the holding corporation in a vertical short-form amalgamation or of the amalgamating corporation the shares of which were not cancelled in a horizontal short-form amalgamation.

Similarly, you should make the appropriate entries in the register of directors of the amalgamated corporation showing the first directors and the necessary details relating to those individuals.
If any of the amalgamating corporations is a shareholder of another corporation (one uninvolved in the amalgamation), the amalgamated corporation should be substituted in the share register of that corporation and the old share certificate(s) cancelled and replaced.

You should advise the board of directors of the amalgamated corporation to give notice of the amalgamation to its insurers, the Workers’ Compensation Board, business license and permit issuers, its bankers, tax and employment governmental authorities, etc.
CONTINUANCE

I. INTRODUCTION

Continuance is a procedure authorized under the corporate statutes of some jurisdictions, including Saskatchewan. Simply put, under a continuance procedure a corporation governed by one jurisdiction's corporate legislation leaves (or is "exported" from) that jurisdiction and is continued (or "imported") under the corporate legislation of a different jurisdiction. All Canadian jurisdictions except Quebec have corporate legislation authorizing continuances.

Note that continuance is not the same as extra-provincial registration. An extra-provincial corporation is a corporation incorporated in one jurisdiction and registered to do business in another jurisdiction. However, after extra-provincial registration, the corporation is still governed by the incorporating statute of its home jurisdiction. When a foreign company or corporation is continued into Saskatchewan, it becomes a corporation subject to the SBCA and Saskatchewan becomes the corporation's home jurisdiction. In other words, it becomes a Saskatchewan corporation.

The following are three reasons for continuing a corporation into or out of a jurisdiction:

1. **Amalgamation.** All corporations that are party to a proposed amalgamation must be governed by the same corporate legislation. If the corporations are governed by different corporate legislation, one must continue into the jurisdiction of the other before an amalgamation can be effected. Note, however, that the recently enacted *Business Corporations Act* (British Columbia) contemplates transborder amalgamations.

2. **Corporate Name Availability.** A proposed corporate name may be unavailable in a corporation's home jurisdiction (whether on incorporation or for a subsequent name change). However, the desired name may be available in a neighbouring jurisdiction. Nevertheless, take note that continuance might not solve the name availability problem if the continued corporation intends to carry on business in its original jurisdiction of
incorporation under its new name. The continued corporation would still be required to extra-provincially register in its former home jurisdiction and the new name would likely remain unavailable for extra-provincial registration purposes (although, in some jurisdictions, the rules for extra-provincial registration are less stringent than those for incorporation). The continued corporation would likely be unable to register unless it used an assumed name or reverted to its incorporation number. Also, the continued corporation may be granted more latitude in extra-provincial registration if it has continued federally under the *Canada Business Corporations Act* or a similar federal statute.

3. **Jurisdiction Shopping.** Variations in the corporate legislation of different jurisdictions is a common reason for continuing a corporation out of one jurisdiction and into another. Continuance allows corporations to shop for the jurisdiction with the most accommodating corporate legislation. For example, a Saskatchewan corporation whose board of directors no longer meets the residency requirements of the SBCA may continue into Nova Scotia or British Columbia, where there are no director residency requirements. Similarly, a corporation faced with financial assistance restrictions in its home jurisdiction which are blocking a transaction, may continue into Saskatchewan, where there are no "restrictions" on giving financial assistance. Similarly, there is always the possibility that unscrupulous management will recommend export to a jurisdiction with easier standards to evade their duties under the SBCA.

However, before starting a continuance procedure (whether for import or export), you must carefully review the laws of the foreign jurisdiction both in respect of continuance and generally.

II. **IS CONTINUANCE IN OR OUTSIDE SASKATCHEWAN PERMITTED?**

The corporate legislation of both the importing and exporting jurisdiction must authorize the continuance procedure. If continuance is not permitted in either jurisdiction, the continuance cannot occur.
The corporation's constating documents or a unanimous shareholders' agreement may contain a prohibition on continuance outright or without the prior approval of a super-majority of the shareholders. Before effecting a continuance, you must review the corporation's constating documents and shareholder agreements to ensure that the continuance is carried out in compliance with any requirements set out therein.

Most bank loan agreements prohibit continuance outright or without the prior consent of the lender. Since a continuance might trigger consent requirements or default provisions in loan and other agreements to which the continuing corporation is party, you must review all agreements to which the corporation is party to ensure that the continuance is carried out in compliance with those contractual requirements before effecting the continuance.

III. CONTINUANCE OUTSIDE SASKATECHEWAN

Section 182 allows a corporation that is incorporated under the laws of Saskatchewan to continue under the laws of another jurisdiction and to discontinue under the SBCA. An export continuance requires shareholder approval and at least two levels of official or public approval. First, the Director must be satisfied that the proposed continuance will not adversely affect the creditors and shareholders of the corporation. Second, the export continuance requires any necessary approval in the importing jurisdiction.

A. STATUTORY AUTHORITY AND PROHIBITIONS

Continuance of a corporation outside Saskatchewan (i.e., export continuance) is authorized by section 182 of the SBCA. Section 182(1) states that a corporation may, if authorized by the shareholders and if the corporation establishes (to the satisfaction of the Director) that its proposed continuance will not adversely affect its creditors or shareholders, apply to the appropriate official or public body of another jurisdiction requesting that the corporation be continued into that other jurisdiction as if the corporation had been incorporated under the laws of that other jurisdiction.
This authority is specifically subject to subsections 182(2) and 182(9). Subsection 182(2) prohibits the continuance outside Saskatchewan of a class of corporations prescribed by the regulations under the SBCA without the prior consent of the Minister of Justice. Subsection 182(9) prohibits the continuance of a corporation outside Saskatchewan where the laws of the importing jurisdiction do not provide that:

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

Subsection 182(9) should not be interpreted as requiring the import jurisdiction corporate legislation to contain the precise language of that subsection, but certainly the laws of the import jurisdiction should be broad enough to cover all issues addressed by the subsection.

B. THE DIRECTOR OF CORPORATIONS BRANCH (SASKATCHEWAN)

To effect a continuance outside Saskatchewan, the Saskatchewan corporation must satisfy the Director of Corporations Branch (Saskatchewan) under subsection 182(1) SBCA that its proposed continuance in another jurisdiction will not adversely affect the creditors or shareholders of the corporation. This requirement is met by completing and filing with the Director a "Statement of Proposed Continuance in Another Jurisdiction", which is Form 30 under the SBCA Regulations (the "Statement of Proposed Continuance,").

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62 Subsection 182(1).
63 See Appendix B.
The Statement of Proposed Continuance must set out the full legal name of the corporation and name of the importing jurisdiction and a director or authorized officer of the corporation must certify the following:

(a) that the corporation is not in default in filing annual returns or notices under the SBCA;
(b) there are no actions, suits or proceedings pending against the corporation nor any unsatisfied judgments or any orders outstanding against the corporation, except as may be enumerated in the Statement of Proposed Continuance;
(c) a notice of meeting of shareholders (in accordance with subsection 182(3) and section 129) was sent to each shareholder stating that a dissenting shareholder is entitled to be paid the fair value of the shareholder's shares in accordance with section 184 (dissent rights);
(d) on the date of the shareholders meeting referred to in (c) above, the shareholders authorized the corporation to request continuance under the laws of the importing jurisdiction in accordance with subsection 182(5);
(e) the proposed continuance will not adversely affect shareholders of the corporation;
(f) no shareholder has objected or dissented under section 184 to the proposed continuance, except as may be enumerated in the Statement of Proposed Continuance;
(g) the proposed continuance will not adversely affect creditors of the corporation;
(h) the total liability of the corporation to all creditors as at a date specific;
(i) the names and addresses of, and the amount owing to, the "major creditors" of the corporation; and
(j) any additional information which may assist the Director in determining whether to grant the application and issue a certificate of discontinuance.

Given the foregoing, the corporation must be in good standing with the Director prior to an application for continuance outside Saskatchewan. You must also obtain from the corporation all information necessary to complete the Statement of Proposed Continuance or conduct the
appropriate due diligence searches to enable an officer or director of the corporation to certify as correct the information contained in the Statement. Immediately before filing the application, ensure that the corporation has filed its latest annual return and that all information in the corporate registry is up-to-date \(i.e.,\) shareholders, directors, registered office, etc.).

If the Director refuses to issue a certificate of discontinuance, appeal may be had to the Court of Queen's Bench.\(^{64}\)

**C. THE SHAREHOLDERS**

Under subsection 182(5), continuance outside Saskatchewan must be authorized by the shareholders of the corporation by special resolution. Furthermore, each share of the corporation carries the right to vote in respect of a continuance whether or not it otherwise carries the right to vote.\(^{65}\)

Under subsection 182(3), the corporation must give notice of a meeting of shareholders complying with section 129 and sent in accordance with that section to each shareholder. The notice of meeting must state that a dissenting shareholder is entitled to be paid the fair value of the shareholder's shares in accordance with section 184, but failure to make that statement does not invalidate a discontinuance under the SBCA.

At the special meeting called for the purpose (or by consent resolution under SBCA subsection 136(1)), the shareholders should authorize the corporation's continuance outside Saskatchewan by:

- authorizing the corporation's directors to apply to the appropriate official or authority in the importing jurisdiction for an certificate of continuance under the laws of the importing jurisdiction;

\(^{64}\) Clause 239(1)(d).

