

The New Generation Co-operatives Act

being

Chapter N-4.001* of *The Statutes of Saskatchewan, 1999* (effective January 26, 2000) as amended by the *Statutes of Saskatchewan, 2000, c.L-5.1; 2001, c.8; 2002, c.S-17.2; 2004, c.L-16.1; and 2006, c.26.*

***NOTE:** Pursuant to subsection 33(1) of *The Interpretation Act, 1995*, the Consequential Amendment sections, schedules and/or tables within this Act have been removed. Upon coming into force, the consequential amendments contained in those sections became part of the enactment(s) that they amend, and have thereby been incorporated into the corresponding Acts. Please refer to the Separate Chapter to obtain consequential amendment details and specifics.

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

Table of Contents

PART I		
Short Title and Interpretation		
1 Short title	42 Prohibition re voting	
2 Interpretation	43 Request for information	
3 Co-operative basis	44 Remedies	
4 Application of Act	45 Reliance on statements, rules and knowledge	
PART II		
Incorporation		
5 Application to incorporate	46 Ruling of Co-operative Securities Board	
6 Articles of incorporation	47 Issue of shares	
7 Bylaws	48 Stated capital account	
8 Incorporation of co-operative	49 Other additions	
9 Effect of certificate of incorporation	50 Holding own shares	
10 Articles and bylaws binding	51 Exception for holding own shares	
11 Reservation of name	52 Entitlement to vote	
12 Required name of co-operative	53 Allocation of surplus	
13 Alternative name	54 Payment of dividends	
14 Prohibited names	55 Purchase of shares or compulsory loans	
15 Deceptive or inaccurate names	56 Deductions applied to loans and shares	
16 Name on amalgamation	57 Non-payment of small dividends	
17 Direction to change name	58 Effect of marketing plans	
18 Use of name	59 Purchase of shares	
19 Seal	60 Limitations on purchase	
20 Pre-incorporation contracts	61 Reduction of capital	
PART III		
Capacity and Powers		
21 Capacity of a co-operative	62 Adjustment of stated capital account	
22 Restrictions on business	63 Prohibited loans and guarantees	
23 No constructive notice	64 Moneys owing a debt	
24 Authority of directors, officers and agents	65 Lien on member's interest	
PART IV		
Registered Office and Records		
25 Registered office	PART VI	
26 Corporate records	Memberships and Common Shares	
27 Access to corporate records	66 Memberships, etc., transferable	
28 List of holders	67 Share certificates	
29 Registrar may request list	68 Transfers of shares or memberships	
30 Form of records	69 Dealings with registered holder	
PART V		70 Joint memberships
Finance		71 Variation of joint membership
31 Shares	PART VII	
32 Common shares	Share Certificates, Registers and Transfers	
33 Preferred shares	72 Interpretation of Part	
34 Preferred share voting	73 Application	
35 Member right shares	74 Certificates	
36 Preferred shares in series	75 Fee may be charged for certificate	
37 Pre-emptive rights	76 Jointly held securities	
38 Commissions	77 Certificate must be signed	
39 Options and rights	78 Information to be stated on certificate	
40 Constraints on preferred share ownership	79 Special rights or restrictions	
41 Prohibition re dividends on certain preferred shares	80 Fractional preferred shares	
	81 Registers	
	82 Agent may be appointed	
	83 Registration valid for all purposes	
	84 Person to be treated as owner	
	85 Restrictions on transfer	
	86 Obligations of co-operative	
	87 Surviving joint holder	

- 183 Material contracts
- 184 Officers
- 185 Declaration by directors and officers
- 186 Organization meeting

PART XII

Members and Meetings

- 187 Bylaws to govern
- 188 Eligibility
- 189 Eligible age for membership
- 190 Place of meetings
- 191 First general meeting
- 192 Annual meetings of members
- 193 Special meetings
- 194 Notice of meetings
- 195 Fixing record date
- 196 Quorum
- 197 District meetings
- 198 Delegates
- 199 Voting rights
- 200 Proposals
- 201 Power to enact bylaws
- 202 Directors cannot change bylaws
- 203 Effective day of bylaw
- 204 Representative of member who is not an individual
- 205 Voting procedures
- 206 Resolution in lieu of meeting
- 207 Meeting called by the registrar
- 208 Compulsory sale of shares
- 209 Withdrawal of members
- 210 Termination of membership by directors
- 211 Termination of membership by members
- 212 Appeal
- 213 Re-admittance
- 214 Contracts
- 215 Marketing contracts

PART XIII

Proxies

- 216 Interpretation of Part
- 217 Proxy may be appointed
- 218 Management to send form of proxy
- 219 Circulars
- 220 Exemptions
- 221 Rights and obligations of proxyholder
- 222 Proxies and preferred shares
- 223 Misstatement of facts in proxy
- 224 Application

PART XIV

Financial Disclosure

- 225 Annual financial statement
- 226 Approval of financial statements
- 227 Providing financial statements
- 228 Financial statements
- 229 Annual financial statements
- 230 Qualification of auditor
- 231 Appointment of auditor

- 232 Resolution to not appoint
- 233 Ceasing to hold office
- 234 Removal and vacancy
- 235 Filling vacancy
- 236 Appointment by registrar
- 237 Rights to attend meeting
- 238 Examination by auditor
- 239 Rights to information
- 240 Audit committee
- 241 Qualified privilege, defamation

PART XV

Annual and Special Returns

- 242 Annual and special returns

PART XVI

Fundamental Changes and Amalgamations

- 243 Amendments to articles
- 244 Amendment re authorized capital
- 245 Proposal to amend
- 246 Preferred shareholder vote
- 247 Delivery of articles
- 248 Effect of certificate
- 249 Restated articles
- 250 Amalgamation
- 251 Amalgamation agreement
- 252 Member approval
- 253 Sending of articles
- 254 Effect of certificate
- 255 Continuance pursuant to this Act
- 256 Discontinuance
- 257 Reorganization
- 258 Arrangement
- 259 Dissenting rights
- 260 Extraordinary disposition

PART XVII

Dissolution

- 261 Application of Part
- 262 Dissolution by members and holders of preferred shares
- 263 Notice of dissolution by members
- 264 Dissolution by registrar
- 265 Dissolution for failure to account for business transacted
- 266 Dissolution by court order
- 267 Revival of a dissolved co-operative
- 268 Appointment of liquidator
- 269 Commencement of liquidation
- 270 Cessation of business
- 271 General provisions respecting liquidators
- 272 Duties of liquidator
- 273 Powers of liquidator
- 274 Limitation on liability of liquidator
- 275 Costs of liquidation
- 276 Final account
- 277 Custody of records
- 278 Remuneration of liquidator
- 279 Continuation of actions
- 280 Creditors, etc., not located

PART XVIII
Investigations

- 281 Special audit
- 282 Investigations
- 283 Court order
- 284 Powers of inspector
- 285 Hearing with public excluded
- 286 Incriminating statements
- 287 Absolute privilege, defamation
- 288 Inquiries

PART XIX
Remedies

- 289 Interpretation of Part
- 290 Derivative action
- 291 Oppression
- 292 Evidence of member approval not decisive
- 293 Application to court to rectify records
- 294 Compliance or restraining order
- 295 Summary application to court
- 296 Appeal

PART XX
OFFENCES

- 297 Offences with respect to reports
- 298 Contravention of Act
- 299 Use of word “co-operative”
- 300 Order to comply
- 301 Time limited for proceedings
- 302 Civil remedy not affected

PART XXI
Extra-provincial Co-operatives

- 303 Registration of extra-provincial co-operatives
- 304 Prohibition
- 305 Effect of registration
- 306 Application for registration
- 307 Certificate of registration
- 308 Notice of registration
- 309 Restriction
- 300 Power of attorney
- 311 Notice of change
- 312 Change in articles
- 313 Notice to registrar of amalgamation agreement
- 314 Restriction on name change
- 315 Withdrawal of registration

PART XXII
Security Issues

- 316 Interpretation of Part
- 317 Non-application of certain Acts
- 318 Invitation to purchase securities
- 319 Duties of board
- 320 Exemption
- 321 Review procedure
- 322 Form for prospectus
- 323 Order to investigate
- 324 Offences
- 325 When agreement not binding
- 326 Misrepresentation in offering document
- 327 Time limitations
- 328 Non-liability of board, etc.

PART XXIII
Administration

- 329 Seal
- 330 Service
- 331 Register
- 332 Right to inspect and obtain copies
- 333 Form of copies
- 334 Certificate of registrar
- 335 Power to refuse documents
- 336 Form of documents filed
- 337 Proof required by registrar

PART XXIV
General

- 338 Execution and filing
- 339 Service
- 340 Waiver of notice
- 341 Certificate of co-operative
- 342 Proof of ownership
- 343 Copies of documents
- 344 Alteration
- 345 Corrections
- 346 Striking name off register
- 347 Actions of unregistered co-operatives
- 348 Acts of unregistered co-operatives
- 349 Non-application of certain Acts
- 350 Regulations

PART XXV
Consequential Amendments and Coming into Force

- 351 S.S. 1986, c.A-28.1 amended
- 352 R.S.S. 1978, c.B-10 amended
- 353 S.S. 1989-90, c.F-8.001 amended
- 354 S.S. 1983, c.N-5.1 amended
- 355 S.S. 1989-90, c.R-26.1 amended
- 356 Coming into force

CHAPTER N-4.001

An Act respecting New Generation Co-operatives and making consequential amendments to other Acts

PART I

Short Title and Interpretation

Short title

1 This Act may be cited as *The New Generation Co-operatives Act*.

Interpretation

2(1) In this Act:

- (a) **“affairs”** means the relationship among a co-operative, its subsidiaries and its members, directors and officers, but does not include the business carried on by the co-operative;
- (b) **“affiliate”** means an affiliated body corporate within the meaning of subsection (5);
- (c) **“articles”** means the original or restated articles of incorporation, amendment, amalgamation, arrangement, continuance, reorganization, dissolution or revival and, in Parts XV and XVIII to XXII, includes any Act, statute or ordinance by or pursuant to which a body corporate is incorporated or any letters patent, supplementary letters patent, certificate of incorporation, memorandum of association or any other document evidencing corporate existence;
- (d) **“associate”**, when used to indicate a relationship with a person, means:
 - (i) a body corporate, where that person beneficially owns or controls, directly or indirectly, shares of that body corporate carrying more than 10% of the voting rights;
 - (ii) a partner of that person acting on behalf of the partnership of which they are partners;
 - (iii) a trust or estate in which that person has a substantial beneficial interest or with respect to which that person serves as a trustee or in a capacity similar to a trustee;
 - (iv) a spouse or child of that person; or
 - (v) where a relative of that person or that person’s spouse has the same residence as that person, the relative;
- (e) **“auditor”** includes a partnership of auditors;

- (f) **“bearer”** means, respecting a security, the person who is in possession of a security that is:
- (i) payable to the person in possession; or
 - (ii) endorsed in blank;
- (g) **“beneficial ownership”** includes:
- (i) in Quebec, the rights of a beneficiary of a trust that owns property, and ownership of property through one or more administrators of the property of others, mandataries or other legal representatives; and
 - (ii) in those parts of Canada outside Quebec, ownership of property through one or more trustees, legal representatives, agents or other intermediaries;
- (h) **“body corporate”** means a body corporate wherever or however incorporated and includes a co-operative, but does not include a public body;
- (i) **“business”** includes the undertaking carried on by a body corporate;
- (j) **“bylaw”** means a bylaw of a co-operative approved by the members and by the registrar;
- (k) **“common share”** means a share in the capital stock of a co-operative that confers on the holder equal rights to receive dividends declared on those shares and, if provided in the articles, to receive the remaining property of the co-operative on dissolution;
- (l) **“co-operative”** means a body corporate:
- (i) that is organized and operated on a co-operative basis;
 - (ii) that is incorporated or continued pursuant to this Act; and
 - (iii) whose articles restrict the business of the co-operative to one or more of the following endeavours or businesses:
 - (A) the production, processing or marketing of agricultural products;
 - (B) the provision of services to persons primarily engaged in an endeavour mentioned in paragraph (A);
 - (C) any prescribed business;
- (m) **“corporation”** means a body corporate incorporated by or pursuant to an Act or an Act of the Parliament of Canada or a legislative assembly of another province or territory of Canada;
- (n) **“court”** means the Court of Queen’s Bench;
- (o) **“debt obligation”** means a bond, debenture, note or other evidence of indebtedness of an entity, whether secured or unsecured;

- (p) **“delegate”** means an individual elected to represent a division of the members at meetings of a co-operative;
- (q) **“director”** means a person occupying the position of director of a co-operative, by whatever name called;
- (r) **“distributing co-operative”** means:
- (i) a co-operative any of whose issued securities, other than common shares or preferred shares mentioned in section 35, are or were part of a distribution to the public and that remain outstanding and are held by more than one person; or
 - (ii) any co-operative that has issued a security that is subject to approval by the Co-operative Securities Board pursuant to Part XXII or that is subject to *The Securities Act, 1988*;
- (s) **“entity”** means a body corporate, a trust, a partnership, a fund or an unincorporated organization;
- (t) **“extra-provincial co-operative”** means a body corporate that proposes to carry on business in Saskatchewan on a co-operative basis, the business of which is restricted in accordance with subsection 4(3), but does not include a body corporate registered pursuant to an Act, other than this Act;
- (u) **“federal cooperative”** means a body corporate carrying on business on a co-operative basis that is incorporated by or pursuant to an Act of the Parliament of Canada;
- (v) **“general meeting”** includes an annual or special meeting;
- (w) **“holder”** means:
- (i) respecting a security certificate, the person in possession of the certificate issued or endorsed to the person, to the bearer or in blank;
 - (ii) respecting the ownership of a common share, the member who is or is entitled to be entered in the records of the co-operative as the owner of the common share;
 - (iii) respecting the ownership of a preferred share, the person who is or is entitled to be entered in the records of the co-operative as the owner of the preferred share;
- (x) **“incorporator”** means a person who applies for incorporation of a co-operative pursuant to section 5;
- (y) **“issuer”** means, respecting a security, the entity that issues the security;
- (z) **“judge”** means a judge of the court;

- (aa) **“member”** means a person who has met the conditions of membership set forth in the bylaws of a co-operative and has been accepted as a member by the directors of the co-operative, and includes an incorporator;
- (bb) **“officer”** includes:
- (i) a president, vice-president, treasurer, secretary, general manager or assistant general manager of a co-operative;
 - (ii) a person who performs functions for a co-operative normally performed by a person mentioned in subclause (i); or
 - (iii) an employee of a co-operative appointed by the directors to assume a position of responsibility in the management of the business and affairs of the co-operative;
- (cc) **“ordinary resolution”** means a resolution passed by a majority, or any greater number set out in the articles, of the votes cast by or on behalf of the persons entitled to vote on the resolution;
- (dd) **“patronage dividend”** means an amount that a co-operative allocates among and credits or pays to its members or to its member and non-member patrons from its surplus based on the business done by its members or patrons, with or through the co-operative, and includes a patronage refund;
- (ee) **“person”** includes an entity or public body;
- (ff) **“preferred share”** means a share in the capital stock of a co-operative that is not a common share and that has special rights or restrictions as provided in the articles;
- (gg) **“prescribed”** means prescribed in the regulations;
- (hh) **“proxy”** means a completed and executed form of proxy by means of which the holder of a preferred share appoints a proxyholder to attend and act on that person’s behalf at a meeting of the holders of the preferred shares;
- (ii) **“public body”** means:
- (i) the Government of Canada, of Saskatchewan or of another province or territory of Canada;
 - (ii) a corporation, board, commission or agency of a government described in subclause (i);
 - (iii) a municipality;
 - (iv) a body elected or appointed pursuant to an Act:
 - (A) to administer, arrange, undertake or regulate schools, hospitals, health facilities, libraries, water utilities, drainage and irrigation works, sewage works, local improvements or public utilities; or
 - (B) to levy and collect taxes; or

- (v) any body, other than one described in subclauses (i) to (iv), that is designated in the regulations;
- (jj) **“redeemable”** means, respecting a preferred share issued by a co-operative, that the share is a share that the co-operative:
- (i) may acquire or redeem on the demand of the co-operative; or
 - (ii) is required by the articles of the co-operative to acquire or redeem at a specified time or on the demand of the holder;
- (kk) **“register”** means:
- (i) in sections 26, 27, 30, 40, 43, 68 and 69, Part VII and sections 188, 194, 341 and 342, a register required by this Act to be maintained by or on behalf of a co-operative; and
 - (ii) in any other case, the register to be kept by the registrar pursuant to section 331;
- (ll) **“registrar”** means the registrar appointed pursuant to section 227 of *The Co-operatives Act, 1996* and includes a deputy registrar;
- (mm) **“security”** includes a preferred share, a debt obligation of a co-operative and a certificate evidencing that share or debt obligation and, for the purposes of Parts XVI, XIX and XXII, includes a common share and a member loan;
- (nn) **“security interest”** means an interest in or charge on the property of a co-operative by way of mortgage, hypothec, pledge or other obligation taken by a creditor to secure payment of a debt of the co-operative;
- (oo) **“series”** means, respecting preferred shares, a division of a class of those shares;
- (pp) **“share”** means a common share or a preferred share;
- (qq) **“shareholder”** means a holder of a share and includes the personal representative of a deceased shareholder;
- (rr) **“special resolution”** means a resolution passed by not less than two-thirds, or any greater number set out in the articles, of the votes cast by or on behalf of the persons entitled to vote on the resolution;
- (ss) **“special rights or restrictions”** means the preferences, rights, conditions, restrictions, limitations and prohibitions attaching to preferred shares and, if there is to be more than one class, or if a class may be issued in series, the special preferences, rights, conditions, restrictions, limitations and prohibitions attaching to each class or series;
- (tt) **“surplus”**, as applied to the operations of a co-operative in a financial year, means any amount that remains after deducting from the operating revenue, charges to members and patrons and other revenue in that financial year:
- (i) the operating expenses in the financial year, including proper allowances for depreciation, expenses incurred but not paid and proper charges against operations; and

c. N-4.001

NEW GENERATION CO-OPERATIVES

- (ii) any refunds and interim and final payments to members and patrons in that financial year as required in contracts made with them or pursuant to the bylaws of the co-operative.
- (2) For the purposes of this Act, a body corporate is a subsidiary of another body corporate if:
- (a) the shares of the body corporate that carry voting rights sufficient to elect a majority of its directors are held, directly or indirectly, other than by way only of collateral security, by the other body corporate;
 - (b) the bylaws of the body corporate provide or the body corporate agrees in writing that a majority of the directors must be nominees of the other body corporate; or
 - (c) 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.
- (3) For the purposes of this Act, a co-operative is deemed to carry on business in Saskatchewan if:
- (a) it holds any title to or an interest in land registered in the name of the co-operative pursuant to *The Land Titles Act, 2000*;
 - (b) it has a resident agent or representative or maintains an office, warehouse or place of business in Saskatchewan;
 - (c) it is licensed or registered or required to be licensed or registered pursuant to an Act entitling it to do business; or
 - (d) in the opinion of the registrar, it otherwise carries on business in Saskatchewan.
- (4) Where the number of a telephone located in Saskatchewan is listed in a telephone directory under the name of a co-operative, that co-operative is deemed, in the absence of evidence to the contrary, to be carrying on business in Saskatchewan.
- (5) For the purposes of this Act:
- (a) one body corporate is affiliated with another body corporate if:
 - (i) one of them is the subsidiary of the other;
 - (ii) both are subsidiaries of the same body corporate; or
 - (iii) each of them is controlled by the same body corporate; and
 - (b) if two bodies corporate are affiliated with the same body corporate at the same time, they are deemed to be affiliated with each other.

