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CHAPTER F-13.1

FOREIGN RESIDENT CORPORATIONS ACT

- 1. In this Act**
- Definitions
- (a) “foreign corporation” means a company or corporation or any other incorporated body that
- foreign corporation
- (i) is organized and exists under the laws of any jurisdiction other than Prince Edward Island,
- (ii) has determined to protect its interests in time of war or other emergency by transferring its registered office to Prince Edward Island;
- (b) “foreign resident corporation” means a company or corporation that has been issued a certificate under section 4;
- foreign resident corporation
- (c) “jurisdiction” means a kingdom, empire, republic, commonwealth, state, dominion, province, territory, colony, possession, or protectorate or any part thereof;
- jurisdiction
- (d) “listed directors” means the directors whose names have been submitted to the Minister pursuant to section 3;
- listed directors
- (e) “listed directors and officers” means the directors and officers whose names have been submitted to the Minister pursuant to section 3;
- listed directors and officers
- (f) “Minister” means the Attorney General;
- Minister
- (g) “original jurisdiction” means the jurisdiction under the laws of which the foreign corporation was created;
- original jurisdiction
- (h) “registered office” means the head office, siege social or chief place of business of a foreign corporation;
- registered office
- (i) “war or other emergency” includes
- war or other emergency
- (i) war or armed conflict,
- (ii) revolution or insurrection,
- (iii) invasion or occupation by foreign military forces,
- (iv) rioting or civil commotion of an extended nature,
- (v) domination by a foreign power,
- (vi) expropriation, nationalization or the impairment of the institution of private property held anywhere in the world,
- (vii) unlawful death of a head of state,
- (viii) the immediate threat of any of the foregoing. 1992, c.28, s.1; 1993, c.29, s.4; 1997,c.20,s.3; 2000,c.5,s.3.

Application

2. A foreign corporation may apply to the Minister to transfer its domicile, including its registered office, into Prince Edward Island and to operate within Prince Edward Island as a foreign resident corporation as defined and permitted under the provisions of this Act so long as the laws of the original jurisdiction do not expressly prohibit such transfer. 1992, c.28, s.2.

Supplementary information

3. (1) An application referred to in section 2 shall be accompanied by

- (a) a copy of the charter, articles of incorporation or other documents evidencing the incorporation of the foreign corporation;
- (b) a copy of that portion of the laws of the original jurisdiction that defines the terms of the creation and legal existence of the foreign corporation;
- (c) a list of the officers and directors of the foreign corporation who are to act as such within Prince Edward Island and a statement
 - (i) defining the authority which each shall have in the operation of the foreign resident corporation, and
 - (ii) setting out the manner in which the successors of one or more of the officers and directors are to be appointed in the event of death or disability or refusal or inability to act;
- (d) the address of the proposed registered office of the foreign corporation in Prince Edward Island and the name and address of a person resident in Prince Edward Island upon whom notices and other documents may be served on its behalf; and
- (e) a certificate from a member of the diplomatic mission or consular post established in Canada by the original jurisdiction that as a representative of the original jurisdiction and in its name
 - (i) he or she approves and recognizes the validity of each document submitted by the foreign corporation,
 - (ii) he or she recognizes that the foreign corporation was validly created and is validly subsisting,
 - (iii) he or she affirms that the officers and directors listed in accordance with clause (d) may in accordance with their defined authority
 - (A) validly receive, control and dispose of any property of the foreign corporation, in its name or on its behalf,
 - (B) make contracts in the name of the foreign corporation, and
 - (C) otherwise conduct the business of the foreign corporation after the transfer of its registered office to Prince Edward Island, and
 - (iv) he or she affirms that the foreign corporation, in applying to transfer its registered office, has complied with all relevant laws of the original jurisdiction, including those which permit the transfer of its registered office.

(2) Where, in the opinion of the Minister, any of the documents referred to in subsection (1) are unavailable or difficult to produce, the Minister may accept other documents in lieu thereof.

Substitute documents

(3) Where all or any part of the documents submitted to the Minister under subsection (1) are not in the French or English language, the Minister may require a submission of a translation of the documents or any part thereof, verified in a satisfactory manner, before the Minister considers the application.

Translation

(4) Notwithstanding subsection (1), where a foreign corporation has filed under section 7 all of the documents referred to in this section, the application may be accompanied by a statement informing the Minister that all of the documents referred to in this section have been submitted. 1992, c.28, s.3.