\(^{65}\) Subsection 182(4).
(b) authorizing the corporation's directors to apply to the Director for authorization of the continuance out of Saskatchewan;

(c) if intended or required by the importing jurisdiction, authorizing a change of corporate name;

(d) approving the amendment of the corporation's constating documents to conform to the laws of the importing jurisdiction;

(e) authorizing the corporation's directors and officers to do all things necessary to implement the special resolution and the continuance; and

(f) authorizing the corporation's directors to abandon the continuance at any time without seeking further shareholder approval.66

Clause 184(1)(d) provides that a shareholder of a corporation which has resolved to continue outside Saskatchewan may dissent. Whether a meeting of shareholders will be held to authorize the continuance or the continuance will be authorized by consent resolution, the corporation must ensure that it complies with subsection 182(3) with respect to delivering material to the shareholders advising them of their dissent rights under section 184.

Where a shareholder sends a notice of dissent to the corporation in respect of a resolution under subsection 182(5) to authorize the continuance, the corporation must comply with the dissent rights set out in section 184. Simply put, this means that a dissenting shareholder can force the continued corporation to purchase at fair value the dissenting shareholder's shares (or, at least, those shares subject to the notice of dissent67), since the continued corporation remains liable for the obligations of the corporation in its original home jurisdiction.

Given the potential cost of purchasing the shares of dissenting shareholders, a corporation may not want to proceed with continuance if there are too many dissenting shareholders or the number of shares held by dissenting shareholders makes the procedure cost-prohibitive.

66 Subsection 182(6).
67 See subsection 184(4).
While the subject of shareholder dissent rights is beyond the scope of this paper, both the corporation and any shareholder intending to dissent should note the timing requirements of section 184.

D. THE EFFECT OF CONTINUANCE OUTSIDE SASKATCHEWAN

Under subsection 182(7), the Director is required to issue a certificate of discontinuance upon receipt of notice satisfactory to the Director that the corporation has been continued under the laws of the importing jurisdiction and, thereafter, strike the name of the corporation from the corporate registry maintained pursuant to section 282. Therefore, immediately after continuance, the continued corporation should file with the Director a copy of any record issued to it by the importing jurisdiction to effect the continuance. Some jurisdictions will send this directly to the Director, but the corporation should nevertheless send a copy to the Director as well. This step is important because, under subsection 182(8), Part I of the SBCA ceases to apply to the continued corporation on the date shown in the certificate of discontinuance issued by the Director of Corporations Branch (Saskatchewan) pursuant to subsection 182(7) and section 255. Until that time, it is arguable that the corporation must comply with the corporate legislation of both the exporting and importing jurisdictions.

Furthermore, to avoid any confusion as to which corporate statute governs immediately after continuance, the corporation's request to the Director for authorization to continue into the importing jurisdiction should contain a request that the Director issue the certificate of discontinuance bearing a date as of the day when the corporation is continued under the laws of the importing jurisdiction, as is permitted under subsection 255(5).

After the certificate of discontinuance is issued, the Director must publish in the Saskatchewan Gazette a notice that the corporation has been continued into the importing jurisdiction. The corporation is then removed from the corporate registry as a Saskatchewan corporation.
If the corporation will continue to carry on business in Saskatchewan, it must register extra-provincially within 60 days months after the continuance. Further, unless the continued corporation submits a power of attorney (Form 24) within the said 60 day period (together with the applicable fee), the Director will strike the name of the corporation from the register of corporations.

IV. CONTINUANCE IN SASKATCHEWAN

A. STATUTORY AUTHORITY

Section 181 permits a corporation that was incorporated under the laws of a jurisdiction other than Saskatchewan (a foreign corporation) to continue under the laws of Saskatchewan, i.e., to become a Saskatchewan corporation. If you compare sections 181 and 182, you will note that section 181 is easier to comply with because most of the pre-conditions to continuance will be set out in the law of the exporting jurisdiction. The only pre-condition under the SBCA to an import continuance is that the laws of the export jurisdiction must authorize the continuance:

181(1) A body corporate incorporated:
(a) otherwise than by or under an Act of the Legislature may, if so authorized by the laws of the jurisdiction where incorporated;
(b) by or under an Act of the Legislature may:
   (i) if so authorized by a resolution under clause 258(1)(a); or
   (ii) in accordance with subsection 258(1.1);
apply to the Director for a certificate of continuance.

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68 Including Saskatchewan, see subsection 181(6).
69 Clause 41(3)(a) of the SBCA Regulations.
70 Clause 41(3)(b) of the SBCA Regulations.
71 See clause 3(1)(a).
B. APPLICATION FOR CONTINUANCE IN SASKATCHEWAN

The name of the continued corporation must meet the requirements of *The Business Names Registration Act*. Therefore, the first step in an import continuance is to have the corporate name (or, if that name does not meet the requirements, a new name) reserved under *The Business Names Registration Act*. Even if the corporation is already registered extra-provincially in Saskatchewan, the corporate name of the continued corporation must comply with the name requirements for a Saskatchewan corporation and must be reserved.

Articles of continuance in Form 11 must be filed in duplicate with the Director of Corporations Branch (Saskatchewan) together with the necessary filing fee. The following documents must also accompany the articles of continuance:

(a) a notice of registered office (section 19; Form 3);
(b) a notice of directors (section 101; Form 6);
(c) proof of authorization under the laws of the exporting jurisdiction;
(d) evidence of good standing of the corporation in the exporting jurisdiction; and
(e) a statement of continuance (Form 28).

The notice of directors and notice of registered office are standard corporate filings. If the exporting jurisdiction is a Canadian jurisdiction, the Director may assume that the authorization to continue would not be given if the corporation were not in good standing in that jurisdiction. However, prudent practice requires the filing of a certificate of status or good standing from the exporting jurisdiction. On the other hand, if the exporting jurisdiction is outside Canada, the Director will require a certificate of good standing (or its equivalent).

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72 R.S.S. 1978, c. B-11; but see subsection 12(3) of the SBCA.
73 Note that subsection 10(2) of the SBCA permits the Director to grant an exemption from the requirement that a continued corporation's name contain a cautionary suffix pursuant to subsection 10(1) of the SBCA.
1. **Articles of Continuance**

The continuance application must contain articles of continuance in Form 11 and that conform to sections 4 to 6 of the SBCA Regulations. The information required in the articles of continuance will mirror that required on an incorporation, namely:

(a) the full legal name of the corporation;
(b) the details of share capital required by clause 6(1)(c),
(c) a statement of the restrictions placed on the right to transfer shares, if any, and the nature of such restrictions;
(d) the minimum and maximum number of directors,
(e) any restrictions placed on the business that the corporation may carry on; and
(f) any other provision that is permitted by the SBCA.

The corporate legislation of many jurisdictions does not say anything about amending the articles of incorporation on the export of a corporation from its home jurisdiction. It is simply recognized that, in order to continue, the corporation will have to amend its articles (or other charter documents) and adopt those required by the importing jurisdiction. It is also understood that those amended articles become the incorporating documents of the corporation once it is imported in the other jurisdiction. Under the SBCA, however, this right is set out in subsection 181(2), as follows:

**Amendments in articles of continuance**

(2) A body corporate that applies for a certificate of continuance under subsection (1) may, without so stating in its articles of continuance, effect by those articles any change or amendment to its articles, if the change or amendment is a change or amendment a corporation incorporated under this Act may make to its articles.

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74 If you are importing from British Columbia or another jurisdiction that permits nominal or par value shares, note that if shares with those rights were issued before continuance in Saskatchewan, they are deemed to be shares without nominal or par value upon continuance (see subsection 24(2) and subsections 181(8-10)).

75 If cumulative voting is permitted, the articles of continuance must set out an invariable number of directors.
2. Notice of Directors

The directors of the continued corporation must be set out in the notice of directors that accompanies the continuance application.

If any of the directors of the continued corporation at the time of its continuance under the SBCA were not (immediately before continuance) directors of the foreign corporation, those individuals should consent in writing to act as a director of the corporation. Arguably, such consent can be made to the foreign corporation or to the continued corporation. It is also advisable to obtain written consents to act from the existing directors of the foreign corporation. For the qualifications of directors, see section 100.

3. Notice of Registered Office

This will be the same as the standard corporate filing on incorporation, see Form 3 and section 19.

4. Statement of Continuance

The application for continuance must include a completed Statement of Continuance in Form 28. Under the Statement of Continuance, a director or authorized officer of the foreign corporation must certify the following information:

(a) the full legal name of the foreign corporation;
(b) the corporate history of the foreign corporation including the date and jurisdiction of incorporation, date and jurisdiction of amalgamation (if any), date and jurisdiction of previous continuances (if any), and any change of corporate name;
(c) the main type or types of business carried on by the foreign corporation; and

76 See paragraph 101(b)(i).
(d) any other information that may assist the Director in determining whether to grant the application and issue a certificate of continuance.

The requirements of Form 28 are straightforward. However, Form 28 provides the following examples of the acceptable manner of setting out the information required under (b) above:

ABC Holdings Ltd. was incorporated under the laws of Alberta on January 25, 1921 as XYZ Agencies Ltd. - changed to its present name in 1930 - continued as a Manitoba corporation under its present name on January 10, 1977.

A.B.c. Holdings Ltd. resulted from the amalgamation of A.B.C. Enterprises Ltd. and A.B.C. Investments Ltd. under the laws of Alberta on February 14, 1965, etc.

The Statement of Continuance must be signed by a director or authorized officer of the foreign corporation.

5. Proof of Authorization

A simple letter from the Director or Registrar of Corporations in the exporting jurisdiction indicating authorization to continue outside of that jurisdiction should be sufficient. However, Saskatchewan issues a Certificate of Authorization and a similar document may be available from the exporting jurisdiction.