- (6) For the purposes of this Act, a body corporate is controlled by a person if:
- (a) securities of the body corporate to which are attached more than 50% of the votes that may be cast to elect directors of the body corporate are held, other than by way of security only, by or for the benefit of that person; and
 - (b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the body corporate.

1999, c.N-4.001, s.2.; 2000, c.L-5.1, s.358.

Co-operative basis

3 For the purposes of this Act, a body corporate is organized, operated and administered on a co-operative basis where:

- (a) no member or delegate has more than one vote;
- (b) no member or delegate is entitled to vote by proxy;
- (c) its business is carried on primarily for the benefit of its members;
- (d) its membership is voluntary and available, without any artificial restriction or any unlawful basis of discrimination, to any person who can use its services and is willing to accept the responsibilities of membership;
- (e) the limit on the interest on any member loan or the dividend on any common share that it pays does not exceed the rate provided for in the articles;
- (f) any savings arising out of its operation are:
 - (i) used to develop its business;
 - (ii) used to provide or improve common services to members;
 - (iii) distributed among members in proportion to their patronage with the body corporate;
 - (iv) used to educate its members, officers or employees or the general public in the principles and techniques of economic and democratic co-operation;
 - (v) distributed to non-profit, charitable or benevolent organizations;
 - (vi) used to pay interest on member loans;
 - (vii) used to provide reserves for the payment of dividends on common shares and preferred shares; or
 - (viii) retained as a reserve for the body corporate;
- (g) to the extent feasible, the members provide the capital required by the body corporate;

c. N-4.001**NEW GENERATION CO-OPERATIVES**

(h) the body corporate promotes the social and economic development of the community in which it carries on business through policies approved by its members; and

(i) the body corporate educates its members, officers or employees or the general public in the principles and techniques of economic and democratic co-operation.

1999, c.N-4.001, s.3.

Application of Act

4(1) This Act applies to every co-operative incorporated or continued pursuant to this Act.

(2) Sections 34 and 165 and Parts XV and XIX to XXIII apply to an extra-provincial co-operative registered pursuant to this Act.

(3) No co-operative shall be incorporated, continued or registered pursuant to this Act unless the articles of the co-operative restrict the business of the co-operative to the matters set out in subclause 2(1)(l)(iii).

1999, c.N-4.001, s.4.

PART II Incorporation

Application to incorporate

5(1) Subject to subsection (3), not less than six persons may apply for incorporation as a co-operative.

(2) The incorporators shall apply for incorporation by sending to the registrar:

- (a) the articles of incorporation in the prescribed form;
- (b) the proposed bylaws of the co-operative;
- (c) the prescribed fee; and
- (d) any additional information that the registrar may require.

(3) The registrar may allow two or more persons to apply for incorporation as a co-operative where the registrar considers it appropriate.

(4) An individual is not eligible to be an incorporator if the individual:

- (a) is less than 18 years of age; or
- (b) is of unsound mind and has been so found by a court in Canada or elsewhere.

(5) A person who has the status of a bankrupt is not eligible to be an incorporator.

1999, c.N-4.001, s.5.

Articles of incorporation

6(1) The articles of incorporation of a proposed co-operative must be in the prescribed form.

(2) The incorporators shall set out in the articles of incorporation of a proposed co-operative the following information:

- (a) the name of the co-operative;
 - (b) the par value of the common shares;
 - (c) whether the number of common shares to be issued is unlimited or, where limited, the maximum number of common shares that may be issued;
 - (d) whether there is to be preferred share capital and, if so, the designation and the special rights or restrictions attaching to the preferred shares or to each class;
 - (e) subject to subsection (4), the number of directors or the minimum and maximum number of directors;
 - (f) the names in full and place of residence of each first director;
 - (g) the objects or purposes the co-operative is intended to fulfil;
 - (h) a statement that the business of the co-operative is restricted to the matters set out in subclause 2(1)(l)(iii);
 - (i) a statement of any other restrictions on the business of the co-operative not mentioned in clause (h);
 - (j) the maximum rate of interest that may be paid on member loans;
 - (k) the price or formula to be used for the issuance of preferred shares or the redemption of redeemable preferred shares;
 - (l) the maximum dividend that may be paid on common shares;
 - (m) any provision for the distribution of the property of the co-operative on its dissolution;
 - (n) any provision by which the members may restrict, in whole or in part, the powers of the directors to manage the business of the co-operative;
 - (o) whether the business of the co-operative will be effected on an agency basis;
 - (p) any provision that requires a greater number of votes of directors, members or holders of preferred shares than is required by this Act to effect an action, as long as the provision does not require, in order to remove a director or delegate, that more than a majority of the votes cast by or on behalf of the persons who are entitled to vote be so cast.
- (3) Subject to subsection (4), where the articles require a greater number of votes of directors, members, delegates or holders of preferred shares than the number required in this Act to effect any action, the articles prevail.

- (4) A co-operative shall have a minimum of five directors, but the registrar may permit the number of directors to be fewer than five where:
- (a) the number of incorporators or members is less than six; or
 - (b) fewer than five members are eligible to be directors pursuant to section 165.
- (5) The consent to act as a first director of any first director who is not an incorporator must be attached to the articles of incorporation in the prescribed form.
- (6) A co-operative may set out in its articles any provisions permitted in this Act to be set out in the bylaws of the co-operative.

1999, c.N-4.001, s.6.

Bylaws

- 7(1) A co-operative shall have bylaws relating to:
- (a) conditions of membership, including:
 - (i) the rights of joint members, if any;
 - (ii) the qualifications of members;
 - (iii) any right to transfer common shares or preferred shares of the class mentioned in section 35;
 - (iv) subject to this Act, the conditions on which membership ceases or may be terminated, the disposition that may be made on cessation or termination of a member's interest and the determination of the value of the member's interest; and
 - (v) any obligation of members to sell or deliver goods or to use the services of the co-operative;
 - (b) the election, term of office and removal of directors and members of committees of directors;
 - (c) where the co-operative proposes to divide the territory in which members are located into districts:
 - (i) the establishment of district boundaries;
 - (ii) the procedure for altering district boundaries;
 - (d) where there is to be a delegate structure, the defining of the powers, duties, election, voting rights and removal of delegates;
 - (e) where the co-operative proposes to divide its members into classes:
 - (i) the qualifications of members of each class;
 - (ii) the conditions precedent to membership in each class;
 - (iii) the method, time and manner of and conditions precedent to transferring membership in one class to membership in another class;
 - (iv) the conditions on which membership in a class ceases;

- (v) the method, time and manner of permitting members to withdraw from each class of members;
 - (vi) whether the interest of a member in a class may be assigned or transferred; and
 - (vii) the automatic suspension of a member's rights when the member ceases to be qualified for membership in a class;
- (f) where the co-operative is to act as an agent for its members, the particulars of the agency relationship between the co-operative and its members;
- (g) any matters, in addition to those described in clauses (a) to (f), that the members consider necessary or desirable.
- (2) The bylaws may specify the terms to be included in a contract between members and the co-operative pursuant to which the co-operative is to provide services to members or pursuant to which the obligations of members to sell or deliver goods exclusively to or through the co-operative are to be satisfied.

1999, c.N-4.001, s.7.

Incorporation of co-operative

8(1) The registrar:

- (a) may register the articles of incorporation and bylaws of a proposed co-operative and enter the name of the co-operative in the register where the registrar:
 - (i) is satisfied that the articles of incorporation and bylaws sent to the registrar pursuant to subsection 5(2) comply with this Act and the regulations and that the incorporators have complied with any other requirements of this Act and the regulations; and
 - (ii) considers it appropriate to approve the incorporation;
 - (b) with respect to a co-operative entered in the register pursuant to subsection (1), shall:
 - (i) issue a certificate of incorporation in accordance with section 338, stating that the co-operative is incorporated pursuant to this Act and showing the day of incorporation; and
 - (ii) send to the co-operative at its registered office one copy of its articles and bylaws, certified by the registrar as having been registered.
- (2) The registrar shall not approve an application unless the registrar is satisfied that:
- (a) the formation of the proposed co-operative will be for the convenience and advantage of its members;
 - (b) the proposed directors are qualified pursuant to section 165 and the articles comply with section 34; and
 - (c) the proposed co-operative is organized and will be operated on a co-operative basis.

1999, c.N-4.001, s.8.

Effect of certificate of incorporation

9 A co-operative comes into existence on the day shown on its certificate of incorporation.

1999, c.N-4.001, s.9.

Articles and bylaws binding

10 The articles of a co-operative and its bylaws are deemed to bind the co-operative and its members to the same extent as if they:

- (a) had been signed and sealed by the co-operative and by every member; and
- (b) contained covenants on the part of each member and the heirs, executors and administrators of each member to observe all the provisions of the articles and bylaws.

1999, c.N-4.001, s.10.

Reservation of name

11 Where the registrar receives a written request and the prescribed fee, the registrar may reserve for 90 days a name for a proposed co-operative or for a co-operative that proposes to change its name.

1999, c.N-4.001, s.11.

Required name of co-operative

12(1) A co-operative shall:

- (a) have the word “Co-operative” or «coopérative» in its name and the word “Limited” or «Limitée» or the abbreviation “Ltd.” or «Ltée» as the last word in its name; and
 - (b) include one or more words that describe the restriction specified in clause 6(2)(h).
- (2) The registrar may exempt a co-operative from the provisions of clause (1)(a).

1999, c.N-4.001, s.12.

Alternative name

13(1) Subject to section 14, a co-operative may set out its name in:

- (a) an English form;
 - (b) a French form;
 - (c) a combined English and French form; or
 - (d) any language form other than English or French that is approved by the registrar.
- (2) A co-operative may be legally designated by the language form it has chosen pursuant to subsection (1).

1999, c.N-4.001, s.13.

Prohibited names

14(1) No co-operative shall have a name that:

- (a) subject to subsection (2), is the same as or similar to the name of another body corporate, public body, association, partnership or firm where, in the opinion of the registrar, the use of that name would be likely to confuse or mislead the general public;
 - (b) is identical to the name of a body corporate previously incorporated pursuant to the laws of Saskatchewan;
 - (c) suggests or implies a connection with a public body;
 - (d) suggests or implies a connection with a political party or a leader of a political party;
 - (e) suggests or implies a connection with a university or a professional association recognized by the laws of Canada or of a province or territory of Canada, unless the university or professional association concerned consents in writing to the use of the proposed name;
 - (f) is a name that is prohibited in the regulations; or
 - (g) is a designating number.
- (2) Subject to the approval of the registrar, a co-operative may use the same name as or a name similar to the name of another body corporate, public body, association, partnership or firm where the other body corporate, public body, association, partnership or firm:
- (a) consents in writing to the use of the name in whole or in part; and
 - (b) where required by the registrar, undertakes to dissolve or change its name to a dissimilar name within six months after the filing of the articles by the co-operative that is acquiring the name.

1999, c.N-4.001, s.14.

Deceptive or inaccurate names

15 The registrar may refuse to register a co-operative or to register articles amending the name of a co-operative where, in the registrar's opinion, the proposed name:

- (a) is deceptively inaccurate in describing:
 - (i) the businesses, goods or services in association with which it is proposed to be used;
 - (ii) the conditions under which the goods or services will be produced or supplied;
 - (iii) the persons to be employed in the production or supply of the goods or services; or
 - (iv) the place or origin of those goods or services;
- (b) is likely to be confused with the name of a co-operative that was dissolved; or
- (c) is for any reason objectionable.

1999, c.N-4.001, s.15.

Name on amalgamation

16 Where two or more corporations amalgamate and the amalgamated corporation is to be a co-operative, the co-operative may have one of the following names as long as the name complies with this Part:

- (a) the name of one of the amalgamating corporations;
- (b) a distinctive combination of the names of the amalgamating corporations that, in the opinion of the registrar, is not confusing or misleading;
- (c) a distinctive new name that, in the opinion of the registrar, is not confusing or misleading.

1999, c.N-4.001, s.16.

Direction to change name

17(1) Where a co-operative is granted a name subject to an undertaking given pursuant to subsection 14(2) and the undertaking is not carried out within the time specified in the undertaking, the registrar may direct the co-operative to which the name is granted to change its name to a name that complies with this Act.

(2) The registrar may direct a co-operative to change its name pursuant to section 243 where the co-operative:

- (a) comes into existence or is continued with a name that contravenes section 14 or 15; or
- (b) on an application to change its name, is granted a name that contravenes section 14 or 15.

(3) Where a co-operative is directed pursuant to subsection (1) or (2) to change its name and fails within 60 days after service of the directive to change its name to a name that complies with this Act, the registrar may revoke the name of the co-operative and assign an alternative name to it.

(4) Where a co-operative has had its name revoked and an alternative name assigned to it pursuant to subsection (3), the registrar shall:

- (a) issue to the co-operative a certificate of amendment showing the new name of the co-operative; and
- (b) immediately give notice of the change of name in the Gazette.

(5) The articles of the co-operative are deemed to be amended on the date shown in the certificate of amendment issued pursuant to clause (4)(a).

(6) Where the registrar receives a copy of a special resolution to change the name of a co-operative passed pursuant to section 243 and the registrar approves the new name or, in the case of an extra-provincial co-operative, a document evidencing the change of name to a name approved by the registrar, the registrar shall:

- (a) enter the new name on the register in place of the former name;
- (b) issue a certificate showing the change of name;
- (c) inform the co-operative in writing of the change of name; and
- (d) immediately publish notice of the change of name in the Gazette.

1999, c.N-4.001, s.17.

Use of name

18(1) Every co-operative shall display its name in legible characters in a conspicuous position:

- (a) at every office or place at which it carries on business;
 - (b) in all notices and other official publications;
 - (c) on all its contracts, business letters, orders for goods, invoices, statements of account, receipts and letters of credit; and
 - (d) on all bills of exchange, promissory notes, endorsements, cheques and orders for money it signs or that are signed on its behalf.
- (2) Where a co-operative has a corporate seal, it shall display its name in legible characters on its corporate seal.
- (3) Subject to subsections (1) and (2), a co-operative may carry on business under or identify itself by a name other than the name of the co-operative if that other name is registered as a business name pursuant to *The Business Names Registration Act*.

1999, c.N-4.001, s.18.

Seal

19(1) The directors may, by resolution:

- (a) adopt a corporate seal; and
 - (b) change the corporate seal adopted pursuant to clause (a).
- (2) An instrument or agreement executed on behalf of a co-operative by a director, an officer or an agent of the co-operative is not invalid merely because a corporate seal is not affixed to it.

1999, c.N-4.001, s.19.

Pre-incorporation contracts

20(1) Subject to subsections (2) to (6), a person who enters into a written contract in the name of or on behalf of a co-operative before the co-operative comes into existence is personally bound by the contract and is entitled to the benefits of the contract.

(2) Within a reasonable time after a co-operative comes into existence, the co-operative may adopt a written contract made in its name or on its behalf before it came into existence by any action or conduct signifying its intention to adopt the contract.

(3) Where a co-operative adopts a contract pursuant to subsection (2):

- (a) the co-operative is bound by the contract and is entitled to the benefits of the contract as if the co-operative had been in existence at the day of the contract and had been a party to the contract; and

- (b) subject to subsection (4), the person who purported to act in the name of or on behalf of the co-operative ceases to be bound by the contract or entitled to the benefits of the contract.
- (4) Subject to subsection (6), whether or not a written contract made before the coming into existence of a co-operative is adopted by the co-operative, a party to the contract may apply to the court for an order fixing the obligations under the contract as joint and several or apportioning liability between the co-operative and any person who purported to act in the name of or on behalf of the co-operative.
- (5) Where the court receives an application pursuant to subsection (4), it may make any order that it considers appropriate.
- (6) Where a written contract expressly provides that a person who purported to act in the name of or on behalf of the co-operative before it came into existence is not bound by the contract or entitled to the benefits of the contract, the person is deemed not to be bound by the contract and not to be entitled to the benefits of the contract.

1999, c.N-4.001, s.20.

PART III Capacity and Powers

Capacity of a co-operative

- 21(1)** A co-operative has the capacity of an individual and, subject to this Act, the rights, powers and privileges of an individual.
- (2) A co-operative has the capacity to carry on its business, conduct its affairs and exercise its powers outside Saskatchewan.

1999, c.N-4.001, s.21.