Statement of compliance

4. (1) Subject to section 6, the Minister, after receipt of an application by a foreign corporation, shall issue a certificate

Certificate

- (a) approving the transfer of the registered office of the foreign corporation to the place within Prince Edward Island designated in the application;
- (b) recognizing the continuance within Prince Edward Island of the foreign corporation;
- (c) authorizing the foreign corporation to exist and operate within Prince Edward Island as a foreign corporation; and
- (d) listing the names of the officers and directors submitted in accordance with clause 3(1)(c).

(2) On and after the date shown on a certificate issued by the Minister under subsection (1), the applicant foreign corporation shall

Rights of company upon issue of certificate

- (a) be known as a foreign resident corporation;
- (b) enjoy, subject to this Act, the status of a foreign resident corporation until it has voluntarily returned to its original jurisdiction, voluntarily transferred its registered office outside Prince Edward Island or is continued under the *Companies Act* R.S.P.E.I. 1988, Cap. C-14;
- (c) have all the powers and rights originally granted to it by the original jurisdiction
 - (i) except powers and rights that may not be granted under the laws of Prince Edward Island to companies or corporations, and
 - (ii) except as further limited by the Minister. 1992, c.28, s.4.

5. Where any change occurs in relation to the matters referred to in the documents

Changes, Minister to be informed

- (a) submitted to the Minister under section 3; or
- (b) filed with the Minister under section 7,

the applicant foreign corporation or the foreign resident corporation, as the case may be, shall inform the Minister of the change within ninety days. 1992, c.28, s.5.

Ineligible objects	6. (1) Where none of the purposes or objects of a foreign corporation are within those for which a company or corporation may be incorporated under the laws of Prince Edward Island, the foreign corporation shall not be eligible to become a foreign resident corporation.
<i>Idem</i>	(2) A foreign resident corporation <ul style="list-style-type: none"> (a) may not exercise any corporate activities within Prince Edward Island except those for which a company or corporation may be incorporated under the laws of Prince Edward Island; and (b) shall be limited in its operations to those permitted under the laws of Prince Edward Island.
Refusal	(3) The Minister may <ul style="list-style-type: none"> (a) refuse to issue a certificate under section 4 where the Minister considers the issuance would be in contravention of or prejudicial to the public interest; or (b) limit the purposes, objects and powers of the foreign resident corporation.
Powers	(4) Where the Minister has issued a certificate under section 4, he or she may <ul style="list-style-type: none"> (a) limit the time for which the certificate is effective; or (b) cancel the certificate in accordance with subsection (5).
Cancellation	(5) Upon giving the foreign resident corporation three months' notice in writing, delivered or sent by registered mail to its registered office in Prince Edward Island, the Minister may cancel the certificate issued under section 4. 1992, c.28, s.6.
Preliminary filing of documents	7. (1) A foreign corporation may file any or all of the documents referred to in section 3 with the Minister prior to making an application to operate within Prince Edward Island as a foreign resident corporation.
Translation	(2) Where all or any part of the documents submitted to the Minister under subsection (1) are not in the French or English language, the Minister may require a submission of a translation of the documents or any part thereof, verified in a satisfactory manner before the documents are filed under subsection (1).
Withdrawal and substitution	(3) The foreign corporation may <ul style="list-style-type: none"> (a) withdraw or amend any or all of the documents filed with the Minister; or (b) substitute other documents for those filed with the Minister,

prior to the date of application under section 3. 1992, c.28, s.7.

8. Every document and the information contained therein that is submitted to the Minister under this Act is confidential and the Minister shall seal and hold the documents submitted in strictest secrecy. 1992, c.28, s.8. Confidentiality

9. An application by a foreign corporation to acquire the status of a foreign resident corporation need not be accompanied by the names and addresses of any of its shareholders. 1992, c.28, s.9. Shareholders need not be identified

10. A foreign resident corporation shall continue to conduct business Name
 (a) in its corporate name;
 (b) in the name of the foreign resident corporation which is a translation into English or French; or
 (c) in a name approved by the Minister that describes or identifies the foreign resident corporation,
 followed by the initials "F.R.C.". 1992, c.28, s.10.