6. Abandonment of the Application

If authorized under the corporate legislation of the exporting jurisdiction (in Saskatchewan, by the special resolution of the shareholders of the corporation at the time they approved the application for continuance), the directors of the foreign corporation may abandon the application any time after it is filed with the Director and before the continuance becomes effective. The application should be abandoned in writing by filing with the Director a notice of abandonment (may be in letter form) identifying the continuance application. Of course, abandonment is only available when the continuance application has been filed specifying a date later than the date the Director received the articles of continuance on which the continuance is
to be effective.

C. THE EFFECT OF CONTINUANCE IN SASKATCHEWAN

On receipt of the articles of continuance and the supporting documents listed above, the Director will issue a certificate of continuance and make a record in the register of corporations as to the continuance of the corporation under the SBCA. The certificate of continuance will be dated either as of the date of receipt by the Director of the articles of continuance or such later date as may be specified by the person who signed the articles.

Upon the issuance of the certificate of continuance and on the date shown in the certificate:

(a) the foreign corporation becomes a corporation to which the SBCA applies as if it had been incorporated under the SBCA (clause 181(5)(a));

(b) the articles of continuance are deemed to be the articles of incorporation of the continued corporation (clause 181(5)(b));

(c) the certificate of continuance is deemed to be the certificate of incorporation of the continued corporation (clause 181(5)(c));

(d) subject to clause (e) below, the articles of the foreign corporation in effect prior to the date shown in the certificate of continuance do not apply (clause 181(5)(d)); and

(e) in the case of a body corporate incorporated by an Act of the Legislature, no provision of that Act applies, unless otherwise provided in its articles of continuance (clause 181(5)(e)).

Upon continuance, subsection 181(5.1) restricts any dissent rights a shareholder may have had under the exporting jurisdiction in respect of certain fundamental changes (i.e., those set out in subsection 167(1)) that occurred concurrent with continuance. However, the shareholder remedy

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77 Subsection 181(4).
78 Subsection 282(d).
79 Subsection 255(3).
under section 234 (oppression) remains available to the shareholder in respect of those changes for two years after the continuance.

Subsection 181(7) provides that when a foreign corporation is continued as a Saskatchewan corporation under the SBCA:

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

The effect is that upon issuance of the certificate of continuance, the foreign corporation becomes a Saskatchewan corporation, with new constating documents, but otherwise remains basically unchanged.

If the foreign corporation was extra-provincially registered in other jurisdictions before its continuance in Saskatchewan, a certified copy of the certificate of continuance may have to be filed in those other jurisdictions, depending on their requirements.

D. ISSUED SHARES

1. Preservation of Shareholder Rights

For the purposes of subsections 181(8) and (9), "share" is defined to include certificates, warrants or other evidences of conversion privileges, options and rights to acquire securities of a
corporation, and share warrants or like instruments.

Subsection 181(8) provides that (subject to subsection 45(9), see below) a share of the foreign corporation issued before it continued in Saskatchewan is deemed to have been issued in compliance with the SBCA and with the provisions of the articles of continuance, irrespective of whether the share is fully paid and irrespective of any designation, rights, privileges, restrictions or conditions set out on or referred to in the certificate representing the share. Subsection 181(8) further provides that continuance in Saskatchewan does not deprive a holder of any right or privilege that claimed under, or relieve him of any liability in respect of, an issued share of the foreign corporation.

Subsection 181(9) provides that where the foreign corporation had, before continuance, issued a share certificate in registered form that was convertible to bearer form, the continued corporation may, if the holder of the share certificate exercises the conversion privilege attached thereto, issue a share certificate in bearer form for the same number of shares to the holder.

Under subsection 26(1.5), when a foreign corporation is continued under the SBCA it is permitted to add to its stated capital account any consideration it received for a share it issued. Furthermore, the continued corporation must add to the stated capital account maintained for a class or series of shares any amount unpaid in respect of a share issued by the foreign corporation prior to continuance in Saskatchewan and paid after such continuance. Also, for the purposes of the insolvency tests in subsection 32(2), section 26 (reduction of stated capital), section 40 (dividends) and clause 179(2)(a) (amalgamation), the continued corporation's stated capital is deemed to include the amount that would have been included in its stated capital if the corporation had been incorporated under the SBCA.

80 See subsection 44(4).
81 See subsection 44(6).
82 Subsection 26(3); see also subsection 26(2). Note that the articles of continuance should provide that the corporation has a lien on its shares for all amounts so unpaid on the date of continuance, see subsection 43(2).
83 Subsection 26(4).
Also note the effect of subsection 45(8), which provides as follows:

**Restrictions**

(8) If a security certificate issued by a corporation or by a body corporate before the body corporate was continued under this Act is or becomes subject to:

(a) a restriction on its transfer other than a constraint under section 168;
(b) a lien in favour of the corporation;
(c) a unanimous shareholder agreement; or
(d) an endorsement under subsection (10) of section 184;

such restriction, lien, agreement or endorsement is ineffective against a transferee of the security who has no actual knowledge of it, unless it or a reference to it is noted conspicuously on the security certificate.

This subsection will be of particular importance when dealing with post-continuance share transfers.

2. Nominal or Par Value Shares

As noted above, if you are importing a company from British Columbia or another jurisdiction that permits nominal or par value shares, if shares with those rights were issued before continuance in Saskatchewan, the shares are deemed to be shares without nominal or par value upon continuance. However, the foreign corporation may apply to the Director pursuant to subsection 181(11) to obtain an exemption from the application of subsections 24(2) and 181(8-10) where it is not practicable to change a reference to the nominal or par value of shares of a class or series that the foreign corporation was authorized to issue before it continued under the SBCA. If satisfied, the Director may, notwithstanding subsection 24(1), permit the foreign corporation to continue to refer in its articles of continuance to those shares, whether issued or unissued, as shares having a nominal or par value.

Where the Director's exemption is granted, the articles of continuance must set out the maximum number of the nominal or par value shares that the corporation is authorized to issue. Further, the continued corporation is prohibited from amending its articles to increase the maximum

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84 See subsection 24(2) and subsections 181(8-10).
number of the nominal or par value shares the corporation is authorized to issue or to change the nominal or par value of those shares. The Director's decision to refuse to grant an exemption is reviewable.

E. HOUSEKEEPING MATTERS

After continuance, you will have to set up in Saskatchewan the registered office and corporate records for the continued corporation. The registered office in Saskatchewan should have all the records of the foreign corporation relating to the period before continuance in Saskatchewan that it was required to keep by the corporate legislation of the exporting jurisdiction. In addition, the material in the registered office should include the original certificate and articles of continuance, bylaws, any unanimous shareholder agreements and any consents to act as a director (even if signed before the continuance). Notwithstanding subsection 99(1.1) which exempts a continued corporation from the requirements of subsection 99(1), it may be prudent to attend to some of the typical post-incorporation matters, such as:

(a) confirmation of bylaws;
(b) banking resolutions;
(c) appointment (or waiver of the appointment) of an auditor;
(d) appointment of officers;
(e) unanimous shareholder agreements (amendment thereof);
(f) issuance of share certificates; or
(g) adoption of form of corporate seal.

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85 Subsection 181(12).
86 Subsection 181(13).
87 Clause 239(1)(c.1).
88 See sections 19, 20 and 22.
89 See subsection 20(3).
90 Subsection 20(1).
A shareholder register should be set up and entries should be made in it showing the details of the shareholders of the continued corporation. Subsection 45(9) provides that if a foreign corporation continued under the SBCA has outstanding security certificates with the words "private company" appearing on the certificates, those words are deemed to be a notice of a restriction, lien, agreement or endorsement for the purpose of subsection 45(8). However, you may consider it desirable to cancel the existing share certificates and issue new share certificates which comply with the SBCA.\footnote{See subsections 45(7), (8), (8.2), (10).}

Entries should be made in a register of directors of the continued corporation showing the first directors and the necessary details relating to them.

\footnote{See section 46.}
APPENDIX A

AMALGAMATION PRECEDENTS

The following amalgamation precedent documents were prepared by Dan Anderson and Kurt Wintemute of MacPherson Leslie & Tyerman LLP for their Saskatchewan Bar Admission Course paper entitled "Corporate Changes" and are included in this paper with their kind permission.
RESOLUTION OF THE SHAREHOLDERS OF . , PASSED BY THE SIGNATURE OF ALL THE SHAREHOLDERS, AS OF THE • DAY OF • , 199., PURSUANT TO THE PROVISIONS OF THE BUSINESS CORPORATIONS ACT.

AMALGAMATION

WHEREAS it is considered desirable that the Corporation amalgamate with • and • pursuant to the provisions of The Business Corporations Act of Saskatchewan, effective as of the • day of • , 199.;

NOW, THEREFORE, BE IT RESOLVED AS A SPECIAL RESOLUTION:

THAT the Corporation be, and it is hereby authorized and directed to be, amalgamated with • and • under the provisions of The Business Corporations Act and, for such purpose, is authorized to enter into an agreement dated as of the • day of . , 19. , between the Corporation, • and • , in or substantially in the same form and containing substantially the same terms and conditions as the draft agreement attached hereto as Schedule A;

THAT the President of the Corporation is hereby authorized and directed for and on behalf and in the name of the Corporation to execute under its corporate seal and to deliver an agreement in the form of the said draft agreement, subject to such changes thereto as maybe approved by him, which approval shall be conclusively evidenced by his execution and delivery of such agreement; and

THAT the President of the Corporation is hereby further authorized and directed for and on behalf of the Corporation to do all other acts and things and to execute under the seal of the Corporation or otherwise and to deliver all such documents or instruments as may be necessary or desirable in connection with the said agreement and amalgamation therein provided for.