Restrictions on business

- 22(1)** No co-operative and no subsidiary of a co-operative shall:
- (a) carry on any business that it is restricted from carrying on by this Act, by its articles or by the regulations; or
- (b) exercise any of its powers in a manner contrary to the objects and purposes stated in the articles.
- (2) No act of a co-operative, including a transfer of property to or by a co-operative, is invalid by reason only that the act or transfer is contrary to its articles, this Act or the regulations.
- (3) It is not necessary for a bylaw to be passed to confer any particular power on the co-operative or its directors.

1999, c.N-4.001, s.22.

No constructive notice

23(1) Subject to subsection (2), no person is affected by or deemed to have notice or knowledge of the contents of a document or record of a co-operative or an order of the registrar with respect to the co-operative by reason only that the document, record or order has been filed with the registrar or is available for inspection at an office of the co-operative or the registrar.

(2) A member of a co-operative is deemed to have notice and knowledge of the content of the articles and bylaws of the co-operative.

1999, c.N-4.001, s.23.

Authority of directors, officers and agents

24(1) Subject to subsection (2), no co-operative and no guarantor of an obligation of a co-operative shall assert against a person dealing with the co-operative or with another person who has acquired rights from the co-operative that:

- (a) the articles or bylaws have not been complied with other than between a co-operative and a member or between members;
- (b) the persons named in the most recent notice sent to the registrar pursuant to this Act are not the directors of the co-operative;
- (c) the place named in the most recent notice sent to the registrar pursuant to this Act is not the registered office of the co-operative;
- (d) a person held out by the co-operative as a director, an officer or an agent of the co-operative has not been duly appointed or has no authority to exercise the powers or perform the duties that are customary in the business of the co-operative or are usual for that director, officer or agent;
- (e) a document issued by any director, officer or agent of the co-operative with actual or usual authority to issue the document is not valid or not genuine; or
- (f) any financial assistance to members or directors or any sale, lease or exchange of all or substantially all of the property of the co-operative was not authorized.

(2) Where a person dealing with a co-operative or with another person who has acquired rights from the co-operative has or ought to have knowledge to the contrary by virtue of his or her position with or relationship to the co-operative, subsection (1) does not apply.

1999, c.N-4.001, s.24.

PART IV
Registered Office and Records

Registered office

- 25(1)** A co-operative must have a registered office in Saskatchewan.
- (2) The directors of a co-operative may change the address of the registered office.
- (3) A co-operative shall send to the registrar a notice setting out the address of its registered office on incorporation and within 15 days after any change of address of the registered office, and the registrar shall file that notice.
- (4) Where a co-operative sends an annual return to the registrar pursuant to section 242 within 30 days after a change is made to the address of the co-operative's registered office, the annual return is deemed to be the notice required pursuant to subsection (3).

1999, c.N-4.001, s.25.

Corporate records

- 26(1)** A co-operative shall prepare and maintain at its registered office or at a place in Saskatchewan designated by the directors other than its registered office, records containing:
- (a) its articles and bylaws and all amendments to its articles and bylaws;
 - (b) minutes of member meetings and resolutions of members;
 - (c) copies of all notices of directors and notices of change of directors;
 - (d) a register of its directors setting out the names, addresses and occupations of all persons who are or have been directors of the co-operative with the days on which each person became or ceased to be a director;
 - (e) a register of members and shareholders setting out their names arranged in alphabetical or numeric order, their latest address known to the co-operative and the number of shares held by each member or shareholder;
 - (f) a copy of every certificate issued to it by the registrar;
 - (g) a copy of every order of the registrar relating to the co-operative;
 - (h) a record of the obligations of the co-operative to provide goods or services to any member and of the right of the co-operative to receive goods or services from any member; and
 - (i) if the co-operative issues securities in registerable form, a security register that complies with section 81.
- (2) In addition to the records described in subsection (1), a co-operative shall prepare and maintain adequate accounting records and records containing minutes of meetings and resolutions of the directors and any committee of directors.
- (3) Where a co-operative is continued pursuant to this Act, "**records**" includes records similar to those described in clause (1)(b) and subsection (2) that were required by law to be maintained by the co-operative before it was continued.

(4) Where accounting records of a co-operative are kept at a place outside Saskatchewan, the co-operative shall keep at its registered office or at another office in Saskatchewan accounting records adequate to enable the directors to ascertain the financial position of the co-operative with reasonable accuracy on a quarterly basis.

1999, c.N-4.001, s.26.

Access to corporate records

27(1) Members, the holders of preferred shares and creditors, their agents and legal representatives may, without charge, examine the records mentioned in subsection 26(1) during the usual business hours of the co-operative and take extracts from those records.

(2) Where, in the case of a distributing co-operative, a person, other than a person mentioned in subsection (1), wishes to examine the records mentioned in subsection 26(1) and take extracts from those records, that person may do so on payment of a reasonable fee.

(3) Subject to Parts XVIII and XIX, no person mentioned in subsection (1) or (2) is entitled to information respecting a business transaction with the co-operative.

(4) On request, a member is entitled without charge to one copy of the articles and bylaws.

(5) A co-operative shall give access at all reasonable times to the records mentioned in section 26 to the directors of the co-operative, the registrar and any person appointed by the registrar.

(6) A co-operative shall provide access to its register of members mentioned in clause 26(1)(e) at any general meeting of members, and the members may examine the register.

1999, c.N-4.001, s.27.

List of holders

28(1) In this section, “**basic list**” means a list of the members or holders of preferred shares.

(2) On sending to a co-operative or its transfer agent the affidavit described in subsection (5), any member, holder of a preferred share or creditor, or if the co-operative is a distributing co-operative, any other person and his or her agent and legal representative, on payment of a reasonable fee, may require the co-operative or its agent to provide, within 21 days after the receipt of the affidavit, a list made up to a day not more than one month before the day of receipt of the affidavit setting out, in alphabetical or numeric order, the names of members or holders of preferred shares, as requested, and their latest addresses known to the co-operative.

(3) Any person requiring a co-operative to supply a basic list, on payment of a reasonable fee, may, where he or she states in his or her affidavit mentioned in subsection (2) that he or she requires a supplemental list for the purpose of updating a basic list, require the co-operative or its agent to provide a supplemental list setting out changes to the names or addresses of the members or holders of preferred shares from the day to which the basic list was made up.

(4) A co-operative or its agent shall provide a supplemental list required pursuant to subsection (3):

(a) on the day the basic list is provided, where the information relates to changes that took place before that day; and

(b) on the business day following the day to which the supplemental list relates, where the information relates to changes that take place on or after the day on which the basic list is provided.

(5) The affidavit mentioned in subsection (2) must contain:

(a) the names and addresses of the applicants;

(b) where an applicant is a body corporate, the name and address for service of the body corporate; and

(c) a declaration that the basic list and any supplemental list obtained pursuant to subsection (3) will not be used for any purpose other than in connection with an effort:

(i) to influence the voting of members or the holders of preferred shares of the co-operative; or

(ii) to make a written request pursuant to section 193 to call a special meeting.

(6) Where an applicant is a body corporate, the affidavit mentioned in subsection (2) must be made by a director or officer of the body corporate.

1999, c.N-4.001, s.28.

Registrar may request list

29 The registrar may request that the co-operative provide the registrar with a list of members or holders of preferred shares of the co-operative not later than 10 days after the co-operative receives the request.

1999, c.N-4.001, s.29.

Form of records

30(1) A co-operative may:

(a) prepare and maintain any register or other record that is required by this Act in a bound or loose-leaf form or in a photographic film form; or

(b) enter or record information in the registers and records mentioned in clause (a):

(i) by any system of mechanical or electronic data processing; or

(ii) by any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.

(2) A co-operative and its agent shall take reasonable precautions to prevent loss or destruction of, or falsification of entries in, the records and registers that it is required by this Act and the regulations to prepare and maintain, and to facilitate detection and correction of inaccuracies in those records and registers.

1999, c.N-4.001, s.30.

PART V Finance

Shares

31(1) Subject to subsection (2), shares of a co-operative must be in registered form.

(2) The bylaws may provide that share certificates need not be issued for common shares, but, where they so provide, the co-operative must, on the request of a member, issue a statement of the number of common shares held by that member.

(3) Common shares must have a par value fixed in the articles.

(4) Preferred shares shall be without nominal or par value.

(5) Preferred shares of a body corporate that is continued pursuant to this Act are deemed to be preferred shares without a nominal or par value.

1999, c.N-4.001, s.31.

Common shares

32(1) The common shares confer on their holders equal rights to receive dividends declared on the common shares and, if the articles so provide, to receive the remaining property of the co-operative on dissolution.

(2) The articles may not include any special right or restriction on the common shares except as provided by this Act.

1999, c.N-4.001, s.32.

Preferred shares

33(1) The articles of a co-operative may provide that the co-operative may issue preferred shares, and if so, the articles must set out the following:

(a) whether the preferred shares may be issued to persons who are not members of the co-operative;

(b) whether the number of preferred shares is to be unlimited and, if not, the maximum number of preferred shares that may be issued;

(c) the number of classes of preferred shares;

c. N-4.001**NEW GENERATION CO-OPERATIVES**

- (d) the special rights or restrictions attaching to the preferred shares and, if there is to be more than one class, the designation of each class and special rights or restrictions attaching to each class.
- (2) No preferred share may be issued until the members have authorized the principle of the issuance of preferred shares.

1999, c.N-4.001, s.33.

Preferred share voting

34(1) The articles may provide that:

- (a) a preferred share confers on its holder the right to vote at an election of directors by reason of an event that has occurred and is continuing or by reason of a condition that has been fulfilled; or
- (b) the holders of the preferred shares, any class of preferred shares or series of preferred shares may elect a fixed number or a percentage of directors.
- (2) Notwithstanding subsection (1), the articles may not provide that the holders of preferred shares of all classes have the right to elect more than 20% of the directors.
- (3) Subject to section 80, if the holders of preferred shares are entitled to vote at a meeting of the co-operative, each preferred share entitles the holder to one vote.
- (4) A member who holds a preferred share may exercise any voting rights associated with that preferred share.
- (5) No right to vote at a meeting of the co-operative attaches to any preferred shares except the right to vote on the election of directors or as permitted by this Act.

1999, c.N-4.001, s.34.

Member right shares

35 The articles may provide for a class of preferred shares that:

- (a) are issued only to members;
- (b) are designated as a preferred share of this class;
- (c) carry no right to vote on the election of a director;
- (d) obligate the holder of the preferred share to provide a specific good or service to the co-operative or that give to the holder of the share the right to receive from the co-operative a specific good or service, pursuant to a contract between the holder of the preferred share and the co-operative, and that obligation or right may vary among the holders based on the number or percentage of the shares held; and
- (e) may provide to the holders of the preferred shares a special right to participate:
 - (i) in the surplus of the co-operative by way of patronage dividend or bonus payment;
 - (ii) in any reserve amount of the co-operative to receive dividends; or
 - (iii) in the remaining property of the co-operative on its dissolution.

1999, c.N-4.001, s.35.

Preferred shares in series

36(1) The articles may authorize, subject to any limitation set out in them and subject to subsection (2), the issue of any class of preferred shares in one or more series and may:

- (a) fix the number of preferred shares in, and determine the designation and special rights or restrictions attaching to the preferred shares of, each series; or
 - (b) authorize the directors to fix the number of preferred shares in, and to determine the designation and special rights or restrictions attaching to the preferred shares of, each series.
- (2) If any cumulative dividends or amounts payable on return of capital respecting a series of preferred shares are not paid in full, the preferred shares of all series of the same class must participate rateably respecting accumulated dividends and return of capital.
- (3) No special rights or restrictions attached to a series of preferred shares authorized pursuant to this section confer a priority respecting dividends or return of capital on a series over any other series of preferred shares of the same class that are then outstanding.
- (4) If the directors exercise their authority pursuant to clause (1)(b), the directors shall, before the issue of shares of the series, send to the registrar articles of amendment, in the prescribed form, to designate a series of preferred shares.
- (5) On receipt of articles of amendment designating a series of shares pursuant to subsection (4), the registrar may approve the articles of amendment and on approval shall issue a certificate of amendment.
- (6) The articles of the co-operative are amended on the date shown in the certificate of amendment.

1999, c.N-4.001, s.36.

Pre-emptive rights

37(1) If the articles so provide, no preferred share of any class may be issued unless the preferred shares are first offered to the holders of the preferred shares of that class.

- (2) The holders of the preferred shares of that class have a pre-emptive right to acquire the offered preferred shares in proportion to their holdings of the preferred shares of that class, at the price at which and on the terms on which those preferred shares are to be offered to others.
- (3) Notwithstanding that the articles may provide the pre-emptive right mentioned in subsection (1), the holders of preferred shares have no pre-emptive right to acquire preferred shares that are to be issued:
- (a) in exchange for a thing or service other than money;
 - (b) as a preferred share dividend or in payment of a patronage dividend; or
 - (c) pursuant to the exercise of conversion privileges, options or rights of conversion granted by the co-operative.

1999, c.N-4.001, s.37.

Commissions

38 The directors may authorize the co-operative to pay a reasonable commission to any person in consideration of the person:

- (a) purchasing preferred shares from the co-operative or from some other person; or
- (b) procuring or agreeing to procure purchasers for any of those shares.

1999, c.N-4.001, s.38.

Options and rights

39(1) A co-operative may issue certificates, warrants or other evidence of conversion privileges, options or rights to acquire securities of the co-operative, and shall set out the conditions of the conversion privileges, options or rights:

- (a) in the certificates, warrants or other evidence; or
- (b) in certificates evidencing the securities to which the conversion privileges, options or rights are attached.

(2) Conversion privileges, options and rights to acquire securities of a co-operative may be made transferable or non-transferable, and options and rights to acquire may be made separable or inseparable from any securities to which they are attached.

(3) Where a co-operative has granted privileges to convert any securities issued by the co-operative into preferred shares, or into preferred shares of another class or series, or has issued or granted options or rights to acquire preferred shares, if the articles limit the number of authorized preferred shares, the co-operative shall reserve and continue to reserve sufficient authorized preferred shares to meet the exercise of those conversion privileges, options and rights.

1999, c.N-4.001, s.39.

Constraints on preferred share ownership

40(1) The total number of preferred shares that may be beneficially owned by a person or by a person together with an associate of that person must not exceed either of the following determined on a fully diluted basis:

- (a) 10% of the total number of any class of preferred shares that carry any right to vote on the election of directors;
- (b) 25% of any other class of preferred shares issued by a co-operative.

(2) For the purposes of subsection (1), a co-operative may count as preferred shares issued:

- (a) rights granted by a co-operative to holders of preferred shares to purchase additional preferred shares; and
- (b) a distribution or an offering of preferred shares.

(3) The validity of a transfer of preferred shares that has been made or recorded in the securities register of a co-operative or the validity of the issuance of preferred shares is not affected by the holding of the shares in contravention of this section.

- (4) If two or more persons hold the same preferred shares as holders or as beneficial owners, each person is deemed to be the sole holder of those shares for the purposes of subsection (1).
- (5) The percentage limit mentioned in subsection (1) does not apply to a person acting as an underwriter in connection with a distribution of preferred shares during the period commencing on the commencement date of that distribution and ending 150 days after the commencement date of that distribution.
- (6) The percentage limit mentioned in subsection (1) does not apply to a person during the period commencing on the date of an amalgamation of the co-operative pursuant to section 250 and ending 150 days after that date.
- (7) The percentage limit mentioned in subsection (1) does not apply to:
- (a) a public body; or
 - (b) a person or an entity specified in the regulations.
- (8) A holder of preferred shares is deemed not to be the holder of preferred shares for the purposes of determining whether this section has been contravened if the holder submits to the directors a statutory declaration:
- (a) stating that, respecting preferred shares of which that person is the holder, the shares are held in right of, or for the use or benefit of, another person with whom that person is not associated; and
 - (b) showing the name and address of that other person and the number of shares so held.
- (9) If there is a contravention of the percentage limit mentioned in subsection (1), the preferred shares held in excess of that percentage limit shall be determined based on the order inverse to the order of registration of the shares in the securities register of the co-operative.
- (10) In this section:
- (a) “**distribution**” means a distribution as defined in *The Securities Act, 1988*;
 - (b) “**underwriter**” means an underwriter as defined in *The Securities Act, 1988*.

1999, c.N-4.001, s.40.

Prohibition re dividends on certain preferred shares

- 41(1) When preferred shares are held by a person in contravention of subsection 40(1), the co-operative shall not pay any dividends respecting any of the preferred shares held by that person.
- (2) Notwithstanding subsection (1), a co-operative may pay dividends respecting the number of preferred shares not in excess of the percentage limit mentioned in subsection 40(1) if:
- (a) the preferred shares are held in contravention of subsection 40(1) by two or more associated persons; and

c. N-4.001

NEW GENERATION CO-OPERATIVES

(b) the contravention was, in the opinion of the directors, inadvertently caused by the acquisition of preferred shares by one or more of those persons in circumstances where the person or persons who acquired the preferred shares did not know:

- (i) of the association; or
- (ii) that the acquisition would result in the contravention.

(3) Notwithstanding subsections (1) and (2), the directors may authorize the payment of dividends respecting any preferred shares to a holder who would not otherwise be entitled to them pursuant to those subsections if the directors are of the opinion that:

- (a) the contravention was inadvertent or is of a technical nature; or
- (b) it would be inequitable not to pay dividends to the holder of the preferred shares.

(4) If dividends are paid by the co-operative respecting preferred shares in contravention of this section, the co-operative may, by action, recover the amount of the dividends paid from the holders of the preferred shares to whom they were paid, whether or not the co-operative had knowledge of the contravention of this section.

1999, c.N-4.001, s.41.

Prohibition re voting

42(1) If a person holds or the members of any group of associated persons hold as the holder of preferred shares, beneficial owner or partly as the holder of preferred shares and partly as beneficial owner a number of preferred shares contrary to subsection 40(1), that person or those members shall not exercise the voting rights attached to the preferred shares held by that person or those members.