11. A foreign resident corporation shall establish the voluntary return to its original jurisdiction or the voluntary transfer of its registered office from Prince Edward Island by filing with the Minister a certificate to that effect from Certificate of transfer
 (a) a member of the diplomatic mission or consular post established in Canada by the original jurisdiction; or
 (b) a majority of the listed directors and officers of the foreign resident corporation. 1992, c.28, s.11.

12. The issuance of a certificate under section 4 shall not Effect of certificate on existing obligations
 (a) impair the rights of creditors, both domestic and foreign, against the foreign resident corporation;
 (b) impair liens upon the property and rights of the foreign resident corporation;
 (c) prejudicially affect the property, rights, contracts or obligations of the foreign resident corporation; or
 (d) deem the foreign corporation to be liquidated or dissolved. 1992, c.28, s.12.

13. A foreign resident corporation may plead such defences as may be recognized under the laws of Prince Edward Island by reason of the facts arising out of the state of war or other emergency in the original jurisdiction. 1992, c.28, s.13. Defences

14. (1) No court shall recognize a cause of action against a foreign resident corporation arising prior to the transfer of its registered office to Prince Edward Island if an action based upon that cause of action could Recognition of causes of action

not have been commenced against the foreign resident corporation prior to such transfer.

Obligations and liabilities

(2) Where the foreign resident corporation undertakes obligations and incurs liabilities after the transfer of its registered office such obligations and liabilities shall be governed by the laws of Prince Edward Island, 1992, c.28, s.14.

Authority of directors, etc.

15. (1) The officers and directors of a foreign resident corporation shall have the authority specified pursuant to clause 3(1)(c) and such authority may include any powers which were or might have been granted to them under the charter, bylaws or articles of incorporation of the foreign corporation and the laws of the original jurisdiction, as such laws existed immediately prior to the commencement of the war or occurrence of the emergency which was the occasion of the transfer of its registered office.

Revocation etc. of laws in original jurisdiction not effective

(2) No revocation, annulment, amendment or other change of or in any laws in the original jurisdiction that affects

- (a) the rights and duties of the officers and directors of the foreign corporation; or
- (b) the operation of the foreign corporation or the title to its property shall be effective.

Powers of directors etc. limited

(3) Notwithstanding subsections (1) and (2), the officers and directors of a foreign resident corporation may not exercise any powers which cannot be authorized under the laws of Prince Edward Island for comparable corporate officers and directors.

Managing director

(4) The directors of the foreign corporation may appoint from their number a managing director or one or more committees of directors and delegate to such managing director or committees any of the powers of the directors.

Limitation of powers

(5) Notwithstanding subsection (4), no managing director and no committee of directors has authority to

- (a) submit to the shareholders any question or matter requiring the approval of the shareholders;
- (b) fill a vacancy among the directors, or if an auditor has been appointed, in the office of auditor;
- (c) issue securities except in the manner and on the terms authorized by the directors;
- (d) declare dividends;
- (e) purchase, redeem or otherwise acquire shares issued by the foreign corporation;
- (f) pay a commission concerning the issue of the foreign corporation's shares;

- (g) approve any financial statements of the foreign corporation required to be placed before the shareholders at an annual meeting;
or
(h) adopt, amend or repeal bylaws. 1992, c.28, s.15.

16. (1) The listed directors and officers of a foreign resident corporation have the authority

Authority to dispose of property and assume or discharge obligations

- (a) to receive, control and dispose of any property received for or on account of or held in the name of the foreign resident corporation prior or subsequent to the transfer of its registered office to Prince Edward Island; and
(b) to obligate the foreign resident corporation and give acquittance for performance of any contract or other obligation to which a foreign resident corporation is a party or by which it is or may be affected.

(2) Every payment, transfer, delivery or other disposal of property to or on the order of a listed officer or director acting within authority, shall

Disposal etc. to be lawful and constitute discharge

- (a) be conclusively deemed to be lawful; and
(b) constitute a complete discharge of any liability of the person holding, paying, transferring, delivering or otherwise disposing of such property. 1992, c.28, s.16.

17. (1) Where an officer or director of a foreign resident corporation would not be qualified to act as such under the laws of Prince Edward Island he or she shall be granted thirty days in which to comply with such laws.

Qualification

(2) A foreign resident corporation is authorized to issue qualifying shares and make the purchase of such shares available to an officer or director under such terms and conditions as the Minister considers just. 1992, c.28, s.17.