WITNESS the signatures of all the Shareholders of the Corporation as of the day and year set forth above.
(Long Form Amalgamation Agreement)

THIS AMALGAMATION AGREEMENT made as of the ____ day of ____ A.D. 19____,

BETWEEN:

Φ, a body corporate incorporated under the laws of the Province of Saskatchewan, (hereinafter referred to as "Φ.").

OF THE FIRST PART

- and-

Φ, a body corporate incorporated under the laws of the Province of Saskatchewan, (hereinafter referred to as "Φ.").

OF THE SECOND PART

- and-

Φ, a body corporate incorporated under the laws of the Province of Saskatchewan, (hereinafter referred to as "Φ.").

OF THE THIRD PART

AMALGAMATION AGREEMENT

MacPHERSON LESLIE & TYERMAN
Barristers and Solicitors
1500. 410 - 22nd Street East
Saskatoon, Saskatchewan
S7K 5T6
THIS AMALGAMATION AGREEMENT made as of the ___ day of , A.D. 19-,

BETWEEN:

- • a body corporate incorporated under the laws of the
  Province of Saskatchewan,
  (hereinafter referred to as "."),

OF THE FIRST PART

- and - .

- • , a body corporate incorporated under the laws of the
  Province of Saskatchewan,
  (hereinafter referred to as "."),

OF THE SECOND PART

- and-

- • a body corporate incorporated under the laws of the
  Province of Saskatchewan,
  (hereinafter referred to as ".")

OF THE THIRD PART

WHEREAS • 's shareholders are • 's shareholder is • and • 's shareholders are • ;

AND WHEREAS • • • and • have agreed to amalgamate upon the terms and
  conditions hereinafter set forth;

NOW THEREFORE this Agreement witnesseth as follows:
1. In this Agreement, the expression "Amalgamated Corporation" means the corporation continuing from the amalgamation of $e_1$, $e_2$ and $e_3$, which are sometimes collectively referred to as the "Amalgamating Corporations", or singularly as an "Amalgamating Corporation".

2. $e_1$, $e_2$ and $e_3$ hereby agree to amalgamate under the provisions of The Business Corporations Act (Saskatchewan) (the "Act") and to continue as one corporation upon and subject to the conditions herein set forth.

3. The name of the Amalgamated Corporation shall be "$e_1$".

4. The first registered office of the Amalgamated Corporation shall be:

5. The number of directors of the Amalgamated Corporation shall be a minimum of one and a maximum of ten, the precise number to be determined from time to time by resolution of the Board of Directors of the Amalgamated Corporation, until the precise number is so determined, such number shall be deemed to be two.

6. The first directors of the Amalgamated Corporation, a majority of whom are resident Canadians, shall be the persons whose names, addresses and occupations appear below:

<table>
<thead>
<tr>
<th>Name</th>
<th>Resident</th>
<th>Occupation</th>
<th>Address</th>
</tr>
</thead>
</table>

and such directors shall hold office until the first annual meeting of the Amalgamated Corporation or until their successors are duly elected or appointed.
7. The Articles of Amalgamation of the Amalgamated Corporation shall be those attached hereto as Schedule "A".

8. The issued shares of • are:

(a)

The issued shares of • are as follows:

(b)

(c)

(d)

The issued shares of • are as follows:

(e)

(f)

(g)

(h)

(i)

9. Upon consummation of the amalgamation, the authorized, issued and outstanding shares of • shall be cancelled without any repayment of capital in respect thereof, and shall not be converted into shares of the Amalgamated Corporation.
10. Upon consummation of the amalgamation, the authorized, issued and outstanding shares of • shall be converted into ____ issued fully paid non-assessable _________ shares of the Amalgamated Corporation on the following basis:

   (i)
   (ii)
   (iii)

11. Upon consummation of the amalgamation, the authorized, issued and outstanding shares of • shall be converted into issued shares of the Amalgamated Corporation on the following basis:

   (a) •'s Class "A" Common Voting Shares shall be converted into ____ issued and fully paid non-assessable Common Shares of the Amalgamated Corporation on the following basis:

   (b) •'s Class "B" Preferred Non-Voting Shares shall be converted into ____ issued and fully paid non-assessable Class "A" Preference Shares of the Amalgamated Corporation on the following basis:

12. For greater certainty, any shares of one of the Amalgamating Corporations held by another Amalgamating Corporation shall, upon amalgamation, become, effective on the date of
amalgamation, cancelled without any repayment of capital in respect thereof and no such shares shall be converted into shares of the Amalgamated Corporation.

13. The parties hereby declare that the value of the shares of each Amalgamating Corporation used for the purpose of conversion of the shares of each Amalgamating Corporation to shares of the Amalgamated Corporation represent their best-estimate of the fair market value of each Amalgamating Corporation's shares as at the date of this agreement. The parties covenant and agree that if the Minister of National Revenue of Canada (hereinafter referred to as the "Minister") or any provincial taxing authority should assess or reassess any of the parties hereto, or one of the shareholders of the Amalgamated Corporation for any income tax, gift tax or succession duty or propose such an assessment or reassessment on the basis of a determination or assumption that the fair market value of the shares of any of the Amalgamating Corporations is not the amount so determined by the parties to be the fair market value of the shares of each Amalgamating Corporation, notwithstanding paragraphs 9, 10, and 11, the fair market value of the shares of each Amalgamating Corporation shall be deemed to be an amount determined as follows:

(a) If the Minister or the authority making or proposing such an assessment or reassessment also makes a determination of the fair market value of the shares of any or all of the Amalgamating Corporations and in the opinion of the Amalgamated Corporation and the shareholders of the Amalgamated Corporation, such determination is acceptable or accurate, the fair market value thereof shall be deemed to be the amount(s) so determined;

(b) The Amalgamating Corporation and the shareholders of the Amalgamating Corporation may dispute the amount(s) proposed by or determined by the Minister or authority in (a) and in such circumstances any settlement amounts accepted by the Amalgamated Corporation and the shareholders of the Amalgamated Corporation and the Minister or other authority shall be the fair market value of the shares of the Amalgamating Corporations;
(c) Failing such agreement, within ninety (90) days of an assessment being proposed or issued, the fair market value of the shares of the Amalgamating Corporations shall be determined by three (3) arbitrators, one to be appointed by ., one to be appointed by ., and one to be appointed by the two appointees, the decision of any two of whom shall be binding upon the parties. A submission under this paragraph shall be deemed to be a submission to arbitration within the provisions of *The Arbitration Act, 1992*, Saskatchewan; or

(d) The fair market value of the shares of the Amalgamating Corporations shall be determined by a competent tribunal after all appeals which the Amalgamated Corporation and its shareholders upon advice of counsel or the Minister pursue and the time within which any further appeal may be filed has expired.

14. If the fair market value of the shares of any of the Amalgamating Corporations is varied in the manner set out in the preceding paragraph, then the following adjustments shall be made retroactively, *nunc pro tunc*, to the date of this amalgamation:

(a) the authorized, issued and outstanding shares of any Amalgamating Corporation to be converted into issued shares of the Amalgamated Corporation as provided in paragraphs 9, 10 and 11, shall be adjusted so that the number of shares of the Amalgamated Corporation received by a shareholder of an Amalgamating Corporation on the conversion shall be increased or decreased to properly reflect the value of the shares of the Amalgamating Corporation so determined;

(b) notwithstanding subparagraph (a) hereof, any shares of one Amalgamating Corporation held by another Amalgamating Corporation shall, be cancelled without any repayment of capital in respect thereof, and no such shares shall be converted into shares of the Amalgamated Corporation;
(c) any additional shares issued on conversion as so determined shall be deemed to have been allotted to the shareholder of the Amalgamated Corporation as of the effective date of the amalgamation and a share certificate for the same shall forthwith be issued to the shareholder of the Amalgamated Corporation;

(d) any number of shares to be cancelled as a result of the adjustment provided for herein shall be effective as of the date of the amalgamation and the shareholder of the Amalgamated Corporation shall forthwith surrender the appropriate certificate to the Amalgamated Corporation in order to effect such cancellation and the Amalgamated Corporation shall re-issue a new share certificate representing the appropriate number of shares in the Amalgamated Corporation;

15. The stated capital of the Amalgamated Corporation shall be the aggregate of the stated capital of C and E. The total stated capital of the Amalgamated Corporation, upon amalgamation shall be $ __. The stated capital of each class of shares of the Amalgamated Corporation shall be as follows:

(a) Common Shares -

(b) Class "A" Preference Shares -

16. The "Paid-up Capital" for the purposes of The Income Tax Act (Canada) of all classes of shares of each Amalgamating Corporation shall be the aggregate of the Paid-Up Capital of all classes of shares of C and E. The total Paid-up Capital of all classes of the Amalgamated Corporation, upon amalgamation, shall be $ ____. The paid up capital of each class of shares of the Amalgamated Corporation shall be as follows:

(a) Common Shares -

(b) Class "A" Preference Shares -
17. The proposed general Bylaws of the Amalgamated Corporation are as set forth in the attachment annexed as Schedule liB”.

18. Each of ∙, ∙ and ∙ shall contribute to the Amalgamated Corporation all its property and assets, subject to all its liabilities.

19. The Amalgamated Corporation shall possess all the property, assets, rights, privileges and franchises and shall be subject to all the contracts, liabilities, debts and obligations of ∙, ∙ and ∙.

20. All rights of creditors against the property, assets, rights, privileges and franchises of ∙, ∙ and ∙ and all liens upon their properties, rights and assets, if any, shall be unimpaired by such amalgamation and all debts, contracts, liabilities and duties of ∙, ∙ and ∙ shall thenceforth attach to and may be enforced against the Amalgamated Corporation.