(2) If voting rights are exercised in contravention of this section at a meeting of the holders of preferred shares, the vote or other proceeding at that meeting is not affected by reason of the exercise of the voting rights in contravention of this section, but the directors may cancel the vote or proceedings and direct a new vote on the matter.

1999, c.N-4.001, s.42.

Request for information

43(1) The holder of preferred shares shall, on the written request of the co-operative given in accordance with subsection (2), submit a statutory declaration to the co-operative respecting:

- (a) the beneficial ownership of any preferred shares of the co-operative held by that holder;
- (b) the identity of the beneficial owner of all or any of the preferred shares of which that person is a holder;
- (c) whether that holder is associated with any other person; and

- (d) any other matter that the directors consider relevant;
- for the purposes of determining whether the preferred shares held by that holder or persons associated with that holder are held in contravention of subsection 40(1), whether dividends have been paid in contravention of subsection 41(1) or (2) or whether voting rights have been exercised in contravention of subsection 42(1).
- (2) A request pursuant to subsection (1):
- (a) may be given by registered mail or personal service; and
- (b) is to set out the period following the giving of the request, being not less than 30 days, within which the request is to be complied with.
- (3) When a statutory declaration has been requested pursuant to this section by a co-operative from a holder of preferred shares and the holder fails or neglects to submit to the co-operative a declaration satisfactory to the co-operative within the time prescribed in the written request, sections 41 and 42 apply to the holders of preferred shares as though they held the preferred shares in contravention of subsection 40(1) until a declaration satisfactory to the co-operative has been submitted to it.
- (4) It is a condition of every transfer of a preferred share to be made or recorded in the securities register of a co-operative and of the issue of any preferred share of a co-operative that the transferee or purchaser shall, at the request of the co-operative, submit to the co-operative a statutory declaration in accordance with subsection (1).
- (5) When the co-operative has requested a statutory declaration pursuant to subsection (4), the co-operative shall not, respecting the person who is required to submit the statutory declaration, accept any offer to purchase any preferred share or allow any transfer to be made or recorded in the securities register of the co-operative unless:
- (a) the declaration has been submitted to the directors; and
- (b) it appears to the directors from the declaration that the purchaser or transferee would not, by the acceptance of the offer to purchase the shares being purchased or the entry in the securities register of the preferred shares being transferred, hold those shares in contravention of subsection 40(1).
- (6) A co-operative may establish reasonable presumptions, procedures and rules not inconsistent with sections 40, 41 and 42 for the purposes of implementing this section and sections 40, 41 and 42 according to their intent.

1999, c.N-4.001, s.43.

Remedies

44 On the application of a co-operative, the court may make all or any of the following orders:

- (a) an order directing the repayment of a dividend in accordance with subsection 41(4);

c. N-4.001

NEW GENERATION CO-OPERATIVES

- (b) if it is satisfied that directors were elected at an election at which voting rights were exercised in contravention of subsection 42(1), an order respecting:
- (i) an election of directors; and
 - (ii) the term of office of directors elected at that election;
- (c) an order requiring the divestiture of the preferred shares held by a person in contravention of subsection 40(1);
- (d) any additional order that the court may direct.

1999, c.N-4.001, s.44.

Reliance on statements, rules and knowledge

45(1) A co-operative and any of its directors, officers, employees or agents may rely on a statement made in any declaration submitted pursuant to section 43, on any determination made in good faith by any of them in accordance with any presumption, procedure or rule established pursuant to subsection 43(6) or on the knowledge of any of its directors, officers, employees or agents in determining, for the purposes of this section:

- (a) whether any preferred shares are held in contravention of subsection 40(1);
 - (b) whether any dividends have been paid in contravention of subsections 41(1) and (2);
 - (c) whether any voting rights were exercised in contravention of subsection 42(1);
 - (d) whether a person is associated with any other person; or
 - (e) any other circumstances relevant to the implementation by the co-operative of sections 40, 41 and 42.
- (2) A co-operative and its directors, officers, employees or agents are not liable in an action for anything done or omitted to be done by them in good faith as a result of any conclusions made by them on the basis of the statements, the determinations or the knowledge mentioned in subsection (1).

1999, c.N-4.001, s.45.

Ruling of Co-operative Securities Board

46(1) On the written application to it by any member or holder of preferred shares, beneficial owner of a preferred share or other person that the Co-operative Securities Board considers interested in the matter, the Co-operative Securities Board may make a ruling on whether:

- (a) any person or group of associated persons holds preferred shares in contravention of subsection 40(1); or
- (b) subsection 42(1) applies to any person or group of associated persons.

- (2) The directors are bound by a ruling made pursuant to subsection (1) unless:
- (a) the applicant did not disclose to the Co-operative Securities Board a fact that is, in the opinion of the Co-operative Securities Board, material to the ruling; or
 - (b) there is a subsequent change of circumstances that is, in the opinion of the Co-operative Securities Board, material.

1999, c.N-4.001, s.46.

Issue of shares

47(1) In this section, “**property**” does not include a promissory note or a promise to pay.

(2) Subject to subsection (3), a co-operative may issue shares at any time and for any consideration that the directors consider appropriate.

(3) A co-operative shall sell its common shares at their par value.

(4) Shares issued by a co-operative are non-assessable and the holders are not liable to the co-operative or to its creditors respecting those shares.

(5) No co-operative shall issue a share until it is fully paid in money, in property or in past service that, in the opinion of the directors, is the fair equivalent of the money that the co-operative would have received if the share had been issued for money.

(6) For the purposes of subsection (5), when determining whether property or past service is the fair equivalent of a money consideration, the directors may take into account reasonable charges and expenses of organization and re-organization and payment for property and past service reasonably expected to benefit the co-operative.

1999, c.N-4.001, s.47.

Stated capital account

48(1) A co-operative that is authorized to issue preferred shares must maintain a stated capital account for each class and series of preferred shares that it issues.

(2) A co-operative must add to the appropriate stated capital account, net of all bona fide commissions, the full amount of any money, or the value of any thing or service, that it receives for preferred shares it issues.

(3) Notwithstanding subsection (2), a co-operative may, subject to subsection (4), add to the stated capital account maintained for the preferred shares of a class or series the whole or any part of the amount of the money, or the value of the things and services, it receives in an exchange if the co-operative issues preferred shares:

- (a) in exchange for:
 - (i) property of a person who, immediately before the exchange, did not deal with the co-operative at arm’s length within the meaning of that expression in the *Income Tax Act* (Canada);

- (ii) preferred shares of, or another interest in, an entity that, immediately before the exchange, or that because of the exchange, did not deal with the co-operative at arm's length within the meaning of that expression in the *Income Tax Act* (Canada);
 - (iii) property of a person who, immediately before the exchange, deals with the co-operative at arm's length within the meaning of the *Income Tax Act* (Canada), if the person, the co-operative and all holders of preferred shares in the class or series of shares so issued consent; or
- (b) under an amalgamation or arrangement, or to members or shareholders of an amalgamating body corporate who receive the preferred shares in addition to or instead of securities of the amalgamated co-operative.
- (4) On the issue of a preferred share, a co-operative may not add to a stated capital account respecting the share it issues an amount greater than the amount of the money, or the value of the thing or service, it received for the preferred share.
- (5) The proposed addition of an amount to a stated capital account maintained by a co-operative respecting a class or series of preferred shares must be approved in advance by a special resolution of the members and, if the co-operative has issued preferred shares, by a separate special resolution of the holders, the class of holders or the holders of the series of preferred shares that is affected by the special resolution, if:
- (a) the amount to be added was not received by the co-operative as consideration for the issue of the preferred shares; and
 - (b) the co-operative has issued shares of more than one class or series that are outstanding.

1999, c.N-4.001, s.48.

Other additions

- 49(1)** Where a co-operative is continued pursuant to this Act, it may add to a stated capital account any money, or the value of any thing or service, received by it for a preferred share it issued and a co-operative may, at any time, add to a stated capital account any amount it credited to a retained earnings or other surplus account.
- (2) Where a body corporate is continued pursuant to this Act, subsection 48(2) does not apply to the money, or the value of things or services, received by it before it became subject to this Act unless the share with respect to which the money, thing or service received is issued after the co-operative became subject to this Act.
- (3) Where a co-operative is continued pursuant to this Act, an amount unpaid respecting a preferred share issued by a co-operative before it became subject to this Act and paid after it became subject to this Act is added to the stated capital account maintained for the preferred shares of that class or series.

(4) For the purposes of subsections 54(3), 60(1), 61(1) and 250(1), where a co-operative is continued pursuant to this Act, its stated capital account for any class of preferred shares is deemed to include the amount that would have been included if this Act had always applied to the co-operative.

(5) A co-operative shall not reduce its stated capital or any stated capital account except in the manner provided in this Act.

1999, c.N-4.001, s.49.

Holding own shares

50(1) Subject to sections 51 and 59, a co-operative shall not:

- (a) hold any shares in itself; or
- (b) permit any of its subsidiaries to hold shares in the co-operative other than the minimum number of common shares required by the bylaws of the co-operative to qualify for membership in it.

(2) A co-operative shall ensure that any subsidiary that holds shares in the co-operative contrary to subsection (1) disposes of those shares not later than five years after the date on which it became a subsidiary.

1999, c.N-4.001, s.50.

Exception for holding own shares

51(1) A co-operative may hold, and may permit its subsidiaries to hold, in the capacity of a legal representative, shares in itself only if the co-operative or subsidiary does not have a beneficial interest in the shares.

(2) A co-operative may hold shares in itself by way of security for an indebtedness.

1999, c.N-4.001, s.51.

Entitlement to vote

52(1) No person is entitled to vote at any meeting as the holder of a preferred share unless the person is the holder of a preferred share or the proxy of that person.

(2) No common shareholder is entitled to vote at any meeting on any matter pursuant to this Act other than as a member.

(3) Where the holders of preferred shares are entitled at any meeting to vote on a matter, they shall vote at a meeting separate and apart from a meeting of members.

1999, c.N-4.001, s.52.

Allocation of surplus

53(1) Where a co-operative has a surplus in a financial year and before it allocates among or credits to members the surplus pursuant to subsection (2), the directors:

- (a) shall use any part of the surplus that the co-operative will require:
 - (i) first, for income tax; and
 - (ii) second, for any reserve it is required to maintain pursuant to its bylaws;

- (b) may set aside any part of the surplus in any reserves that the directors consider necessary;
 - (c) may provide, in the manner set out in the bylaws, for the payment of dividends on common shares or interest on member loans at a rate not greater than the rate set out in the articles; and
 - (d) may, in accordance with the articles, provide for the payment of dividends on preferred shares.
- (2) Subject to any other provision of this Act, the directors may allocate among and credit or pay to the members, as a patronage dividend, all or any part of the surplus that arises from the operations of the co-operative in a financial year and that remains after making provision for the matters described in subsection (1), in proportion to the business done by the members with or through the co-operative in that financial year, computed in the manner described in subsection (3), at a rate set by the directors.
- (3) For the purposes of subsection (2), the directors may compute the amount of the business done by each member with a co-operative in a financial year by taking into account:
- (a) the quantity, quality, kind and value of the goods bought, sold, handled, marketed or dealt in by the co-operative;
 - (b) the services rendered:
 - (i) by the co-operative on behalf of or to the member, whether as principal or agent of the member or otherwise; or
 - (ii) by the member on behalf of or to the co-operative; and
 - (c) differences that are, in the opinion of the directors, appropriate for the different classes, grades or qualities of goods and services described in clauses (a) and (b).
- (4) The bylaws may provide that a co-operative may, in each financial year, allocate among and credit or pay to patrons of the co-operative who are not members a share of any surplus at a rate that is equal to or less than the rate at which the surplus is distributable to members.
- (5) Where a co-operative allocates among and credits or pays to non-member patrons a portion of any surplus, the directors shall compute the business done by the non-member patrons in the manner described in subsection (3).

1999, c.N-4.001, s.53.

Payment of dividends

- 54(1) A dividend on shares, an interest payment on member loans or a patronage dividend paid pursuant to section 53 may be paid in cash or property, including fully paid shares or member loans of the co-operative or a subsidiary corporation, that are not greater in value than the amount of the dividend, interest or patronage dividend, but common shares and member loans may be issued only to members.
- (2) Where a dividend is paid pursuant to subsection (1) in shares, the directors are required to distribute the shares rateably among all persons entitled to the dividend.

(3) No co-operative shall declare or pay a dividend if there are reasonable grounds to believe that:

- (a) the co-operative is, or would after the payment be, unable to pay its liabilities as they become due; or
- (b) the realizable value of the co-operative's assets after payment of the dividend would be less than the total of:
 - (i) its liabilities;
 - (ii) the stated capital account of all of its preferred shares; and
 - (iii) the aggregate of the par value of all of its issued common shares.

(4) If preferred shares of a co-operative are issued in payment of a patronage dividend or a dividend, the amount of the patronage dividend or dividend, stated as an amount of money, must be added to the appropriate stated capital account of the preferred shares issued.

1999, c.N-4.001, s.54.

Purchase of shares or compulsory loans

55(1) The bylaws may provide that, in each financial year, all or any part of the patronage dividend declared pursuant to subsection 53(2) that the directors consider reasonable must be:

- (a) applied to the purchase from the co-operative of shares of the co-operative; or
- (b) loaned to or retained by the co-operative on any terms and for any period that the directors may determine.

(2) If a co-operative is unable to pay its liabilities as they become due, no member is required to lend a patronage dividend to the co-operative or purchase shares pursuant to subsection (1).

(3) If shares of a co-operative are issued in payment of a patronage dividend, the co-operative shall give notice of the number of shares purchased or to be purchased and, if applicable, issue and forward the certificates representing those shares issued or to be issued.

(4) If a member loan to the co-operative is created in payment of a patronage dividend, the co-operative shall give notice to the member of the amount of that member loan.

(5) No member is required to purchase common shares at a price in excess of their par value or to purchase preferred shares at a price in excess of the formula provided in the articles or, if there is no formula, the fair value of the shares as determined by the directors.

1999, c.N-4.001, s.55.

Deductions applied to loans and shares

56 The bylaws may provide that the co-operative may:

- (a) deduct an amount from the moneys it receives for the goods, products or services it has marketed, handled, or dealt in, for or on behalf of a member or non-member patron; and
- (b) apply the amount described in clause (a) as a loan or to the purchase of shares in the same manner and subject to the same restrictions as provided in section 55 for the application of patronage dividends.

1999, c.N-4.001, s.56.

Non-payment of small dividends

57 The bylaws may provide that where the patronage dividend that would otherwise be payable or allocatable to any person with respect to the operations of a financial year is less than or equal to \$10 or any smaller amount that may be specified in the bylaws:

- (a) the co-operative shall not pay any patronage dividend to that person; and
- (b) the amount mentioned in clause (a) that would otherwise be payable is the property of the co-operative to be used as the directors may decide.

1999, c.N-4.001, s.57.

Effect of marketing plans

58(1) Subject to subsection (3), where members of a co-operative are required by a marketing plan established pursuant to an Act or an Act of the Parliament of Canada to sell or deliver goods or render services to or through a producer board, marketing commission or agency, this section applies to the co-operative and its members.

(2) For the purposes of allocating, crediting and paying patronage dividends among or to members and making payments to members as part of the price or proceeds of their goods or services, the members are deemed to have sold, delivered or rendered those goods or services to the co-operative.

(3) The bylaws of a co-operative may provide that this section does not apply to a member until any conditions that are set out in the bylaws are fulfilled with respect to the delivery or rendering of goods and services.

1999, c.N-4.001, s.58.

Purchase of shares

59(1) Subject to this Act, the regulations, the articles and the bylaws, a co-operative may purchase or otherwise acquire any of its shares.

(2) Subject to this Act, the purchase price of a common share is equal to its par value.

(3) Subject to this Act, a co-operative may, at any time, purchase or redeem any of its preferred shares that are redeemable, in accordance with the price or formula set out in its articles.

- (4) Subject to this Act, the co-operative shall acquire shares issued by it:
- (a) to satisfy the claims of members who have withdrawn from membership or where membership has been terminated pursuant to section 209, 210 or 211;
 - (b) to satisfy the claims of members or the holders of preferred shares who dissent pursuant to section 259; or
 - (c) to comply with an order pursuant to section 291.
- (5) Subject to this Act, a co-operative may acquire shares issued by it:
- (a) to settle or compromise a debt or claim asserted by the co-operative;
 - (b) to eliminate fractional shares; or
 - (c) to fulfil the terms of a non-assignable option or obligation to purchase shares owned by a director, officer or employee.
- (6) Subject to subsection (7), where a co-operative purchases or otherwise acquires shares issued by it, those shares are deemed to be cancelled.
- (7) Where the articles of a co-operative limit the number of authorized shares, any shares of the co-operative purchased or otherwise acquired by the co-operative may be returned to the status of authorized but unissued shares.
- (8) A co-operative shall fulfil its obligations pursuant to subsection (4) or under a contract to buy shares of the co-operative, unless the co-operative can prove that enforcement of the contract would put the co-operative in breach of subsection 60(1).
- (9) Until the co-operative has fulfilled all its obligations under a contract mentioned in subsection (8), the other party retains the status of claimant entitled to be paid as soon as the co-operative is lawfully able to do so or, in a liquidation, to be ranked subordinate to the rights of creditors and to the rights of any class or holder of preferred shares whose rights were in priority to the rights given to the class of preferred shares being purchased, but in priority to the rights of members and other holders of preferred shares.

1999, c.N-4.001, s.59.

Limitations on purchase

60(1) Notwithstanding section 59, a co-operative may not make a payment to acquire or redeem a share if there are reasonable grounds to believe that:

- (a) the co-operative is, or would after the payment be, unable to pay its liabilities as they become due; or
- (b) the realizable value of the co-operative's assets after the payment would be less than the total of:
 - (i) its liabilities;
 - (ii) the amount that would be required to pay the holders of shares that have a right to be paid, on a redemption or liquidation, rateably with or in priority to the holders of the shares to be acquired or redeemed;

c. N-4.001

NEW GENERATION CO-OPERATIVES

- (iii) the aggregate of the par value of its issued common shares; and
- (iv) if there are any preferred shares, other than a preferred share mentioned in subsection 59(3), the total of the stated capital of its issued preferred shares.