Idem

18. (1) The foreign resident corporation is not required to give notice of annual or special shareholders meetings to any shareholder of record whose address is within any place to which there has been an interruption of normal mail service from Prince Edward Island.

Mailing of notices

(2) A failure to give notification of a shareholders meeting to any shareholder of record outside Prince Edward Island shall not invalidate the meeting or any action taken at the meeting and the shareholders present at the meeting, in person or by proxy, shall be deemed to constitute a majority of the shareholders for the purposes thereof.

Effect of failure of notice

(3) The annual or special shareholders meeting of a foreign resident corporation shall be held in accordance with the formal requirement for meetings of corporations incorporated or continued under the *Companies*

Authority of directors, etc. at meetings

Act and in accordance with the laws of Prince Edward Island, and any action taken at such meeting shall be deemed the authoritative act of the foreign resident corporation except that

(a) only the listed directors and officers shall have the authority to so act at such meeting; and

(b) no action shall be taken at any such meeting to replace any of the listed directors and officers or curtail or in any way affect the authority granted to them in accordance with clause 3(1)(c).

Withholding of dividends where shareholder does not have unrestricted benefit

(4) Where, in the unanimous opinion of the listed directors, a shareholder of record does not have the full and complete use and benefit of any dividends paid to, or for the account of, the shareholder under the laws or regulations then in force in the jurisdiction within which the shareholder resides or sojourns, the listed directors shall withhold any dividends declared on shares of the foreign resident corporation.

Dividends held on trust for true owners

(5) Where the listed directors withhold dividends under subsection (4), the listed directors

(a) are trustees of the dividends for the true owners of the shares;

(b) shall segregate an amount equal to the dividends; and

(c) shall otherwise be responsible for the dividends to the true owners of the shares as trustees. 1992, c.28, s.18.

Validity of resolution etc.

19. (1) A bylaw or resolution in writing signed by all the directors of a foreign resident corporation or signed counterparts of such resolution by all the directors entitled to vote on that resolution or bylaw at a meeting of directors is as valid and effective as if passed at a meeting of the directors duly called, constituted and held for that purpose.

Idem

(2) A resolution in writing, signed by all the members of any committee of directors of a foreign resident corporation or signed counterparts of such resolution by all the members of such committee entitled to vote on that resolution at a meeting of such committee, is as valid and effective as if it had been passed at a meeting of such committee duly called, constituted and held for that purpose.

Idem

(3) A resolution consented to by a signatures of all the shareholders of a foreign resident corporation or signed counterparts of such resolution by all the shareholders entitled to vote at a meeting of shareholders is as valid and effective as if it had been passed at a meeting of the shareholders duly called, constituted and held for that purpose.

Idem

(4) A resolution in writing dealing with all matters required by this Act and the *Companies Act* to be dealt with at a meeting of shareholders, and signed by all the shareholders entitled to vote at that meeting, satisfies all

the requirements of this Act and the *Companies Act* relating to meetings of shareholders.

(5) Any bylaw of a foreign resident corporation passed by the directors and every repeal, amendment and re-enactment thereof may, in lieu of confirmation at a general meeting of shareholders, be confirmed in writing by all the shareholders entitled to vote at such meeting.

Confirmation

(6) Subject to the bylaws, a director may, if all the directors of a foreign resident corporation consent, participate in a meeting of directors or of a committee of directors by means of such telephone or other communication facilities as permit all persons participating in the meeting to hear each other, and a director participating in such a meeting by such means is deemed to be present at that meeting. 1992, c.28, s.19.

Telephonic communication

20. (1) The Minister may permit a foreign resident corporation to be continued under the *Companies Act* and, where the Minister has given such permission, the Director appointed under that Act upon receipt of the documentation referred to in subsection 85(2) of that Act, shall issue a certificate of continuance.

Continuance pursuant to permit of Minister

(2) Where seven years have lapsed after the issuance of a certificate to a foreign resident corporation under section 4, the Minister may, after giving the foreign resident corporation an opportunity to be heard, require the foreign resident corporation to file the relevant documentation for continuance under the *Companies Act*. 1992, c.28, s.20.

Minister may require foreign resident corporation to be continued

21. The Lieutenant Governor in Council may make regulations.

Regulations

- (a) prescribing a fee in respect of the filing of documents and the making of an application; and
- (b) prescribing annual fees to be paid by the foreign resident corporation. 1992, c.28, s.20.