21. The officers of the Amalgamated Corporation shall be those persons set out below, holding the offices set opposite their respective names:

<table>
<thead>
<tr>
<th>Name of Officer</th>
<th>Office Held in Amalgamated Corporation</th>
</tr>
</thead>
</table>

22. The directors of the Amalgamated Corporation aforesaid shall be vested with the authority to manage the Amalgamated Corporation in accordance with and subject to The Business Corporations Act (Saskatchewan), the Articles of Amalgamation and the Bylaws of the Amalgamated Corporation.

23. This agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
24. This agreement shall be governed in accordance with the laws of the Province of Saskatchewan and the laws of Canada applicable therein.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

PER: __________________________
(seal)
PER: __________________________

PER: __________________________
(seal)
PER: __________________________

PER: __________________________
(seal)
PER: __________________________
1. Name of amalgamated Corporation: Corporation No.
   • LTD.

2. The classes and any maximum number of shares that the corporation is authorized to issue:
   The annexed Schedule "1" is incorporated in this form.

3. Restrictions. if any. on share transfers:
   The shares of the Corporation may be transferred only on approval of the directors.

4. Number (minimum or maximum number) of directors:
   Not less than one (1) nor more than ten (10) directors, as determined by the directors from time to time.

5. Restrictions. if any. on business the corporation may carry on or powers the corporation may exercise.
   None

6. Other provisions. if any:
   1. The number of shareholders of the Corporation is limited to 50.
   2. An invitation to the public to subscribe for securities of the Corporation is prohibited.
   3. The Corporation has a lien on a share registered in the name of a shareholder or his legal representative
      for any debt of that shareholder to the Corporation.

7. The amalgamation agreement has been approved by special resolutions of shareholders of each of the
   amalgamating corporations listed in Item 9 below in accordance with Section 177 of the Act.

8. The amalgamation has been approved by a resolution of the directors of each of the amalgamating corporations
   listed in Item 9 below in accordance with Section 178 of the Act. The articles of amalgamation set out herein are
   the same as the articles of incorporation of:

9. Name of Amalgamating Corporations:

   Corporations Corporation Number Signature Date Title
   • Ltd.
   • Inc.
   • Limited
The Corporation is authorized to issue three classes of shares, each having an unlimited number, consisting of Common Shares, Class A Preference Shares and Class B Preference Shares. The shares in the capital of the Corporation have attached thereto the rights, privileges, restrictions and conditions hereafter set forth.

Common Shares

1. Voting Rights:

   The holders of the Common Shares shall be entitled to receive notice of and to attend all meetings of the shareholders of the Corporation and shall have one vote for each Common Share held at all meetings of the shareholders of the Corporation, except for meetings at which only holders of another specified class of shares of the Corporation are entitled to vote separately as a class.

2. Dividends:

   Subject to the prior rights of the holders of the Class A Preference shares and Class B Preference shares with respect to priority in payment of dividends, the holders of Common Shares shall be entitled to receive dividends and the Corporation shall pay dividends thereon, as and when declared by the board of directors of the Corporation out of monies properly applicable to the payment of dividends, in such amount and in such form as the board of directors may from time to time determine.

3. Dissolution:

   In the event of the dissolution, liquidation or winding-up of the Corporation, whether voluntary or involuntary, or any other distribution of assets of the Corporation among its shareholders for the purpose of winding-up its affairs, subject to the prior rights of the holders of the Class A Preference shares and Class B Preference shares, the holders of the Common Shares shall be entitled to receive the remaining property and assets of the Corporation.

Class A Preference Shares

1. Dividends:

   The holders of the Class A Preference Shares, in priority to the Common Shares and Class B Preference shares, shall be entitled to receive and the Corporation shall pay thereon, as and when declared by the board of directors of the Corporation out of the monies of the Corporation properly applicable to the payment of dividends, fixed preferential non-cumulative cash dividends at the rate of $.08 per share per annum. The board of directors of the Corporation shall be entitled from time to time to declare part of the fixed preferential non-cumulative cash dividend for any fiscal year notwithstanding that such dividend for such fiscal year shall not be declared in full. If within four months after the expiration of any fiscal year of the Corporation the board of directors in its discretion shall not declare the said dividend or any part thereof on the Class A Preference Shares for such fiscal year then the rights of the holders of the Class A Preference Shares to such dividend or to any undeclared part thereof for such fiscal year shall be forever extinguished. The holders of the Class A Preference Shares shall not be entitled to any dividends other than or in excess of the preferential non-cumulative cash dividends hereinbefore provided for.

   Except with the consent in writing of the holders of all of the Class A Preference Shares outstanding, no dividends shall at any time be declared or paid on or set apart for payment on the Common shares and Class B Preference shares and the Corporation shall not call for redemption or purchase or
otherwise acquire for value any Common Shares and Class B Preference shares so long as any Class A Preference Shares are outstanding, unless and until the fixed preferential non-cumulative cash dividend has been declared and paid or set apart for payment for the current fiscal year of the Corporation on all the Class A Preference Shares outstanding.

2. Dissolution:

In the event of the dissolution, liquidation or winding-up of the Corporation or other distribution of assets of the Corporation among shareholders for the purpose of winding-up its affairs, the holders of the Class A Preference Shares shall be entitled to receive from the assets and property of the Corporation for each Class A Preference Share held by them respectively the sum of $1.00 together with all declared and unpaid preferential non-cumulative cash dividends thereon, before any amount shall be paid or any property or assets of the Corporation distributed to the holders of any Common Shares and Class B Preference shares. After payment to the holders of the Class A Preference Shares of the amount so payable to them as above provided, they shall not be entitled to share in any further distribution of the property or assets of the Corporation.

3. Redemption by the Corporation:

Subject to the provisions of The Business Corporations Act (Saskatchewan), the Corporation may, upon giving notice as hereinafter provided, redeem at any time the whole or from time to time any part of the then outstanding Class A Preference Shares on payment for each share to be redeemed of the sum of $1.00, together with all declared and unpaid preferential non-cumulative cash dividends thereon.

In the case of the redemption of Class A Preference Shares under the provisions hereof, the Corporation shall at least ten days before the date specified for redemption mail to each person who at the date of mailing is a registered holder of Class A Preference Shares to be redeemed a notice in writing of the intention of the Corporation to redeem such Class A Preference Shares. Such notice shall set out the redemption price and the date on which redemption is to take place and, if only part of the shares held by the person to whom it is addressed is to be redeemed, the number thereof so to be redeemed. On or after the date so specified for redemption, the Corporation shall pay or cause to be paid to or to the order of the registered holders of the Class A Preference Shares to be redeemed the redemption price thereof on presentation and surrender of the certificates representing the Class A Preference Shares called for redemption at the registered office of the Corporation, or at any other place or places designated in the notice of redemption. If only a part of the shares represented by any certificate is redeemed, a new certificate for the balance shall be issued at the expense of the Corporation. On and after the date specified for redemption in any such notice the Class A Preference Shares called for redemption shall cease to be entitled to dividends and the holders thereof shall not be entitled to exercise any of the rights of shareholders in respect thereof unless payment of the redemption price shall not be made upon presentation of certificates in accordance with the foregoing provisions, in which case the rights of the shareholders shall remain unaffected.

The holders of the Class A Preference Shares may waive their right to notice of redemption by the Corporation as hereinbefore provided.

4. Redemption at the Option of the Holders of the Class A Preference Shares:

Subject to the provisions of The Business Corporations Act (Saskatchewan), every registered holder of Class A Preference Shares may at his, her or its option and in the manner hereinafter provided, require the Corporation to redeem at any time all or any part of the Class A Preference Shares held by such holder upon payment for each share to be redeemed of the sum of $1.00 together with all declared and unpaid preferential non-cumulative cash dividends thereon.
In the case of the redemption of Class A Preference Shares under the provisions of this clause 4, the holder thereof shall surrender the certificate or certificates representing such Class A Preference Shares at the registered office of the Corporation accompanied by a notice in writing ("Redemption Notice") signed by such holder requiring the Corporation to redeem all or a specified number of the Class A Preference Shares represented thereby. As soon as practicable following receipt of the Redemption Notice, the Corporation shall pay or cause to be paid to or to the order of the registered holder of the Class A Preference Shares to be redeemed the redemption price thereof. If only a part of the shares represented by any certificate is redeemed, a new certificate for the balance shall be issued at the expense of the Corporation.

5. Voting Rights:

Except where specifically provided by The Business Corporations Act (Saskatchewan), the holders of the Class A Preference Shares shall not be entitled as such to receive notice of or to attend any meeting of the shareholders of the Corporation and shall not be entitled to vote at any such meeting.

Class B Preference Shares

1. Dividends:

The holders of the Class B Preference Shares, in priority to the Common Shares, but subject to the Class A Preference Shares, shall be entitled to receive and the Corporation shall pay thereon, as and when declared by the board of directors of the Corporation out of the monies of the Corporation properly applicable to the payment of dividends, fixed non-cumulative cash dividends at the rate of $0.08 per share per annum. The board of directors of the Corporation shall be entitled from time to time to declare part of the fixed non-cumulative cash dividend for any fiscal year notwithstanding that such dividend for such fiscal year shall not be declared in full. If within four months after the expiration of any fiscal year of the Corporation the board of directors in its discretion shall not declare the said dividend or any part thereof on the Class B Preference Shares for such fiscal year then the rights of the holders of the Class B Preference Shares to such dividend or to any undeclared part thereof for such fiscal year shall be forever extinguished. The holders of the Class B Preference Shares shall not be entitled to any dividends other than or in excess of the preferential non-cumulative cash dividends hereinbefore provided for.