(2) Subject to subsection (1), a co-operative may purchase or otherwise acquire its own shares to comply with an order pursuant to section 291.

1999, c.N-4.001, s.60.

Reduction of capital

61(1) Subject to subsection (2), a co-operative may reduce the par value of its common shares or the stated capital of its preferred shares for any purpose by special resolution of its members and the holders of the preferred shares of the affected class.

(2) A co-operative may not reduce its stated capital if there are reasonable grounds to believe that:

- (a) the co-operative is, or would after the payment be, unable to pay its liabilities as they become due; or
- (b) the realizable value of the co-operative's assets after the reduction would be less than the total of its liabilities.

(3) Subsection (2) does not apply to a reduction of, in the case of common shares, par value or, in the case of preferred shares, stated capital that is not wholly represented by realizable assets.

(4) If the co-operative proposes to reduce its capital in relation to preferred shares and if a co-operative maintains more than one stated capital account, the special resolution to reduce stated capital required by subsection (1) must specify the stated capital account or accounts from which the reduction will be deducted.

(5) A creditor of a co-operative may apply to a court for an order compelling a person:

- (a) to pay to the co-operative an amount equal to any liability of the person that was extinguished or reduced contrary to this section; or
- (b) to pay or deliver to the co-operative any money or property that was paid or distributed to the person as a consequence of a reduction of, in the case of common shares, par value, or in the case of preferred shares, stated capital made contrary to this section.

(6) **Repealed.** 2004, c.L-16.1, s.61.

1999, c.N-4.001, s.61; 2004, c.L-16.1, s.61.

Adjustment of stated capital account

62(1) On a redemption or acquisition of any of its preferred shares, a co-operative must adjust the stated capital account in relation to that share by the ratio of the stated capital for that class to that share.

(2) If a special resolution made in accordance with subsection 61(1) is in relation to preferred shares, a co-operative must adjust its stated capital account in accordance with that special resolution.

(3) On a conversion of preferred shares of a co-operative into preferred shares of another class or series or an exchange pursuant to section 244, a reorganization pursuant to section 257 or the redemption or exchange of preferred shares under an order made pursuant to section 291, the co-operative must:

(a) deduct from the stated capital account maintained for the class or series of preferred shares converted or exchanged, or subject to the reorganization, redemption or exchange, an amount equal to the result obtained by multiplying the stated capital of the preferred shares of that class or series by the number of preferred shares of that class or series converted or exchanged, or subject to the reorganization, redemption or exchange, divided by the number of issued shares of that class or series immediately before the conversion, change, reorganization, redemption or exchange; and

(b) add the result obtained pursuant to clause (a) and any additional amount received pursuant to the conversion, change, reorganization, redemption or exchange to the stated capital account maintained or to be maintained for the class or series of shares.

(4) For the purposes of subsection (3) and subject to its articles, where a co-operative issues two classes of preferred shares and attached to each class is a right to convert a preferred share of the one class into a preferred share of the other class, and a preferred share of one class is converted into a share of the other class, the amount of stated capital attributable to a share in either class is the aggregate of the stated capital of both classes divided by the number of issued preferred shares of both classes immediately before the conversion.

(5) For the purposes of this section, a co-operative holding shares in itself as permitted by section 51 is deemed not to have redeemed or acquired them.

(6) Preferred shares issued by a co-operative that are converted into shares of another class or series, are exchanged pursuant to section 244, or are subject to a reorganization pursuant to section 257 or a redemption or exchange under an order made pursuant to section 291, become shares of the other class or series of shares.

(7) If the articles limit the number of authorized shares of a class of preferred shares and issued shares of that class or of a series of shares of that class have become, pursuant to subsection (6), issued preferred shares of another class or series, the number of unissued shares of the first class is, unless the articles provide otherwise, increased by the number of preferred shares that, pursuant to subsection (6), became preferred shares of another class or series.

1999, c.N-4.001, s.62.

Prohibited loans and guarantees

63(1) Subject to subsection (2) and any additional restrictions set out in the articles, a co-operative or any of its affiliates shall not, directly or indirectly, give financial assistance by means of a loan, guarantee or otherwise:

(a) to any member, shareholder, director, officer or employee of the co-operative or an affiliate or associate of any such person for any purpose; or

c. N-4.001

NEW GENERATION CO-OPERATIVES

(b) to any person for the purpose of or in connection with a purchase of a share issued or to be issued by a co-operative or affiliate;

if there are reasonable grounds for believing that:

(c) the co-operative is, or after giving the financial assistance would be, unable to pay its liabilities as they become due; or

(d) the realizable value of the co-operative's assets, excluding the amount of any financial assistance in the form of a loan and in the form of assets pledged or encumbered to secure a guarantee, after giving the financial assistance, would be less than the aggregate of the co-operative's liabilities, the stated capital of all classes and the aggregate of the par value of the issued common shares.

(2) A co-operative may give financial assistance by means of a loan, guarantee or otherwise:

(a) to a member or patron in relation to an agreement with that member or patron for the supply of a good or service;

(b) to any person on account of expenditures incurred or to be incurred on behalf of the co-operative;

(c) to a subsidiary of the co-operative; and

(d) to employees of the co-operative or of any of its affiliates:

(i) to enable or assist them to purchase or erect living accommodation for their own occupation; or

(ii) in accordance with a plan for the purchase of shares of the co-operative or any of its affiliates to be held by a trustee.

(3) A contract made by a co-operative in contravention of this section may be enforced by the co-operative or by a lender for value in good faith without notice of the contravention.

1999, c.N-4.001, s.63.

Moneys owing a debt

64 All moneys payable by any member to the co-operative pursuant to the articles or bylaws are a debt due from the member to the co-operative.

1999, c.N-4.001, s.64.

Lien on member's interest

65(1) A co-operative has a lien on a common share or member loan, on any preferred share mentioned in section 35 and, subject to subsection 78(2), on any other preferred share with respect to which a lien is provided for in the articles for a debt of a member or holder of preferred shares to the co-operative.

(2) A co-operative may:

(a) enforce a lien mentioned in subsection (1) in the manner set out in its articles or bylaws; or

(b) apply any moneys to the credit of the member or shareholder towards payment of any debt due by the member or shareholder to the co-operative.

1999, c.N-4.001, s.65.

PART VI
Memberships and Common Shares

Memberships, etc., transferable

66 Subject to any conditions or restrictions that are contained in this Act:

- (a) memberships, common shares and preferred shares mentioned in section 35 are transferable in accordance with section 68; and
- (b) preferred shares, other than preferred shares mentioned in section 35, are transferable in any manner as long as the transfer is in accordance with the articles.

1999, c.N-4.001, s.66.

Share certificates

67(1) The bylaws of a co-operative may provide that no certificate for common shares or certificates for member loans need to be issued and, if so:

- (a) the co-operative must, on the request of a member, issue a statement of the number of common shares held by, or the amount of any member loan of, the member; and
- (b) the records kept by the co-operative pursuant to subsection 26(1) are evidence of the common shares or member loans held by a member.

(2) The face of each certificate that the co-operative issues respecting common shares and preferred shares mentioned in section 35 or member loans must contain:

- (a) the name of the co-operative;
- (b) a statement that the co-operative is subject to this Act;
- (c) the name of the person to whom it is issued;
- (d) a statement that the certificate represents common shares and preferred shares mentioned in section 35 in, or member loans of, the co-operative, and the number of the common shares and preferred shares mentioned in section 35 or the amount of the member loan;
- (e) a statement that the certificate is not transferable without the approval of the directors; and
- (f) a statement that there is a charge on the common shares and preferred shares mentioned in section 35 or member loans represented by the certificate in favour of the co-operative for any indebtedness of the member to the co-operative.

1999, c.N-4.001, s.67.

Transfers of shares or memberships

68 Unless the bylaws provide otherwise, no transfer of a common share or preferred share mentioned in section 35 or membership in a co-operative is valid for any purpose unless:

- (a) a written application for membership by the transferee is approved and the transfer is authorized by:
 - (i) a resolution of the directors; or
 - (ii) a person authorized by a resolution of the directors to approve applications and transfers of that kind; and
- (b) notification of any approval given pursuant to clause (a) is sent to the transferee and the transferee's name has been entered on the register of members.

1999, c.N-4.001, s.68.

Dealings with registered holder

69(1) In this section, "**member interest**" means an interest held by a member in the co-operative as common shares, member loans or preferred shares mentioned in section 35.

(2) Before a transfer of a member interest is presented for registration, a co-operative or a trustee under a trust indenture may treat the registered holder in whose name the member interest is registered in a register of the co-operative as if that person had full capacity and authority to exercise all rights of ownership without taking into account:

- (a) any knowledge or notice to the contrary, other than that obtained in a document demanded by the co-operative or trustee; or
- (b) any description in the co-operative's records or on a certificate representing the member interest indicating:
 - (i) a pledge or a representative or fiduciary relationship;
 - (ii) a reference to an instrument other than its records or the certificate; or
 - (iii) the rights of any other person.

(3) Notwithstanding subsection (2) or any provision in this Act or the articles or bylaws of a co-operative that a member interest may only be issued to or owned by a member, a co-operative shall treat a person, other than the registered holder of a security described in subsection (2), as the registered holder of a member interest entitled to exercise all the rights and subject to the obligations of the holder that the person represents where the person provides evidence satisfactory to the co-operative that he or she is:

- (a) the executor, administrator, heir or legal representative of the heirs of the estate of a deceased registered holder;
- (b) a guardian, committee, trustee, curator or tutor representing a registered holder who is an infant, an incompetent person or a missing person; or
- (c) a liquidator of, or a trustee in bankruptcy for, a registered holder.

(4) Where a person on whom the ownership of a member interest devolves by operation of law, other than a person described in subsection (3), provides evidence satisfactory to the co-operative of that person's authority to exercise rights or privileges with respect to the member interest in the co-operative that is not registered in the name of that person, the co-operative shall treat that person as entitled to those rights and subject to the obligations related to those rights.

(5) A co-operative is not required to inquire into the existence of, or see to the performance or observance of, any duty owed to a third person by a registered holder of any member interest or by anyone whom it treats, as permitted or required in this section, as the owner or registered holder of the member interest.

(6) Where an individual who is less than 18 years of age exercises any rights of ownership in a member interest, no subsequent repudiation or avoidance is effective against the co-operative.

(7) Where a co-operative receives proof satisfactory to it of the death of any of the joint holders of a member interest, the co-operative may treat the survivors of the deceased joint holders as the owners of the member interest.

(8) Subject to any applicable law relating to the collection of taxes, a person described in clause (3)(a) is entitled to become a registered holder or to designate a registered holder of a member interest, when the person deposits with the co-operative or its transfer agent:

(a) either:

(i) the original letters probate or letters of administration, or a copy of the letters probate or letters of administration, certified to be a true copy by:

(A) the court that granted the letters probate or letters of administration;

(B) a trust company incorporated pursuant to the laws of Canada or a province or territory of Canada; or

(C) a lawyer or notary acting on behalf of the person; or

(ii) in the case of transmission by notarial will in Quebec, a copy of the notarial will authenticated pursuant to the laws of that province;

(b) an affidavit or declaration of transmission made by the person, stating particulars of the transmission; and

(c) the security certificate, if any, for the member interest, that was owned by the deceased holder, endorsed by the person and accompanied by any assurance the co-operative may require that the endorsement is genuine and effective.

(9) Notwithstanding subsection (8), where the laws of the jurisdiction governing the transmission of a security of a deceased holder do not require letters probate or letters of administration with respect to the transmission, the legal representative of the deceased holder is entitled, subject to any applicable law relating to the collection of taxes, to become a registered holder or to designate a registered holder when he or she deposits with the co-operative or its transfer agent:

(a) the certificates, if any, for member interests that were owned by the deceased holder; and

- (b) evidence that is satisfactory to the co-operative or its transfer agent of:
 - (i) laws of the jurisdiction governing the transmission of the security;
 - (ii) the interest of the deceased holder in the security; and
 - (iii) the right of the legal representative or the person he or she designates to become the registered holder.
- (10) When documents required in subsection (8) or (9) are deposited with a co-operative or its transfer agent, the co-operative or its transfer agent may:
 - (a) record in a register of members or securities the transmission of a member interest from the deceased holder to a person described in clause (3)(a) or to any person that the person mentioned in that clause may designate; and
 - (b) treat the person who becomes a registered holder pursuant to clause (a) as the owner of the member interest.
- (11) Notwithstanding subsections (1) to (10), a person mentioned in subsection (3) or (4) is not entitled to vote as a member of a co-operative unless the person is a member of a co-operative in accordance with section 188.

1999, c.N-4.001, s.69.

Joint memberships

- 70(1)** Unless the bylaws provide otherwise, where membership in a co-operative is held jointly:
- (a) subject to clause (b), each of the joint members is entitled to vote and to exercise full rights and responsibilities of membership;
 - (b) subject to subsection (2), only one joint member of a co-operative may be a director at any one time; and
 - (c) each joint member has an interest in the co-operative equal to that of other joint members.
- (2) Where a joint member also holds a membership in his or her name, that joint member may be elected by the members as a director, notwithstanding the fact that another joint member is also a director.
 - (3) Where membership in a co-operative is held jointly:
 - (a) the membership may be held as a joint tenancy or a tenancy in common, but, where the members do not specify to the co-operative how the membership is to be held, the membership is deemed to be held as a joint tenancy; and
 - (b) the joint members are jointly and severally liable for all obligations imposed or payable with respect to the membership.
 - (4) In the absence of an agreement to the contrary, where one joint member is obliged to and does pay more than his or her proportionate share of an obligation with respect to a joint membership by reason of the default of another of the joint members, the member who paid the amount in excess of his or her proportionate share has a lien on the interest of that other member and may recover the amount from the person who made the default.

(5) Where a joint member is also a holder of preferred shares, that joint member may be elected by the holders of preferred shares as a director.

1999, c.N-4.001, s.70.

Variation of joint membership

71 An application of a joint membership to withdraw from membership in a co-operative or to vary the composition of the joint membership must be signed by all the persons comprising the joint membership.

1999, c.N-4.001, s.71.

PART VII

Share Certificates, Registers and Transfers

Interpretation of Part

72(1) In this Part:

- (a) **“adverse claim”** includes, respecting a security, a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security;
- (b) **“broker”** means a person who is engaged in whole or in part in the business of buying and selling securities and who, in the transaction concerned, acts for, or buys a security from, or sells a security to a customer;
- (c) **“delivery”** means voluntary transfer of possession;
- (d) **“fiduciary”** means a trustee, guardian, committee, curator, tutor, executor, administrator, representative of a deceased person or any other person acting in a fiduciary capacity;
- (e) **“fungible”**, in relation to securities, means securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit;
- (f) **“genuine”** means free of forgery or counterfeiting;
- (g) **“good faith”**, respecting a transaction, means honesty in fact in the conduct of the transaction;
- (h) **“good faith purchaser”** means, respecting a security in bearer form or order form or a security in registered form issued to the purchaser or endorsed to the purchaser or endorsed in blank, a purchaser for value in good faith and without notice of any adverse claim who takes delivery of the security;
- (i) **“holder”** means a person who is in possession of a security that is issued or endorsed to the person or to bearer or in blank;
- (j) **“issuer”** includes a co-operative that:
 - (i) is required by this Act to maintain a securities register; or
 - (ii) directly or indirectly creates fractional interests in its rights or property and issues securities as evidence of the fractional interests;
- (k) **“overissue”** means the issue of securities in excess of any maximum number of securities that the issuer is authorized by its articles or a trust indenture to issue;

- (l) **“purchaser”** means a person who takes an interest in a security by sale, mortgage, hypothec, pledge, issue, reissue, gift or any other voluntary transaction;
- (m) **“security”** or **“security certificate”** means a document issued by a co-operative that is:
- (i) in bearer, order or registered form;
 - (ii) of a type commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment;
 - (iii) one of a class or series or by its terms divisible into a class or series of documents; and
 - (iv) evidence of a preferred share, participation or other interest in or obligation of a co-operative;
- but does not include:
- (v) a common share or a document evidencing a common share;
 - (vi) a member loan or a document evidencing a member loan; or
 - (vii) a membership or a document evidencing a membership;
- (n) **“shareholder”** means the holder of a preferred share;
- (o) **“transfer”** includes transmission by operation of law;
- (p) **“trust indenture”** means a trust indenture as defined in section 143;
- (q) **“valid”** means issued in accordance with the applicable law and the articles of the issuer, or validated pursuant to section 91.
- (2) Except when a transfer is restricted and noted on a security in accordance with subsection 78(2), a security is a negotiable instrument.
- (3) A security is in registered form if it:
- (a) specifies a person who is entitled to the security or to the rights it evidences, and its transfer is capable of being recorded in a securities register; or
 - (b) bears a statement that it is in registered form.
- (4) A debt obligation is in order form if, by its terms, it is payable to the order of a person specified with reasonable certainty in it or to a person to whom it is assigned.
- (5) A security is in bearer form if it is payable to bearer according to its terms and not by reason of an endorsement.
- (6) A guarantor for an issuer is deemed to be an issuer to the extent of the guarantee, whether or not the obligation is noted on the security.

Application

73 This Part governs the transfer or transmission of a security.

1999, c.N-4.001, s.73.

Certificates

74 Every security holder is entitled, at the security holder's option, to obtain from the co-operative:

- (a) a security certificate that complies with this Act; or
- (b) a non-transferable written acknowledgment of the security holder's right to obtain a security certificate.

1999, c.N-4.001, s.74.

Fee may be charged for certificate

75 A co-operative may charge a reasonable fee for a security certificate issued respecting a transfer.

1999, c.N-4.001, s.75.

Jointly held securities

76 If securities are held jointly by more than one person:

- (a) a co-operative is not required to issue more than one security certificate respecting those securities; and
- (b) delivery of a security certificate to one of the joint owners is sufficient delivery to all of the joint owners.

1999, c.N-4.001, s.76.

Certificate must be signed

77(1) A security certificate must be signed manually by one of the following individuals, or a facsimile of the signature must be reproduced on the certificate:

- (a) at least one director or officer;
- (b) an individual on behalf of a director, transfer agent or branch transfer agent of the co-operative;
- (c) a trustee who certifies it in accordance with a trust indenture.

(2) A co-operative may issue security certificates that contain the signature of a person who is no longer a director or officer and the validity of the certificate is not adversely affected.

1999, c.N-4.001, s.77.

Information to be stated on certificate

78(1) The following information must be stated on the face of each security certificate issued by a co-operative:

- (a) the name of the co-operative;
- (b) the words "Incorporated pursuant to *The New Generation Co-operatives Act*", or "Subject to *The New Generation Co-operatives Act*";

- (c) the name of the person to whom it was issued;
 - (d) the number and class of shares and the designation of any series that the certificate represents.
- (2) No restriction, charge or endorsement mentioned in subsection (3) is effective against a transferee of a security, issued by a co-operative or by a body corporate before it is continued pursuant to this Act, who has no actual knowledge of the restriction, charge or endorsement unless it or a reference to it is noted conspicuously on the security certificate.
- (3) The restrictions, charges and endorsements mentioned in subsection (2) are:
- (a) a restriction on transfer;
 - (b) a lien in favour of the co-operative; and
 - (c) an endorsement pursuant to subsection 259(10).
- (4) If the issued preferred shares of a co-operative are or were part of a distribution to the public, remain outstanding and are held by more than one person, the co-operative must not restrict the transfer or ownership of its preferred shares of any class or series.

1999, c.N-4.001, s.78.

Special rights or restrictions

79(1) Every share certificate for a preferred share of a co-operative that is authorized to issue shares of more than one class or series must clearly state:

- (a) the special rights or restrictions attached to the shares of each class and series that exist when the share certificate is issued; or
 - (b) that the class or series of shares that it represents has special rights or restrictions attached to it and that the co-operative will provide a holder of preferred shares, on demand and without charge, with a full copy of the text of:
 - (i) any special rights or restrictions attached to each class authorized to be issued, and to each series, that have been fixed by the directors; and
 - (ii) the authority of the directors to fix the special rights or restrictions of subsequent series.
- (2) If a share certificate for a preferred share contains the statement mentioned in clause (1)(b), the co-operative must provide the holder of preferred shares, on demand and without charge, with a copy of:
- (a) the special rights or restrictions attached to each class or series of preferred shares authorized to be issued; and
 - (b) the authority of the directors to fix the special rights or restrictions of subsequent series of preferred shares in the same class.

1999, c.N-4.001, s.79.

Fractional preferred shares

80(1) A co-operative may issue a certificate for a fractional preferred share or may instead issue a scrip certificate in bearer form that entitles the holder to receive a certificate for a full preferred share in exchange for sufficient scrip certificates equalling a full preferred share.

(2) The directors may attach conditions to scrip certificates issued by the co-operative, including conditions that:

(a) the scrip certificates become null or void if not exchanged for a preferred share representing a full preferred share before a specified date; and

(b) any preferred shares for which the scrip certificates are exchangeable may, notwithstanding any pre-emptive right, be issued by the co-operative to any person and the proceeds distributed rateably to the holders of the scrip certificates.

(3) A holder of a fractional preferred share is not entitled to exercise voting rights or to receive a dividend respecting the preferred share unless:

(a) the fractional share results from a consolidation of preferred shares; or

(b) the articles of the co-operative provide otherwise.

(4) A holder of a scrip certificate is not entitled to exercise voting rights or to receive a dividend respecting the scrip certificate.

1999, c.N-4.001, s.80.

Registers

81(1) A co-operative that issues securities must maintain a securities register in which it records the securities issued by it in registered form, showing with respect to each class or series:

(a) the names, in alphabetical order, and the last known address of each person who holds or previously held the security;

(b) the number of securities held by each security holder; and

(c) the date and particulars of the issue and transfer of each security.

(2) The securities register must be maintained at the co-operative's registered office or at any other place in Canada designated by the directors.

(3) A co-operative may maintain additional branch securities registers in other places designated by the directors.

(4) A branch securities register is only to contain particulars of securities issued or transferred at the branch, and the same information must also be maintained in the central register.

(5) A co-operative, its agent or mandatary or a trustee as defined in section 143 is not required to produce:

(a) a cancelled security certificate in registered form, an instrument mentioned in section 39 that is cancelled or a like cancelled instrument in registered form six years after the date of its cancellation;

c. N-4.001

NEW GENERATION CO-OPERATIVES

(b) a cancelled security certificate in bearer form, an instrument mentioned in section 39 that is cancelled or a like cancelled instrument in bearer form after the date of its cancellation; or

(c) an instrument mentioned in section 39 or a like instrument, regardless of its form, after the date of its expiration.

1999, c.N-4.001, s.81.

Agent may be appointed

82 A co-operative may appoint an agent to maintain a securities register on its behalf.

1999, c.N-4.001, s.82.

Registration valid for all purposes

83 The registration of the issue or transfer of a preferred share in a securities register maintained by the co-operative is complete and valid registration for all purposes.

1999, c.N-4.001, s.83.

Person to be treated as owner

84 Subject to section 28, subsection 194(9) and section 195, a co-operative or a trustee as defined in section 143 may treat the person whose name appears on the securities register as the owner of a security as its owner for all purposes.

1999, c.N-4.001, s.84.

Restrictions on transfer

85 If a co-operative restricts the right to transfer its preferred shares, the co-operative may, notwithstanding section 84, treat a person as the registered holder of a security if the person provides the co-operative with evidence that reasonably meets the requirements of the co-operative that the person is:

(a) the heir of a deceased security holder, or the fiduciary of the estate or succession of a deceased security holder, or of a registered security holder who is a minor, an incompetent or incapable person or a missing person; or

(b) a liquidator of, or a trustee in bankruptcy for, a registered security holder.

1999, c.N-4.001, s.85.

Obligations of co-operative

86 A co-operative must treat a person, other than one described in section 85, as being entitled to exercise the rights and privileges attached to a security if the person provides proof that the person has acquired ownership of the security by operation of law or has legal authority to exercise the rights and privileges.

1999, c.N-4.001, s.86.

Surviving joint holder

87 If satisfactory proof of the death of a joint holder of a security is provided to a co-operative, it may treat any surviving joint holder as the owner of the security.

1999, c.N-4.001, s.87.

Where duty owed to third person

88 A co-operative is not required to inquire into the existence of, or see to the performance of, any duty owed to a third person by a registered holder or a person who may be treated as a registered holder of a security.

1999, c.N-4.001, s.88.

Right of ownership when under 18

89 If an individual who is less than 18 years of age exercises a right of ownership in a security of a co-operative, no subsequent repudiation or avoidance is effective against the co-operative.

1999, c.N-4.001, s.89.

Information to be deposited with co-operative

90(1) Subject to any applicable law relating to the collection of taxes, a person who is an heir or a fiduciary of an estate or succession of a deceased security holder is entitled to become the registered holder or to designate a registered holder if the person deposits the following information with the co-operative or its transfer agent, together with any reasonable assurances that the co-operative may require:

- (a) the security certificate or, in default of one, a document proving that the deceased was the security holder;
 - (b) a document proving the death of the security holder;
 - (c) a document proving that the heir or fiduciary has the right under the law of the place in which the deceased was domiciled immediately before his or her death to deal with the security.
- (2) A security certificate mentioned in clause (1)(a) must be endorsed:
- (a) in the case of a transfer to an heir or fiduciary, by that person; and
 - (b) in any other case, in a manner acceptable to the co-operative.
- (3) Deposit of the documents required by subsection (1) empowers a co-operative or its transfer agent to record in a securities register the transmission of a security from the deceased holder to the heir or fiduciary or to any person that the heir or fiduciary may designate and to treat the person who becomes a registered holder as the owner of the securities.

1999, c.N-4.001, s.90.

Validation

91(1) Subject to this section, the provisions of this Part that validate a security or compel its issue or reissue do not apply if the validation, issue or reissue of a security would result in an overissue.

(2) The person who is entitled to a validation or issue may, if there has been an overissue and if a valid security that is similar in all respects to the security involved in the overissue is reasonably available for purchase, compel the issuer to purchase and deliver that security against the surrender of the security that the person holds.

(3) If a valid security that is similar in all respects to the security involved in the overissue is not reasonably available for purchase, the person who is entitled to the validation or issue may recover from the issuer an amount equal to the price the last purchaser for value paid for the invalid security.

(4) The overissued securities are valid from the date they were issued only if the issuer increases the number of its authorized securities to a number equal to or greater than the number of securities previously authorized in addition to the number of the securities overissued.

1999, c.N-4.001, s.91.

Non-application of sections 60 and 62

92 Sections 60 and 62 do not apply to a payment or purchase by an issuer pursuant to section 91.

1999, c.N-4.001, s.92.

Proceeding

93 The following rules apply in an action on a security:

(a) each signature on the security certificate or in a necessary endorsement is admitted unless specifically denied in the pleadings;

(b) a signature on the security is presumed to be genuine and authorized but, if the effectiveness of the signature is in issue, the burden of establishing that it is genuine and authorized is on the party claiming under the signature;

(c) if a signature is admitted or established, production of a certificate entitles the holder to recover on it unless the other party establishes a defence or defect going to the validity of the security;

(d) if the other party establishes the defence or defect, the plaintiff has the burden of establishing that the defence or defect is ineffective against the plaintiff or some other person under whom the claim is made.

1999, c.N-4.001, s.93.

Delivery

94(1) A person who is required to deliver securities may deliver any security of the specified issue:

(a) in bearer form;

- (b) in registered form in the name of the transferee; or
 - (c) endorsed to the person or in blank.
- (2) Subsection (1) is subject to any agreement to the contrary, to any applicable Act or an Act of the legislature of another province or territory or of the Parliament of Canada or to any applicable regulation or stock exchange rule.

1999, c.N-4.001, s.94.

General

95(1) The terms of a security include those stated on the security and those incorporated by reference to another document, Act or an Act of the legislature of another province or territory or of the Parliament of Canada, regulation, rule or order to the extent that the incorporated terms do not conflict with those stated on the security.

(2) Subsection (1) applies to a good faith purchaser but the incorporation by reference is itself not notice of a defect to the purchaser even if the security expressly states that a person accepting it admits that notice.

1999, c.N-4.001, s.95.

Good faith purchaser

96 A security is valid in the hands of a good faith purchaser.

1999, c.N-4.001, s.96.

Where security not genuine

97 Subject to section 100, the fact that a security is not genuine is a complete defence even against a good faith purchaser.

1999, c.N-4.001, s.97.

Defences

98 All other defences of an issuer, including non-delivery and conditional delivery of a security, are ineffective against a good faith purchaser.

1999, c.N-4.001, s.98.

Notice of defect

99(1) A purchaser is deemed to have notice of any defect in the issue of a security or any defence of the issuer if the security becomes stale within the meaning of subsection (2).

- (2) A security becomes stale if:
 - (a) the purchaser takes the security more than two years after:
 - (i) the date on which performance of the principal obligation evidenced by the security was due; or
 - (ii) the set date on or after which the security is to be presented or surrendered for redemption or exchange; or

c. N-4.001**NEW GENERATION CO-OPERATIVES**

(b) the payment of money or the delivery of securities is required in order to present or surrender the security, the money or securities are available on the day for the payment or delivery and the purchaser takes the security more than one year after that day.

1999, c.N-4.001, s.99.

Unauthorized signature

100(1) Subject to subsection (2), an unauthorized signature on a security is ineffective.

(2) An unauthorized signature on a security is effective in favour of a good faith purchaser if the signature was made by:

(a) an authenticating trustee, transfer agent or other person entrusted by the issuer with the duty to sign the security, or similar securities, or to prepare them for signing; or

(b) an employee of the issuer or a person mentioned in clause (a) who handles the security in the ordinary course of his or her duties.

1999, c.N-4.001, s.100.

Incomplete security

101 If a security contains the signatures necessary for its issue or transfer but is incomplete in another respect, any person may complete it in accordance with his or her authority.

1999, c.N-4.001, s.101.

Incorrectly completed security

102 A security that was completed incorrectly is enforceable by a good faith purchaser.

1999, c.N-4.001, s.102.

Improperly altered security

103 A completed security that was improperly altered, even if fraudulently altered, remains enforceable but only according to its original terms.

1999, c.N-4.001, s.103.

Signing security

104(1) A person signing a security as an authenticating trustee, transfer agent or other person entrusted by the issuer with the duty to sign the security guarantees to a good faith purchaser that:

(a) the security is genuine;

(b) the person's acts in connection with the security are within the person's authority; and

(c) the person has reasonable grounds for believing that the security is in the form and within the amount the issuer is authorized to issue.

(2) Unless agreed otherwise, a person mentioned in subsection (1) does not assume any further liability for the validity of the security.

1999, c.N-4.001, s.104.

Delivery of security

105(1) On delivery of a security, the purchaser of the security acquires the rights in it that the transferor had or had authority to convey.

(2) A good faith purchaser of a security acquires it free from any adverse claim.

(3) A purchaser who was a party to a fraud or illegality affecting a security or who, as a prior holder, had notice of an adverse claim does not have a better position by taking from a later good faith purchaser.

1999, c.N-4.001, s.105.

Limited interest

106 A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

1999, c.N-4.001, s.106.

Adverse claim

107(1) A purchaser of a security, or a broker for a seller or purchaser, is deemed to have notice of an adverse claim if:

(a) the security has been endorsed “for collection” or “for surrender” or for some other purpose other than transfer; or

(b) the security is in bearer form and has a statement on it that it belongs to a person other than the transferor.

(2) The writing of a name on a security is not, of itself, a statement for the purposes of clause (1)(b).

1999, c.N-4.001, s.107.

No duty to inquire

108(1) A purchaser of a security, or a broker for a seller or purchaser, has no duty to inquire into the rightfulness of the transfer and, subject to section 109, has no notice of an adverse claim.

(2) Subsection (1) applies notwithstanding that the purchaser or broker has notice that the security is held by a third person or is registered in the name of or endorsed by a fiduciary.

1999, c.N-4.001, s.108.

Notice of adverse claim

109 A purchaser or broker who knows that the transaction is for the personal benefit of the fiduciary or is otherwise in breach of the fiduciary’s duty is deemed to have notice of an adverse claim.

1999, c.N-4.001, s.109.

Events not constituting adverse claim

110(1) The following events do not constitute notice of an adverse claim unless the security becomes stale within the meaning of subsection (2):

(a) an event that creates a right to performance of the principal obligation evidenced by the security;

c. N-4.001**NEW GENERATION CO-OPERATIVES**

- (b) an event that sets the date on or after which the security is to be presented or surrendered for redemption or exchange.
- (2) A security becomes stale if:
 - (a) the purchaser takes the security more than one year after:
 - (i) the date on which performance of the principal obligation evidenced by the security was due; or
 - (ii) the date on or after which the security was to be presented or surrendered for redemption or exchange; or
 - (b) the payment of money or the delivery of securities is required in order to present or surrender the security, the money or securities are available on the day for the payment or delivery and the purchaser takes the security more than six months after that day.

1999, c.N-4.001, s.110.

Guarantee

- 111(1)** A person who presents a security for registration of transfer or for payment or exchange guarantees to the issuer that the person is entitled to do so.
- (2) A good faith purchaser who receives a new, reissued or re-registered security and who registers a transfer guarantees only that the purchaser has no knowledge of any unauthorized signature in a necessary endorsement.

1999, c.N-4.001, s.111.

Transfer for value

- 112** A person who transfers a security to a purchaser for value guarantees by the transfer only that:
 - (a) the transfer is effective and rightful;
 - (b) the security is genuine and has not been materially altered; and
 - (c) the person knows of nothing that might impair the validity of the security.

1999, c.N-4.001, s.112.

Intermediary

- 113** An intermediary delivering a security to a purchaser who knows that the intermediary is an intermediary guarantees only good faith.

1999, c.N-4.001, s.113.

Broker

- 114** A broker gives to a customer, to the issuer and to a purchaser the guarantees provided in sections 111 to 113 and has the rights and privileges of a purchaser pursuant to those sections, and those guarantees of and in favour of the broker acting as an agent or mandatary are in addition to guarantees given by the customer and guarantees given in favour of the customer.

1999, c.N-4.001, s.114.

Security without endorsement

115 If a registered security is delivered to a purchaser without a necessary endorsement, the purchaser has the right to demand the endorsement, and the purchaser becomes a good faith purchaser after the endorsement.

1999, c.N-4.001, s.115.

Meaning of “appropriate”

116(1) In this section, section 117, subsections 124(1) and 132(1) and section 136, “**appropriate**”, respecting a person, means that the person is:

- (a) the person who is specified by the security or by a special endorsement to be entitled to the security;
 - (b) if a person described in clause (a) is described as a fiduciary but is no longer serving as one, either that person or that person’s successor;
 - (c) if the security or endorsement mentioned in clause (a) specifies more than one person as fiduciaries and one or more of those persons is no longer a fiduciary, the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified;
 - (d) if a person described in clause (a) is an individual and is without capacity to act by reason of death, incompetence, minority or other incapacity, the person’s fiduciary;
 - (e) if the security or endorsement mentioned in clause (a) specifies more than one person with right of survivorship and by reason of death not all of the persons can sign, the survivor or survivors;
 - (f) a person who has the legal power to sign; or
 - (g) to the extent that a person described in clauses (a) to (f) may act through an agent or mandatary, the person’s authorized agent or mandatary.
- (2) The authority of a person signing is determined as of the time of signing.

1999, c.N-4.001, s.116.

Endorsement in registered form

117(1) An endorsement of a security in registered form for the purposes of assignment or transfer is made when an appropriate person signs either the security or a separate document or when the signature of an appropriate person is written without more on the back of the security.