Except with the consent in writing of the holders of all of the Class B Preference shares outstanding, no dividends shall at any time be declared or paid on or set apart for payment on the Common shares and the Corporation shall not call for redemption or purchase or otherwise acquire for value any Common Shares so long as any Class B Preference shares are outstanding, unless and until the fixed preferential non-cumulative cash dividend has been declared and paid or set apart for payment for the current fiscal year of the Corporation on all the Class B Preference shares outstanding.

2. Dissolution:

In the event of the dissolution, liquidation or winding-up of the Corporation or other distribution of assets of the Corporation among shareholders for the purpose of winding-up its affairs, the holders of the Class B Preference Shares shall be entitled to receive from the assets and property of the Corporation for each Class B Preference Share held by them respectively the sum of $1.00 together with all declared and unpaid non-cumulative cash dividends thereon, before any amount shall be paid or any property or assets of the Corporation distributed to the holders of any Common Shares, but after the holders of the Class A Preference Shares have received their entitlement. After payment to the holders of the Class B Preference Shares of the amount so payable to them as above provided, they shall not be entitled to share in any further distribution of the property or assets of the Corporation.
3. Redemption by the Corporation:

Subject to the provisions of The Business Corporations Act (Saskatchewan), the Corporation may, upon giving notice as hereinafter provided, redeem at any time the whole or from time to time any part of the then outstanding Class B Preference Shares on payment for each share to be redeemed of the sum of $1.00, together with all declared and unpaid non-cumulative cash dividends thereon.

In the case of the redemption of Class B Preference Shares under the provisions hereof, the Corporation shall at least ten days before the date specified for redemption mail to each person who at the date of mailing is a registered holder of Class B Preference Shares to be redeemed a notice in writing of the intention of the Corporation to redeem such Class B Preference Shares. Such notice shall set out the redemption price and the date on which redemption is to take place and, if only part of the shares held by the person to whom it is addressed is to be redeemed, the number thereof so to be redeemed. On or after the date so specified for redemption, the Corporation shall pay or cause to be paid to or to the order of the registered holders of the Class B Preference Shares to be redeemed the redemption price thereof on presentation and surrender of the certificates representing the Class B Preference Shares called for redemption at the registered office of the Corporation, or at any other place or places designated in the notice of redemption.

If only a part of the shares represented by any certificate is redeemed, a new certificate for the balance shall be issued at the expense of the Corporation. On and after the date specified for redemption in any such notice the Class B Preference Shares called for redemption shall cease to be entitled to dividends and the holders thereof shall not be entitled to exercise any of the rights of shareholders in respect thereof unless payment of the redemption price shall not be made upon presentation of certificates in accordance with the foregoing provisions, in which case the rights of the shareholders shall remain unaffected.

The holders of the Class B Preference Shares may waive their right to notice of redemption by the Corporation as hereinbefore provided.

4. Redemption at the Option of the Holders of the Class B Preference Shares:

Subject to the provisions of The Business Corporations Act (Saskatchewan), every registered holder of Class B Preference Shares may at his, her or its option and in the manner hereinafter provided, require the Corporation to redeem at any time all or any part of the Class B Preference Shares held by such holder upon payment for each share to be redeemed of the sum of $1.00 together with all declared and unpaid non-cumulative cash dividends thereon.

In the case of the redemption of Class B Preference Shares under the provisions of this clause 4, the holder thereof shall surrender the certificate or certificates representing such Class B Preference Shares at the registered office of the Corporation accompanied by a notice in writing ("Redemption Notice") signed by such holder requiring the Corporation to redeem all or a specified number of the Class B Preference Shares represented thereby. As soon as practicable following receipt of the Redemption Notice, the Corporation shall pay or cause to be paid to or to the order of the registered holder of the Class B Preference Shares to be redeemed the redemption price thereof. If only a part of the shares represented by any certificate is redeemed, a new certificate for the balance shall be issued at the expense of the Corporation.

5. Voting Rights:

Except where specifically provided by The Business Corporations Act (Saskatchewan), the holders of the Class B Preference Shares shall not be entitled as such to receive notice of or to attend any meeting of the shareholders of the Corporation and shall not be entitled to vote at any such meeting.
(Letter Requesting Special Dating of Certificate of Amalgamation pursuant to Section 255(3))

Dear Sir/Madam:

Re: Amalgamation of - Ltd., - Inc. and • Limited
Our File:  

Please accept this letter as a request, pursuant to Section 255(3) of The Business Corporations Act, for the dating of the Certificate of Amalgamation respecting the amalgamation of the three aforementioned companies to be the - day of - , 199-.

Yours truly,

Director, Corporations Branch
2nd Floor
1871 Scarth Street
REGINA, Saskatchewan
54P 3V7

Doc 11109038
Certificate of Amalgamation

The Business Corporations Act

I hereby certify that:

results this day from an amalgamation, under section 179 of the Act, of the following corporations:

Given under my hand and seal
this 1st day of November - 1995

[Signature]

Philip J. Flory, Director
RESOLUTION OF THE DIRECTORS OF - LTD., PASSED BY THE SIGNATURES OF ALL OF THE
DIRECTORS, ON THE - DAY OF -, 19-, PURSUANT TO THE PROVISIONS OF THE BUSINESS
CORPORATIONS ACT.

AMALGAMATION

WHEREAS it is desirable that the Corporation amalgamate with its wholly-owned
subsidiary corporation, - Inc. pursuant to section 178(1) of The Business Corporations Act of
Saskatchewan;

NOW, THEREFORE, BE IT RESOLVED:

THAT the amalgamation of the Corporation and - Inc. pursuant to subsection (1) of section 178
thereof be and the same is hereby approved;

THAT, subject to the issuance of a Certificate of Amalgamation pursuant to
section 179 of The Business Corporations Act, all shares of the authorized capital
of the subsidiary corporation, including all such shares which have been issued
and are outstanding at the date hereof, be and the same are hereby cancelled
without any repayment of capital in respect thereof;

THAT Articles of Amalgamation of the amalgamated corporation shall be the same
as the Articles of Continuance of the Corporation dated -, 199- as amended by
Articles of Amendment dated -, 199-;

THAT no securities shall be issued by the amalgamated corporation in connection
with the amalgamation; and

THAT anyone officer of the Corporation be and is hereby authorized to do all
things and to execute all instruments and documents necessary or desirable to
carry out and to give effect to the foregoing.

WITNESS the signature of all of the Directors of the Corporation the day and year set
forth above.
(Short Form Amalgamation Agreement)

THIS AGREEMENT MADE AS OF THE Day of -, 199-.

BETWEEN:

., a body corporate incorporated under the laws
of Saskatchewan with head office at the City of
Regina, in the said Province,
(hereinafter referred to as "-"),

OF THE FIRST PART

- and -

., a body corporate incorporated under the laws
of Saskatchewan with head office at the City of
Regina, in the said Province,
(hereinafter referred to as "."),

OF THE SECOND PART

WHEREAS - is the wholly-owned subsidiary of • and the parties have
agreed to amalgamate upon the terms and conditions hereinafter set forth;

NOW THEREFORE this Agreement witnesseth as follows:

1. In this Agreement, the expression "Amalgamated Corporation" means the
corporation continuing from the amalgamation of • and •.

2. • and • hereby agree to amalgamate under the provisions of Section 178
of The Business Corporations Act (Saskatchewan) and to continue as one
corporation upon and subject to the conditions herein set forth.

3. The name of the Amalgamated Corporation shall be ..
4. The registered office of the Amalgamated Corporation shall be at Saskatchewan.

5. The Articles of Amalgamation of the Amalgamated Corporation shall be those of •, attached hereto as Schedule "A".

6. The names and addresses of the first directors of the Amalgamated Corporation shall be as set out in the attachment to this Agreement marked as Schedule "B".

7. The issued shares of • shall be cancelled without any repayment of capital and no security shall be issued by the Amalgamated Corporation in connection with the amalgamation.

8. The Bylaws of •, a copy of which are set forth in the attachment to this Agreement marked as Schedule "C", shall be the bylaws of the Amalgamated Corporation.

9. Each of • and • shall contribute to the Amalgamated Corporation all of its property and assets, subject to all of its liabilities.

10. The Amalgamated Corporation shall possess all the property, assets, rights, privileges and franchises and shall be subject to all the contracts, liabilities, debts and obligations of • and •.

11. All rights of creditors against the property, assets, rights, privileges and franchises of • and • and all liens upon their properties, rights and assets, if any, shall be unimpaired by such amalgamation and all debts, contracts, liabilities and duties of • and • shall thenceforth attach to and may be enforced against the Amalgamated Corporation.
12. The officers of the Amalgamated Corporation shall be those persons set out below, holding the offices set opposite their respective names:

<table>
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<tr>
<th>Name of Officer</th>
<th>Office Held in Amalgamated Corporation</th>
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13. The aforesaid officers of the Amalgamated Corporation shall be vested with the authority to manage the Amalgamated Corporation in accordance with and subject to The Business Corporations Act, the Articles of Amalgamation and the Bylaws of the Amalgamated Corporation.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

Per: __________________________

Per: __________________________
1. Name of amalgamated Corporation: Corporation No.:

2. The classes and any maximum number of shares that the corporation is authorized to issue:

3. Restrictions, if any, on share transfers:

4. Number (or minimum or maximum number) of directors:

5. Restrictions, if any, on businesses the corporation may carry on or on powers the corporation may exercise:

6. Other provisions, if any:

7. The amalgamation agreement has been approved by special resolutions of shareholders of each of the amalgamating corporations listed in Item 9 below in accordance with Section 177 of the Act.