- (2) An endorsement may be:
- (a) in blank; or
 - (b) special.
- (3) An endorsement in blank includes an endorsement to bearer.
- (4) A special endorsement specifies the person to whom the security is to be transferred or the person who has power to transfer it.
- (5) A holder may convert an endorsement in blank into a special endorsement.

1999, c.N-4.001, s.117.

Assumption of obligations

118 Unless agreed otherwise, the endorser does not, by the endorsement, assume any obligation that the security will be honored by the issuer.

1999, c.N-4.001, s.118.

Partial endorsement

119 An endorsement purporting to be an endorsement of only part of a security representing units intended by the issuer to be separately transferable is effective to the extent of the endorsement.

1999, c.N-4.001, s.119.

Failure of fiduciary to comply with document

120 Failure of a fiduciary to comply with the document that is the source of the fiduciary's power or with the law of the jurisdiction governing the fiduciary relationship does not render the fiduciary's endorsement unauthorized for the purposes of this Part.

1999, c.N-4.001, s.120.

Endorsement not transfer

121 An endorsement of a security does not constitute a transfer until delivery of the security on which it appears or, if the endorsement is on a separate document, until delivery of both the security and the document.

1999, c.N-4.001, s.121.

Notice of adverse claims

122 An endorsement of a security in bearer form may give notice of an adverse claim pursuant to section 107 but does not otherwise affect any of the holder's rights.

1999, c.N-4.001, s.122.

Ineffectiveness of endorsement

123(1) The owner of a security may assert the ineffectiveness of an endorsement against the issuer or a purchaser, other than a good faith purchaser who has in good faith received a new, reissued or re-registered security on registration of transfer, unless the owner:

- (a) has ratified an unauthorized endorsement of the security; or
- (b) is otherwise precluded from impugning the effectiveness of an unauthorized endorsement.

(2) An issuer who registers the transfer of a security on an unauthorized endorsement is liable for improper registration.

1999, c.N-4.001, s.123.

Guarantees re endorsement

124(1) A person who guarantees the signature of an endorser of a security warrants that, at the time of signing, the signer was an appropriate person to endorse and the signature was genuine.

(2) A person who guarantees the signature of an endorser does not otherwise warrant the rightfulness of the transfer to which the signature relates.

(3) A person who guarantees the endorsement of a security warrants both the signature and the rightfulness, in all respects, of the transfer to which the signature relates, but an issuer may not require a guarantee of endorsement as a condition to registration of transfer.

(4) The guarantees mentioned in subsections (1) to (3) are made to any person who, relying on the guarantee, takes or deals with the security, and the guarantor is liable to the person for any loss resulting from breach of warranty.

1999, c.N-4.001, s.124.

Delivery of security

125 Delivery of a security to a purchaser occurs when:

(a) the purchaser or a person designated by the purchaser acquires possession of it;

(b) the purchaser's securities broker acquires possession of a security specially endorsed to or issued in the name of the purchaser;

(c) the purchaser's securities broker sends the purchaser confirmation of the purchase and the broker in the broker's records identifies a specific security as belonging to the purchaser; or

(d) respecting an identified security to be delivered while still in the possession of a third person, that person acknowledges that it is held for the purchaser.

1999, c.N-4.001, s.125.

Ownership

126(1) A purchaser is the owner of a security held for the purchaser by a securities broker, but a purchaser is not a holder except in the cases described in clauses 125(b) and (c).

(2) If a security is part of a fungible bulk, a purchaser of the security is the owner of the proportionate interest in the fungible bulk.

(3) Notice of an adverse claim received by a securities broker or by a purchaser after the broker takes delivery as a holder for value is not effective against the broker or the purchaser, except that, as between the broker and the purchaser, the purchaser may demand delivery of an equivalent security with respect to which no notice of an adverse claim has been received.

1999, c.N-4.001, s.126.

Sale of security

127(1) Unless agreed otherwise, if a sale of a security is made on a stock exchange or otherwise through securities brokers:

- (a) the selling customer fulfils his or her duty to deliver when the customer delivers the security to the selling securities broker or to a person designated by the selling securities broker or when the customer causes an acknowledgment to be made to the selling securities broker; and
 - (b) the selling securities broker, including a correspondence broker, acting for a selling customer fulfils his or her duty to deliver by delivering the security or a like security to the buying securities broker or to a person designated by the buying securities broker or by affecting clearance of the sale in accordance with the rules of the exchange on which the transaction took place.
- (2) Except as provided otherwise in this section and unless agreed otherwise, a transferor's duty to deliver a security under a contract of purchase is not fulfilled until the transferor delivers the security in negotiable form to the purchaser, or to a person designated by the purchaser, or causes an acknowledgment to be made to the purchaser that the security is held for the purchaser.
- (3) A sale to a securities broker purchasing for the securities broker's own account is subject to subsection (2) and not subsection (1), unless the sale is made on a stock exchange.

1999, c.N-4.001, s.127.

Wrongful transfer

128(1) A person against whom the transfer of a security is wrongful may, against anyone except a good faith purchaser:

- (a) reclaim possession of the security or obtain possession of a new security evidencing all or part of the same rights; or
 - (b) claim damages.
- (2) If the transfer of a security is wrongful by reason of an unauthorized endorsement, the owner may reclaim possession of the security or a new security even from a good faith purchaser if the ineffectiveness of the purported endorsement is asserted against the purchaser pursuant to section 123.

1999, c.N-4.001, s.128.

Proof of authority

129(1) Unless agreed otherwise, a transferor shall, on demand, supply a purchaser with proof of the transferor's authority to transfer a security or with any other requisite that is necessary to obtain registration of the transfer of a security, but if the transfer is not for value, it is not necessary for the transferor to provide authority to transfer unless the purchaser pays the reasonable and necessary costs of the proof and transfer.

- (2) If a transferor fails to comply with a demand pursuant to subsection (1) within a reasonable time, the purchaser may reject or rescind the transfer.

1999, c.N-4.001, s.129.

No seizure without possession

130 No seizure of a security or other interest evidenced by the security is effective until the person making the seizure obtains possession of the security.

1999, c.N-4.001, s.130.

Sale by agent, etc.

131 An agent, mandatary, bailee or depositary who in good faith has received securities and sold, pledged or delivered them according to the instructions of the mandatary, pledgor, depositor or principal is not in breach of a fiduciary duty or otherwise liable even though the mandatary, pledgor, depositor or principal has no right to dispose of the securities.

1999, c.N-4.001, s.131.

Registration of transfer

132(1) If a security in registered form is presented for transfer, the issuer shall register the transfer if:

- (a) the security is endorsed by an appropriate person;
 - (b) reasonable assurance is given that the endorsement is genuine and effective;
 - (c) the issuer has no duty to inquire into adverse claims or has discharged that duty;
 - (d) all applicable laws relating to the collection of taxes have been complied with;
 - (e) the transfer is rightful or is to a good faith purchaser; and
 - (f) any transfer fee mentioned in section 75 has been paid.
- (2) An issuer who has a duty to register a transfer of a security is liable to the person presenting it for registration for any loss resulting from an unreasonable delay in registration or from the failure or refusal to register the transfer.

1999, c.N-4.001, s.132.

Assurance may be required

133(1) An issuer may require an assurance that each necessary endorsement on a security is genuine and effective by requiring a guarantee of the signature of the person endorsing the security and by requiring:

- (a) if the endorsement is by an agent or mandatary, reasonable assurance of authority to sign;
- (b) if the endorsement is by a fiduciary, evidence of appointment or incumbency;
- (c) if there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and
- (d) in any other case, assurance that corresponds as closely as is feasible to the cases set out in clauses (a) to (c).

- (2) For the purpose of subsection (1), a guarantee of the signature of a person is sufficient if it is signed by or on behalf of a person whom the issuer believes, on reasonable grounds, to be a responsible person.
- (3) An issuer may adopt reasonable standards to determine responsible persons for the purpose of subsection (2).
- (4) For the purpose of clause (1)(b), the following constitute sufficient evidence of appointment or incumbency of a fiduciary:
- (a) in the case of a fiduciary of a deceased security holder's estate or succession, a certified copy of the document mentioned in clause 90(1)(c) and dated not earlier than 60 days before the day a security is presented for transfer;
 - (b) in the case of any other fiduciary, a copy of a document showing the appointment or other evidence believed by the issuer to be appropriate.
- (5) An issuer may adopt reasonable standards with respect to evidence mentioned in clause (4)(b).
- (6) An issuer is deemed not to have notice of the content of a document mentioned in subsection (4) that is obtained by the issuer except to the extent that the contents relate directly to appointment or incumbency.

1999, c.N-4.001, s.133.

Deemed notice

134 If an issuer, in relation to a transfer, demands assurance other than an assurance mentioned in subsection 133(1) and obtains a copy of a will, trust or partnership agreement or a bylaw or similar document, the issuer is deemed to have notice of all matters contained in the document that affect the transfer.

1999, c.N-4.001, s.134.

Duty to inquire

135(1) An issuer to whom a security is presented for registration has a duty to inquire into adverse claims if the issuer:

- (a) receives written notice of an adverse claim at a time and in a manner that provide the issuer with a reasonable opportunity to act on it before the issue of a new, reissued or re-registered security and the notice discloses the name and address of the claimant, the registered owner and the issue of which the security is a part; or
- (b) is deemed to have notice of an adverse claim from a document that it obtained pursuant to section 134.

(2) An issuer may discharge a duty of inquiry by any reasonable means, including notifying an adverse claimant by registered mail sent to the address provided by the adverse claimant or, if no address has been provided, to the adverse claimant's residence or regular place of business, that a security has been presented for registration of transfer by a named person and that the transfer will be registered unless, no later than 30 days after the date of sending the notice, the issuer:

- (a) is served with a restraining order or other order of a court; or
- (b) is provided with an indemnity bond sufficient in the issuer's judgment to protect the issuer and any transfer agent or other agent or mandatary of the issuer from any loss that may be incurred by any of them as a result of complying with the adverse claim.

1999, c.N-4.001, s.135.

Where no duty to inquire

136 Unless an issuer is deemed to have notice of an adverse claim from a document that is obtained pursuant to section 134 or has received notice of an adverse claim pursuant to subsection 135(1), if a security presented for registration is endorsed by the appropriate person, the issuer has no duty to inquire into adverse claims and, in particular:

- (a) an issuer registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent or correct description of the fiduciary relationship, and the issuer may then assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as the fiduciary respecting the particular security;
- (b) an issuer registering a transfer on an endorsement by a fiduciary has no duty to inquire into whether the transfer is made in compliance with the document or with the law of the jurisdiction governing the fiduciary relationship; and
- (c) an issuer is deemed not to have notice of the contents of a court record or a registered document even if the record or document is in the issuer's possession and the transfer is made on the endorsement of a fiduciary to the fiduciary specifically or to the fiduciary's nominee.

1999, c.N-4.001, s.136.

Written notice of adverse claim

137 A written notice of adverse claim received by an issuer is effective for 12 months after the day it was received unless the notice is renewed in writing.

1999, c.N-4.001, s.137.

Issuer not liable

138(1) Except as provided otherwise in any applicable law relating to the collection of taxes, an issuer is not liable to the owner or any other person who incurs a loss as a result of the registration of a transfer of a security if:

- (a) the necessary endorsements were on or with the security; and
 - (b) the issuer had no duty to inquire into adverse claims or had discharged that duty.
- (2) If an issuer has registered a transfer of a security to a person not entitled to it, the issuer must, on demand, deliver a like security to the owner unless:
- (a) the issuer is not liable by virtue of subsection (1);
 - (b) the owner is precluded by subsection 139(1) from asserting a claim; or
 - (c) the delivery would result in an overissue to which section 91 applies.

1999, c.N-4.001, s.138.

Notification of loss, etc.

139(1) The owner of a security who fails to notify the issuer of an adverse claim, in writing, within a reasonable time after the owner knows of a loss, apparent destruction or wrongful taking of the security is precluded from asserting against the issuer a claim to a new security if the issuer has registered a transfer of the security.

(2) If the owner of a security claims that the security has been lost, destroyed or wrongfully taken, the issuer shall issue a new security in place of the original security if the owner:

- (a) requests that a new security be issued before the issuer has notice that the security has been acquired by a good faith purchaser;
- (b) provides the issuer with a sufficient indemnity bond; and
- (c) satisfies any other reasonable requirements imposed by the issuer.

(3) If, after the issue of a new security pursuant to subsection (2), a good faith purchaser of the original security presents the original security for registration of transfer, the issuer shall register the transfer unless registration would result in an overissue to which section 91 applies.

(4) In addition to the rights that an issuer has by reason of an indemnity bond, the issuer may recover the new security issued pursuant to subsection (2) from the person to whom it was issued or any person taking under that person other than a good faith purchaser.

1999, c.N-4.001, s.139.

Duty to exercise good faith

140 An authenticating trustee, transfer agent or other agent or mandatary of an issuer has, respecting the issue, registration of transfer and cancellation of a security of the issuer:

- (a) a duty to the issuer to exercise good faith and reasonable diligence; and
- (b) the same obligations to the holder or owner of a security and the same rights, privileges and immunities as the issuer.

1999, c.N-4.001, s.140.

Notice to authenticating trustee

141 Notice to an authenticating trustee, transfer agent or other agent or mandatary of an issuer is notice to the issuer respecting the functions performed by the agent or mandatary.

1999, c.N-4.001, s.141.

PART VIII Insider Trading

Insider respecting co-operative

142(1) In this section:

- (a) **“insider”** means, respecting a co-operative:
 - (i) the co-operative;
 - (ii) an affiliate of the co-operative;
 - (iii) a director or an officer of the co-operative;
 - (iv) a member who controls more than 10% of the voting rights that may be exercised to elect a director of the co-operative;
 - (v) a person who beneficially owns more than 10% of the shares of the co-operative or who exercises control or direction over more than 10% of the votes attached to the shares of the co-operative;
 - (vi) a person employed or retained by the co-operative; and
 - (vii) an individual who receives specific confidential information from a person mentioned in this subsection or in subsection (2), including from an individual who receives that information and who has knowledge that the information is given by a person mentioned in this subsection or in subsection (2);
- (b) **“security”** includes a common share and a preferred share mentioned in section 35.

(2) For the purposes of this section, a director or an officer of an entity, or an individual acting in a similar capacity, is deemed to have been an insider of a co-operative for six months, or any shorter period during which the individual was a director or an officer of the entity, or acted in a similar capacity, before:

- (a) the entity becomes an insider of a co-operative or enters into a business combination with a co-operative; or
- (b) the co-operative becomes an insider of the entity.

(3) An insider who, in connection with a transaction in a security of the co-operative or any of its affiliates, makes use of any specific confidential information for the insider's own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of the security:

- (a) is liable to compensate any person for any direct loss suffered by that person as a result of the transaction, unless the information was known or in the exercise of reasonable diligence should have been known to that person; and
- (b) is accountable to the co-operative for any direct benefit or advantage received or receivable by the insider as a result of the transaction.

(4) **Repealed.** 2004, c.L-16.1, s.61.

1999, c.N-4.001, s.142; 2004, c.L-16.1, s.61.

PART IX Trust Indentures

Interpretation of Part

143(1) In this Part:

- (a) **“event of default”** means, subject to subsection (2), an event specified in a trust indenture on the occurrence of which:
 - (i) a security interest constituted by the trust indenture becomes enforceable; or
 - (ii) the principal, interest and other moneys payable under the trust indenture become or may be declared to be payable before maturity;
- (b) **“public”** includes members of a co-operative;
- (c) **“trust indenture”** means a deed, indenture or other instrument, including any supplement or amendment to the deed, indenture or other instrument, made by a co-operative after its incorporation or continuance pursuant to this Act:
 - (i) under which the co-operative issues debt obligations; and
 - (ii) in which a person is appointed as trustee for the holders of the debt obligations issued under the deed, indenture or other instrument;

- (d) **“trustee”** means a person appointed as trustee pursuant to the terms of a trust indenture to which a co-operative is a party and includes any other person who becomes a successor to the person appointed as trustee.
- (2) An event is not an event of default until all the conditions stated in the trust indenture connected with the event with respect to the following are fulfilled:
- (a) the giving of notice;
 - (b) the lapse of time;
 - (c) any conditions other than those mentioned in clauses (a) and (b).

1999, c.N-4.001, s.143.

Application of Part

144(1) This Part applies to a trust indenture where the debt obligations issued or to be issued under the trust indenture are part of a distribution to the public.

(2) The registrar may exempt a trust indenture from this Part where the trust indenture, the debt obligations issued under the trust indenture and the security interest affected by the trust indenture are subject to a law of a jurisdiction other than Saskatchewan that is, in the registrar’s opinion, substantially equivalent to this Part.

1999, c.N-4.001, s.144.

Conflict of interest

145(1) Subject to subsection (2), no person is eligible to be appointed as trustee where there is a material conflict of interest between the person’s role as trustee and the person’s role in another capacity.

(2) A person may apply to the registrar to be approved as trustee where the person:

- (a) is appointed as trustee pursuant to a trust indenture; and
- (b) has a material conflict of interest between the person’s role as trustee and the person’s role in another capacity.

(3) Where the registrar is satisfied that it is appropriate to do so, the registrar may approve as trustee a person who applies pursuant to subsection (2).

(4) Unless the trustee is approved by the registrar pursuant to subsection (3), the trustee shall, within 90 days after becoming aware that a material conflict of interest exists:

- (a) eliminate the conflict of interest; or
- (b) resign from office.

(5) Notwithstanding any material conflict of interest of the trustee, the trust indenture, any debt obligations issued under the trust indenture and a security interest effected by the trust indenture are valid.

(6) Where a trustee contravenes subsection (1) or (4), an interested person may apply to the court for an order that the trustee be replaced, and the court may make any order on any terms that it considers appropriate.

1999, c.N-4.001, s.145.

Qualification of trustee

146 A trustee, or at least one of the trustees where more than one trustee is appointed, must be a body corporate that:

- (a) is incorporated pursuant to the laws of Canada or a province or territory of Canada; and
- (b) is authorized to carry on the business of a trust corporation or to exercise the powers of a trustee.