8. The amalgamation has been approved by a resolution of the directors of each of the amalgamating corporations listed in Item 9 below in accordance with Section 178 of the Act. The articles of amalgamation set out herein are the same as the articles of incorporation of:

9. 

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<th>Name of Amalgamating Corporations</th>
<th>Signature</th>
<th>Office held</th>
<th>Date</th>
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Doc 51 109041
(Statutory Declaration of a Director of One of the Amalgamating Corporations Pursuant to Section 179(2))

CANADA

PROVINCE OF SASKATCHEWAN

TO WIT:

STATUTORY DECLARATION

I, ., of the • of •, in the • of •, DO SOLEMNLY DECLARE THAT:

1. I am a Director and President of •, one of the amalgamating corporations (hereinafter called the "Corporation"), the other amalgamating corporations being. and ., and as such have personal knowledge of the matters herein declared to.

2. I have conducted such examinations of the books and records of the Corporation and have made such inquiries and investigations as are necessary to enable me to make this Declaration.

3. I have satisfied myself, as of ., 199., that there were reasonable grounds for believing that:

(a) The Corporation is, and the amalgamated corporation resulting from the amalgamation, namely, •, will be, able to pay its liabilities as they become due;

(b) The realizable value of the assets of the amalgamated corporation will not be less than the aggregate of its liabilities and stated capital of all classes.

4. There were as of •, 199, reasonable grounds for believing that no creditor will be prejudiced by the amalgamation.

5. I make this solemn declaration conscientiously believing the same to be true and knowing that it is of the same force and effect as if made under and by virtue of the Canada Evidence Act.

DECLARED BEFORE ME at the City of Saskatoon, in the Province of Saskatchewan, this ___ day of ___, A.D. 199•.

A COMMISSIONER FOR OATHS in and for the Province of Saskatchewan.

My Commission expires

OR being a Solicitor -
ON THE MATTER OF THE BUSINESS CORPORATIONS ACT (SASKATCHEWAN)
AND THE ARTICLES OF AMALGAMATION
OF • Ltd. AND. Inc.

TO WIT:

STATUTORY DECLARATION

I, , of the. of • , in the. of. ,Businessmen, MAKE OATH AND SAY THAT:

1. I am a Director and Officer of each of • Ltd. and • Inc., and as such have a personal knowledge of the facts and matters hereinafter deposed to, except where stated to be on information and belief and where so stated I do verily believe them to be true.

2. Effective. , 199., • Ltd. wishes to amalgamate with. Inc., under s. 178(1) of The Business Corporations Act. • Ltd. being a Saskatchewan corporation and the sole shareholder of • Inc.

3. Each amalgamating corporation is, and the amalgamated corporation will be, able to pay its liabilities as they become due;

4. The realizable value of the amalgamated corporation's assets will not be less than the aggregate of its liabilities and stated capital of all classes.

5. No creditor will be prejudiced by the amalgamation.

6. I make this Statutory Declaration pursuant to s. 178(1) of The Business Corporations Act of the Province of Saskatchewan for the purpose of persuading the Director of Corporations for the Province of Saskatchewan to issue Articles of Amalgamation amalgamating. Ltd. and. Inc.

7. I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath by virtue of the Canada Evidence Act.

DECLARED BEFORE ME at the City of Saskatoon, in the Province of Saskatchewan, this ____ day of __________, A.D. 199 •.

A COMMISSIONER FOR OATHS in and for the Province of Saskatchewan.
My Commission expires _
• OR being a Solicitor -

Doc 81109020
APPENDIXB

CONTINUANCE PRECEDENTS

The following continuance precedent documents were prepared by Dan Anderson and Kurt Wtermute of MacPherson Leslie & Tyerman LLP for their Saskatchewan Bar Admission Course paper entitled "Corporate Changes" and are included in this paper with their kind permission.
APPENDIXB

CONTINUANCE PRECEDENTS

The following continuance precedent documents were prepared by Dan Anderson and Kurt Wintermute of MacPherson Leslie & Tyerman LLP for their Saskatchewan Bar Admission Course paper entitled "Corporate Changes" and are included in this paper with their kind permission.
(Letter to Saskatchewan Director, Corporations Branch, Listing Filing Requirements for Continuance Out of Saskatchewan)

- , 199-

Corporations Branch
1871 Smith Street
REGINA, Saskatchewan
S4P 3V7

Attention: -

Dear -:

Re: - Inc.' Proposed Continuance

With reference to the above, please find enclosed the following:

1. Statement of Proposed Continuance in Another Jurisdiction, in duplicate;

2. Waiver of Dissent Right by Shareholders;

3. Our cheque in the amount of $260.00, representing payment of your fees for registration and publication of the enclosed Statement of Proposed Continuance.

We trust that the enclosed is satisfactory. However should you have any questions or comments, please do not hesitate to contact me.

Yours truly,
INC., incorporated under the laws of Saskatchewan, requests the approval of the Director in connection with its proposed continuance under the laws of • and makes the following statements:

1. The corporation is not in default in filing annual returns or notices under The Business Corporations Act.

2. There are no actions, suits or proceedings pending against the corporation nor any unsatisfied judgments or any orders outstanding against the corporation, except as follows:

   NIL

3. A notice of a meeting of shareholders, in accordance with subsection 182(3), stating that a dissenting shareholder is entitled to be paid the fair value of his shares in accordance with section 184, was sent to each shareholder of the corporation.

   or

   Notice of a meeting of shareholders, in accordance with subsection 182(3), stating that a dissenting shareholder is entitled to be paid the fair value of his shares in accordance with section 184 was waived by all of the shareholders of the corporation.

4. On •, 199., the shareholders authorized the corporation to request continuance under the laws of the above-mentioned jurisdiction in accordance with subsection 182(5).

5. The proposed continuance will not adversely affect shareholders of the corporation. No shareholder has objected or dissented under section 184 to the proposed continuance except the following:

   NIL

6. The proposed continuance will not adversely affect creditors of the corporation. The total liability of the corporation to all creditors as at •, 199., was •. The names and addresses of, and the amount owing to, the major creditors of the corporation (being those to whom • or more is owed) are:

7. Additional information, if any:

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<th>Date</th>
<th>Name</th>
<th>Description of Office</th>
<th>Signature</th>
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</thead>
</table>

Doc 51108941
(Waiver of Dissent Right by Shareholders of Corporation)

WAIVER

We, the undersigned, being all of the shareholders of (the “Corporation”) hereby:

(a) waive the notice for Shareholders' meetings prescribed by The Business Corporations Act with respect to the passage of a resolution by the Corporation authorizing the application by the Corporation for continuance under the laws of -; and

(b) acknowledge that we are fully cognizant of our rights to dissent to such a resolution and require our shares in the capital of the Corporation to be purchased in accordance with the provisions of The Business Corporations Act, and we confirm that we take no objection to such resolution and we waive our said rights to dissent to same.

WITNESS the signatures of all of the shareholders of the Corporation as of the - day of -, 19-.
RESOLUTION OF THE SHAREHOLDERS OF e, PASSED BY THE SIGNATURES OF ALL OF THE SHAREHOLDERS OF THE CORPORATION ON THE e DAY OF e, 1ge, PURSUANT TO THE PROVISIONS OF THE BUSINESS CORPORATIONS ACT.

CONTINUANCE OF THE CORPORATION IN e

WHEREAS it is considered desirable that the Corporation apply to the Director, Corporations Branch, for the Province of e to be continued under the [Name of Other Province’s Business Corporations Act], (e), pursuant to the provisions of Section 182 of The Business Corporations Act (Saskatchewan) and Section e of the [Name of Other Province’s Business Corporations Act], (e);

NOW, THEREFORE, BE IT RESOLVED AS A SPECIAL RESOLUTION:

THAT approval be and the same is hereby given to the application by the Corporation for continuance under the [Name of Other Province’s Business Corporations Act], (e) pursuant to the provisions of Section 182 of The Business Corporations Act (Saskatchewan) and Section e of the [Name of Other Province’s Business Corporations Act], (e);

THAT Articles of Continuance of the Corporation in the form annexed hereto as Schedule “A” be and the same are hereby approved for use in connection with the application for continuance aforesaid;

THAT any officer or director of the Corporation is hereby authorized to execute and deliver all such documents, applications and writings as may be necessary to give effect to this resolution.

WITNESS the signatures of all of the Shareholders of the Corporation the day and year set forth above.

______________________________

e

Doc 51109608
Certificate of Authorization

The Business Corporations Act

This is to certify that

may apply to the appropriate official of the

requesting that the corporation be continued as if it had been incorporated under the laws of that jurisdiction.

This authorization expires six months from this date.

Given under my hand and seal

this ______ day

of November – 1996

Philip J. Flory, Director
Certificate of Discontinuance

The Business Corporations Act

I hereby certify that

is this day discontinued under section 182 of the Act and continued under the laws of another jurisdiction as specified in the attached notice.

Given under my hand and seal
this _______ 29th _______ day
of ___________ November __ 1996

Philip J. Flory, Director
(Letter to Exporting Jurisdiction, Listing All Filing Requirements for Continuance from Saskatchewan into Another Jurisdiction)

- , 199-

Industry Canada
Corporations Directorate
9th Floor, Journal Tower South
365 Laurier Avenue West
OTTAWA, Ontario
K1A OC8

Dear Sirs:

Re: Continuance of - Inc. from Saskatchewan

With reference to the above, please find enclosed the following:

1. Articles of Continuance, in duplicate;
2. Notice of Registered Office, in duplicate;
3. Notice of Directors, in duplicate;
4. Certificate of Authorization from the Saskatchewan Corporations Branch;
5. NUANS report with attached name decision from your office; and
6. Our cheque in the amount of $200.00, representing payment of your fees for registration of the enclosed Articles of Continuance.

We trust that all of the enclosed is satisfactory and look forward to receipt of filed documents at your earliest convenience. Should you have any questions or comments, please contact me as soon as possible. Thank you.

Yours truly,
REGISTERED

December 19, 1996

Macpherson Leslie Tyerman
1500 - 410 - 22nd Street East
Saskatoon, SK
S7K 5T3

Attention:

Dear

Enclosed herewith is the Certificate of Discontinuance confirming the continuance of the above-named corporation as a Canada corporation and its discontinuance as a Saskatchewan corporation.

Please note that if the corporation still carries on any business in Saskatchewan, it must maintain its registration. Although the corporation ceased to be a Saskatchewan corporation, it is deemed to be registered as an extra-provincial corporation for a period of 60 days from the date of its continuance under the laws of that other jurisdiction. But, unless a fee of $50.00 and the enclosed Power of Attorney is received within the 60 day period, the name of the corporation will be struck off the Register. The fee to restore the name of the corporation to the Register upon the expiry of the period is $260.00.

It will be unlawful for the corporation to carry on business in Saskatchewan should its name be struck off. Section 299 of the Act sets out the penalties for carrying on business while unregistered.

Yours truly,

PJF/pf
Director

Encl.
THE BUSINESS CORPORATIONS ACT
GENERAL ADMINISTRATIVE REQUIREMENTS
EXTRA-PROVINCIAL CORPORATIONS

The provisions below are for general guidance only and do not necessarily cover all requirements.

Every extra-provincial corporation (a body corporate incorporated otherwise than by or under an Act of the Legislature of Saskatchewan) registered in Saskatchewan is required to:

1. Set out its name in legible characters in all contracts, invoices, negotiable instruments and orders for goods and services issued or made by or on behalf of the corporation. Section 267
2. Register under The Business Names Registration Act any name other than its corporate name under which the corporation carries on business or identifies itself. Section 267
3. Appoint one or more individuals who reside in Saskatchewan as Power of Attorney for the purpose of receiving service of process in all suits and proceedings by or against the corporation within Saskatchewan. No Fee. Section 268
4. Within 15 days, if for any reason the Power of Attorney becomes invalid or ineffectual, ego the attorney named ceases to reside in Saskatchewan or dies or resigns, appoint and file another Power of Attorney. No Fee. Section 268
5. Within 15 days after the change, send to the Director notice of any change:
   (a) in the address of its head office;
   (b) in the address of its attorney;
   (c) of its directors. Section 270
6. Within 30 days, together with the prescribed fee, send a copy of any amendment to its articles which effects:
   (a) a name change;
   (b) an amalgamation with one or more other corporations;
   (c) a continuance under the laws of another jurisdiction. Section 271
7. File an annual return on or before the last day of the month following the anniversary month of incorporation, except in the year of registration. Preprinted forms will be send out prior to the anniversary date. Fee: $50.00. Section 273

A copy of the Act and Regulations may be obtained by writing to or picked up in person at:
Queen's Printer
Main Floor, 1871 Smith Street
Regina, Sask.
S4P 3V7
(306)787-6894
Rev.D7/96
1. Name of Corporation:

2. Address of registered or head office:

3. Address of principal office, if any, in Saskatchewan:

4. Corporate History:

5. Main types of business carried on:
   (a)
   (b)
   (c)

6. Documents attached are:
   (a) power of attorney in accordance with Section 268;
   (b) certificate of status.

7. The directors of the corporation are:

<table>
<thead>
<tr>
<th>Full Name</th>
<th>Address</th>
<th>Occupation</th>
</tr>
</thead>
</table>

   Date | Name | Office Held | Signature

Doc41106846
Know all men by these presents that:
(hereinafter called the "corporation") hereby appoints:

to act as its attorney for the purpose of receiving service of process in all suits and proceedings by or against the corporation within Saskatchewan and for the purpose of receiving all lawful notices; and the corporation does hereby declare that service of process in respect of such suits and proceedings, and of such notices, upon the attorney are legal and binding to all intents and purposes whatsoever.

If more than one person is hereby appointed, attorney, anyone of them, without the others, may act as true and lawful attorney of the corporation.

This appointment revokes all previous appointments.

Consent to act as Attorney

(see the annexed Schedule 1 incorporated in this form).
SCHEDULE 1

CONSENT TO ACf AS ATTORNEY.

I, •, of (Law Firm), (Address), hereby consent to act as the attorney pursuant to the aforementioned power of attorney.

DATED this day of 199_


CONSENT TO ACf AS ATTORNEY

I, •, of (Law Firm), (Address), hereby consent to act as the attorney pursuant to the aforementioned power of attorney.

DATED this day of 199_


CONSENT TO ACf AS ATTORNEY

I, •, of (Law Firm), (Address), hereby consent to act as the attorney pursuant to the aforementioned power of attorney.

DATED this day of 199_
Certificate of Registration

The Business Corporations Act

I hereby certify that

is this day registered under The Business Corporations Act.

Given under my hand and seal

this_ __12th___ day

of ___September___ 19__94___

Philip J. Flory, Director
Dear Sir:

Re: • Ltd. - Continuance into Saskatchewan

Our File: •

With respect to the continuance of • Ltd. in the Province of Saskatchewan, we enclose the following:

1. Letter of "no objection" from Corporations Branch, in duplicate;
2. Certificate of Status;
3. Certified copy of the charter documents;
4. Articles of Continuance, in duplicate;
5. Notice of Registered Office, in duplicate;
6. Notice of Directors, in duplicate;
7. Statement of Continuance, in duplicate;
8. Cheque in the amount of $250.00.

If you find the enclosures to be in order, kindly issue and provide us with your Certificate of Continuance together with duplicate filed copies of the documentation referred to above.

In connection with the re-registration of the Corporation in the Province of •, will you also kindly provide us with a certified copy of the charter documents and a Certificate of Status for the Corporation. Thank you.

Yours truly,
Corporations Branch

Regina, Saskatchewan
S4P 3V7

Dear Sir:

RE: Corporate Access No. #

I am informed that the above Alberta corporation intends to apply to SASKATCHEWAN, pursuant to Section 182 of the Business Corporations Act of Alberta for export.

I have no objection to , applying for an instrument of export, continuing the corporation as if it had been incorporated under the laws of SASKATCHEWAN.

Yours truly

[Signature]

Office of the Registrar of Corporations

/plé
1. Name of Corporation:

2. The municipality in which the registered office is to be situated:

3. The classes and any maximum number of shares that the corporation is authorized to issue:

4. Restrictions, if any, on share transfers:

5. Number (or minimum and maximum number) of directors:

6. Restrictions, if any, on businesses the corporation may carry on or powers the corporation may exercise:

7. Other provisions if any:

<table>
<thead>
<tr>
<th>Date</th>
<th>Name</th>
<th>Description of Office</th>
<th>Signature</th>
</tr>
</thead>
</table>

Saskatchewan
Consumer and
Commercial Affairs
Corporations
Branch
1. Name of Corporation:

2. Corporate History:

   Incorporate under the Companies Act of Alberta on the day of , 199 as Ltd. and on the day of , 199, the company was continued under the Business Corporations Act of Alberta. The company name was changed to Inc. on the day of , 199.

3. Main types of business carried on:
   (a) 
   (b) 
   (c)

4. Other Information:

<table>
<thead>
<tr>
<th>Date</th>
<th>Name</th>
<th>Description of Office</th>
<th>Signature</th>
</tr>
</thead>
</table>

Coo a1108951
RESOLUTION OF THE SHAREHOLDERS OF e, PASSED BY THE SIGNATURES OF ALL OF THE
SHAREHOLDERS OF THE CORPORATION ON THE e DAY OF e, 1ge, PURSUANT TO THE
PROVISIONS OF THE BUSINESS CORPORATIONS ACT.

CONTINUANCE OF THE CORPORATION IN e

WHEREAS it is considered desirable that the Corporation apply to the Director,
Corporations Branch for the Province of Saskatchewan, to be continued in the Province of
Saskatchewan, pursuant to the provisions of Section 181 of The Business Corporations Act
(Saskatchewan) and Section e of the [Name of Other Province's Business Corporations Act
(en;

NOW, THEREFORE, BE IT RESOLVED AS A SPECIAL RESOLUTION:

THAT approval be and the same is hereby given to the application by the Corporation
for continuance in the Province of Saskatchewan pursuant to the provisions of Section
1810f The Business Corporations Act (Saskatchewan) and Section e of the [Name of Other Province's Business Corporations Act (en.

THAT Articles of Continuance of the Corporation in the form annexed hereto as
Schedule "A" be and the same are hereby approved for use in connection with
the application for continuance aforesaid;

THAT any officer or director of the Corporation is hereby authorized to execute
and deliver all such documents, applications and writings as may be necessary
to give effect to this resolution.

WITNESS the signatures of all of the Shareholders of the Corporation the day and year
set forth above.

[Signatures]

e

Doc s 1108942
Corporation No.

I hereby certify that

is this day continued, pursuant to section 181 of The Business Corporations Act, as set out in the attached Articles of Continuance.

Given under my hand and seal this
Corporation No.

I hereby certify that

is a subsisting corporation under the laws of Saskatchewan and its name is on the Register of Corporations.

. Given under my hand and seal this