1999, c.N-4.001, s.146.

List of debt holders

147(1) On payment to the trustee of a reasonable fee and within 15 days after delivering to the trustee a statutory declaration, holders of 10% of the amount of a debt obligation issued by a co-operative may require the trustee to provide a list setting out the following information as shown on the records maintained by the trustee on the day that the statutory declaration is delivered:

- (a) the names and addresses of the registered holders of that debt obligation;
- (b) the principal amount of the outstanding debt obligations owned by each holder mentioned in clause (a);
- (c) the total principal amount of debt obligations of the co-operative outstanding.

(2) Where a trustee demands, the issuer of debt obligations shall provide the trustee with the information required to enable the trustee to comply with subsection (1).

(3) Where any of the persons requiring the trustee to provide a list pursuant to subsection (1) is a body corporate, a director or officer of the body corporate shall make the declaration required pursuant to that subsection.

(4) The statutory declaration mentioned in subsection (1) must contain:

- (a) the names and addresses of the persons requiring the trustee to provide the list and, where any of the persons is a body corporate, the address for service of the body corporate; and
- (b) a statement that the list will not be used except as permitted in subsection (5).

(5) No person shall use a list obtained pursuant to this section other than in connection with:

- (a) an effort to influence the voting of the holders of debt obligations;
- (b) an offer to acquire debt obligations; or
- (c) any matter, other than one described in clause (a) or (b), relating to the debt obligations or the affairs of the issuer or guarantor of the debt obligations.

1999, c.N-4.001, s.147.

Evidence of compliance

148(1) Before an issuer or a guarantor of debt obligations issued or to be issued under a trust indenture does any of the acts described in clause (a), (b) or (c), the issuer or guarantor shall provide the trustee with evidence of compliance with the conditions in the trust indenture relating to:

- (a) the issue, certification and delivery of debt obligations under the trust indenture;
- (b) the release or release and substitution of property that is subject to a security interest constituted by the trust indenture; or
- (c) the satisfaction and discharge of the trust indenture.

(2) Where a trustee demands, the issuer or guarantor of debt obligations issued or to be issued under a trust indenture shall provide the trustee with evidence of compliance with the trust indenture by the issuer or guarantor with respect to any act to be done by the trustee at the request of the issuer or guarantor.

1999, c.N-4.001, s.148.

Contents of declaration

149(1) The evidence of compliance mentioned in section 148 must consist of:

- (a) a statutory declaration or certificate made by a director or an officer of the issuer or guarantor stating that the conditions mentioned in that section have been complied with; and
- (b) where the trust indenture requires compliance with conditions that are subject to review:
 - (i) by legal counsel, an opinion of legal counsel that those conditions have been complied with; or
 - (ii) by an auditor or accountant, an opinion or report of the auditor of the issuer or guarantor, or any other accountant that the trustee may select, that those conditions have been complied with.

(2) The evidence of compliance mentioned in subsection (1) must include a statement by the person giving the evidence:

- (a) declaring that he or she has read and understands the conditions of the trust indenture described in section 148;
- (b) describing the nature and scope of the examination or investigation on which he or she based the certificate, statement or opinion; and
- (c) declaring that he or she has made any examination or investigation that the person believes necessary to enable him or her to make the statements or give the opinions contained or expressed in the evidence of compliance.

1999, c.N-4.001, s.149.

Trustee may require evidence of compliance

150(1) Where a trustee demands, the issuer or guarantor of debt obligations issued under a trust indenture shall provide the trustee with evidence, in any form that the trustee may require, showing compliance with any condition of the trust indenture relating to any action required or permitted to be taken by the issuer or guarantor under the trust indenture.

(2) At least once in each 12-month period, beginning on the day of the trust indenture and at any other time on the demand of a trustee, the issuer or guarantor of debt obligations issued under a trust indenture shall provide the trustee with a certificate:

- (a) stating that the issuer or guarantor has complied with all the requirements contained in the trust indenture that, if not complied with, would, with the giving of notice, lapse of time or otherwise, constitute an event of default; or
- (b) where there has been failure to comply with the requirements contained in a trust indenture described in clause (a), giving particulars of the failure.

1999, c.N-4.001, s.150.

Notice of default

151 The trustee shall give notice to the registrar and the holders of debt obligations of every event of default arising under a trust indenture and continuing at the time the notice is given within 30 days after the day on which the trustee became aware of the event of default, unless the trustee:

- (a) reasonably believes that it is in the best interests of the holders of the debt obligations to withhold the notice; and
- (b) informs the issuer or guarantor in writing of debt obligations issued under the trust indenture.

1999, c.N-4.001, s.151.

Trustee's duty of care

152(1) A trustee, in exercising the powers and discharging the duties of a trustee, shall:

- (a) act honestly and in good faith with a view to the best interests of the holders of the debt obligations issued under the trust indenture; and
- (b) exercise the care, diligence and skill of a reasonably prudent trustee.

(2) Notwithstanding subsection (1), a trustee is not liable where the trustee relies in good faith on statements contained in a statutory declaration, certificate, opinion or other report that complies with this Act or the trust indenture.

(3) No trustee is deemed to be relieved from the duties imposed on the trustee in this section by virtue of:

- (a) a term of a trust indenture;
- (b) any agreement between a trustee and the holders of debt obligations issued under a trust indenture; or
- (c) an agreement between the trustee and the issuer or guarantor of debt obligations issued under a trust indenture.

1999, c.N-4.001, s.152.

PART X
Receivers and Receiver-managers

Appointment by registrar

153 The registrar may appoint a receiver-manager where, in the opinion of the registrar based on the results of a special audit undertaken pursuant to section 281, it is necessary to appoint a receiver-manager to protect the equity of the members.

1999, c.N-4.001, s.153.

Functions of receiver

154(1) Subject to the rights of secured creditors, a receiver of any property of a co-operative may:

- (a) receive the income from the property and pay the liabilities connected with the property; and
- (b) realize the security interest of those on whose behalf the receiver is appointed.

(2) Notwithstanding subsection (1) and subject to any order that the court may make pursuant to section 158, a receiver who is not appointed manager of the co-operative shall not carry on the business of the co-operative.

1999, c.N-4.001, s.154.

Functions of receiver-manager

155 Notwithstanding section 154, where a receiver of a co-operative is also appointed manager of the co-operative, the receiver may carry on any business of the co-operative to protect the security interest of those on whose behalf the receiver is appointed.

1999, c.N-4.001, s.155.

Directors' powers cease

156 Where a receiver or receiver-manager is appointed by a court or the registrar or pursuant to an instrument, no directors of the co-operative shall exercise the directors' powers that the receiver or receiver-manager is authorized to exercise until the receiver or receiver-manager is discharged.

1999, c.N-4.001, s.156.

Receiver's duty

157(1) A receiver or receiver-manager appointed by a court shall act in accordance with any directions of the court.

(2) A receiver-manager appointed by the registrar shall act in accordance with any directions of the registrar.

(3) A receiver or receiver-manager appointed pursuant to an instrument shall act in accordance with that instrument and any direction that the court may make pursuant to section 158.

(4) A receiver or receiver-manager shall:

- (a) act honestly and in good faith; and
- (b) deal with any property of the co-operative in the possession or control of the receiver or receiver-manager in a commercially reasonable manner.

1999, c.N-4.001, s.157.

Directions given by court

158 On an application of a receiver or receiver-manager appointed by a court or pursuant to an instrument or any interested person, including the registrar, a court may make any order giving directions on any matter relating to the duties of the receiver or receiver-manager appointed by it or pursuant to an instrument that it considers appropriate, including an order:

- (a) appointing, replacing or discharging a receiver or receiver-manager and approving the accounts of the receiver or receiver-manager;
- (b) determining the notice to be given to any person or dispensing with notice to any person;
- (c) fixing the remuneration of the receiver or receiver-manager;
- (d) requiring the receiver or receiver-manager, or a person by or on behalf of whom the receiver or receiver-manager is appointed, to make good any default in connection with the receiver's or receiver-manager's custody or management of the property and business of the co-operative, or relieving a receiver or a receiver-manager, or a person by or on behalf of whom a receiver or receiver-manager is appointed, from any default on any terms that the court considers appropriate;
- (e) confirming any act of the receiver or receiver-manager;
- (f) giving directions on any other matter relating to the duties of the receiver or receiver-manager.

1999, c.N-4.001, s.158.

Directions given by registrar

159(1) Where a receiver-manager is appointed by the registrar, the receiver-manager or any interested person may apply to the registrar for directions on any matter relating to the duties of the receiver-manager.

(2) Where the registrar receives an application pursuant to subsection (1), the registrar may make any order that the registrar considers appropriate, including any order similar to an order described in clauses 158(a) to (f).

1999, c.N-4.001, s.159.

Required actions of receiver

160 A receiver or receiver-manager shall:

- (a) in the case of a receiver or receiver-manager appointed by the court or pursuant to an instrument, immediately notify the registrar of the appointment or discharge of the receiver or receiver-manager;
- (b) take the property of the co-operative into his or her custody and control in accordance with the court order, order of the registrar or instrument pursuant to which the receiver or receiver-manager is appointed;
- (c) open and maintain a bank account in his or her name as receiver or receiver-manager of the co-operative for the moneys of the co-operative coming under his or her control;
- (d) keep detailed accounts of all transactions carried out by him or her as receiver or receiver-manager;
- (e) keep accounts of his or her administration that the receiver or receiver-manager shall cause to be made available during usual business hours for inspection by the directors of the co-operative, the registrar or any person authorized by the registrar;
- (f) prepare at least once in every six-month period after the day of his or her appointment financial statements of his or her administration, as far as is practicable, in the form required by section 225;
- (g) on completion of the duties of the receiver or receiver-manager, render a final account of his or her administration in the form that the receiver or receiver-manager has adopted for preparation of interim accounts pursuant to clause (f); and
- (h) file with the registrar a copy of any financial statement mentioned in clause (f) and any final account mentioned in clause (g) within 15 days after the preparation of the financial statement or the rendering of the final account.

1999, c.N-4.001, s.160.

PART XI**Directors, Officers and Bylaws****First directors**

161(1) On incorporation of the co-operative, the individuals whose names appear on the articles of incorporation as having been appointed and having consented to act as provisional directors:

- (a) are deemed to have all the powers and duties of directors; and
- (b) shall hold office until the first general meeting.

(2) At the first general meeting, the directors are to be elected in accordance with this Act, the regulations, the articles and the bylaws.

1999, c.N-4.001, s.161.

Directors' powers

162 Subject to this Act, the regulations, the articles and the bylaws, the board of directors shall:

- (a) exercise the powers of the co-operative directly or indirectly through the employees and agents of the co-operative; and
- (b) direct the management of the business and affairs of the co-operative.

1999, c.N-4.001, s.162.

Committees

163(1) The board of directors may, from time to time:

- (a) appoint from among its number any committee it considers necessary; and
 - (b) by resolution, delegate to any committee any powers that it considers necessary for the efficient conduct of the affairs and business of the co-operative.
- (2) A committee of directors that has powers delegated to it pursuant to clause (1)(b) is to consist of at least three directors.
- (3) A member of a committee holds office until the member:
- (a) is removed by resolution of the board of directors; or
 - (b) ceases to be a member of the board of directors.
- (4) A committee may exercise any powers of the board of directors that are delegated to it by resolution of the board, subject to any restrictions contained in the resolution.
- (5) Notwithstanding subsection (4), no committee of directors may:
- (a) fill a vacancy among the directors;
 - (b) declare dividends on shares or interest on member loans or a patronage dividend;
 - (c) approve any financial statements of the co-operative;
 - (d) submit to the members any question or matter requiring the approval of members; or
 - (e) make decisions where this Act, the articles or the bylaws require a special majority vote of the board of directors.
- (6) A committee shall:
- (a) fix its quorum at not less than a majority of its members;
 - (b) keep minutes of its proceedings; and
 - (c) submit to the board of directors, at each meeting of the board, the minutes of the committee's proceedings during the period since the most recent meeting of the board.

1999, c.N-4.001, s.163.

Election of directors

164(1) Subject to this Act:

- (a) directors are to be elected:
 - (i) by the members at the annual general meeting of the members; and
 - (ii) annually at a meeting of the holders of preferred shares who are entitled to elect the directors;
 - (b) the directors hold office until the conclusion of the meeting at which their successors are elected, and are eligible for re-election;
 - (c) where the number of nominees exceeds the number of directors to be elected, the election of directors must be by secret ballot;
 - (d) where members are entitled to elect a director, every member or delegate shall vote for the number of directors to be elected, and any ballot that contains the names of more or less than the number to be elected is deemed to be void; and
 - (e) where there is a vacancy on the board of directors and:
 - (i) where there is a quorum of directors, the remaining directors may exercise all the powers of the directors or may fill the vacancy until the next annual meeting;
 - (ii) where there is not a quorum of directors, subject to the articles, the remaining directors shall call a general meeting of the persons entitled to elect directors for the purpose of electing directors to fill any vacancies; and
 - (iii) where there are no directors remaining, any member or holder of a preferred share may, in writing, appoint directors solely for the purpose of calling a general meeting of the persons entitled to elect directors for the purpose of electing directors.
- (2) Where an election of directors required in this Act, the regulations or the bylaws does not take place at the proper time, the directors then in office shall continue in office until their successors are elected.
- (3) Unless the bylaws provide otherwise, not more than one-third of the directors may be employees of the co-operative.
- (4) If the holders of preferred shares have a right to elect one or more directors, they shall vote at a meeting separate from the meeting of members.
- (5) The term of a director elected by the holders of the preferred shares is one year.

c. N-4.001

NEW GENERATION CO-OPERATIVES

- (6) If the holders of a class or series of preferred shares have a right to elect one or more directors, the directors must call the following meetings for the purpose of electing the director or directors:
- (a) a special meeting of the holders of the class or series of preferred shares to be called within six months after the date on which the preferred shares of that class or series are first issued or after the holders of that class or series are entitled to elect a director or directors;
 - (b) an annual meeting of those holders for every subsequent year.
- (7) A person who is elected to hold office as a director is not a director, and is deemed not to have been elected to hold office as a director, unless:
- (a) he or she was present at the meeting when the election took place and he or she did not refuse to hold office as a director; or
 - (b) if he or she was not present at the meeting when the election took place:
 - (i) he or she consented to hold office as a director in writing before the election or within 10 days after it; or
 - (ii) he or she has acted as a director pursuant to the election.
- (8) The individual who receives the greatest number of votes at an election of directors is elected a director and the other individuals who receive, in descending order, the next greatest number of votes are also elected directors, until the number of directors to be elected has been elected, and if two individuals receive an equal number of votes for the last vacancy on the board, the directors already elected to the board must determine which of the two individuals is to be elected.
- (9) If, at the close of a meeting of a co-operative, the persons at the meeting have failed to elect the number or minimum number of directors required by this Act or the articles, the purported election of directors at the meeting:
- (a) is valid if the directors purported to be elected and the incumbent directors, if any, whose terms did not expire at the close of the meeting, together constitute a quorum; or
 - (b) is null or void if the directors purported to be elected and the incumbent directors, if any, whose terms did not expire at the close of the meeting, do not constitute a quorum.
- (10) The articles may provide that if there is a vacancy on the board of directors, the remaining directors must call a special meeting of the persons who are entitled to vote for the purpose of electing directors to fill the vacancy.
- (11) Subject to the articles, if there is a vacancy in the position of a director who is to be elected by a class vote of the holders of the preferred shares:
- (a) any remaining director elected by that class may act to fill the vacancy; or
 - (b) if there is no such remaining director, a holder of preferred shares of that class may act to fill the vacancy.

(12) If the articles are amended to decrease the number of directors, the term of any incumbent director is not affected.

(13) It is not necessary that a director elected by members at a meeting hold office for the same term as the other directors elected at that meeting.

1999, c.N-4.001, s.164.

Qualifications of directors

165(1) A person is not eligible to be a director where the person:

- (a) is less than 18 years of age;
- (b) is of unsound mind and has been so found by a court in Saskatchewan or elsewhere;
- (c) is not an individual;
- (d) has the status of bankrupt; or
- (e) is a member of a prescribed class of persons.

(2) A co-operative may provide in its bylaws for qualifications of directors that are in addition to those set out in subsection (1).

(3) Not less than 80% of the directors, or any greater portion that is provided for by the articles, must be members of the co-operative, or representatives of the members that are entities or members of members that are co-operative entities.

(4) Except in the case of an extra-provincial co-operative, a majority of the directors must be resident Canadians.

(5) In this section and in section 174, “**resident Canadian**” means an individual who is:

- (a) a Canadian citizen ordinarily resident in Canada;
- (b) a Canadian citizen not ordinarily resident in Canada who is a member of a prescribed class of persons; or
- (c) a permanent resident as defined in the *Immigration Act* (Canada).

1999, c.N-4.001, s.165.

Borrowing powers

166(1) Unless the bylaws provide otherwise, directors of a co-operative may, without the authorization of the members:

- (a) borrow money on the credit of the co-operative;
- (b) issue, re-issue, sell or pledge debt obligations of the co-operative;
- (c) subject to section 63, give a guarantee on behalf of the co-operative to secure performance of an obligation of any person; and
- (d) mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the co-operative, owned or subsequently acquired, to secure any debt obligation of the co-operative.

c. N-4.001

NEW GENERATION CO-OPERATIVES

(2) Debt obligations issued by a co-operative are not redeemed by reason only that the indebtedness evidenced by the debt is repaid.

(3) Debt obligations issued by a co-operative and purchased, redeemed or otherwise acquired may be cancelled or may secure any obligation of the co-operative existing at that time or incurred later.

1999, c.N-4.001, s.166.

Meeting by telephone, etc.

167(1) Where all the directors consent, a meeting of directors or of a committee of directors may be held by means of a telephone system or a communications facility other than a telephone system that permits all persons participating in the meeting to hear and speak to each other, and a person so participating is deemed to be present at that meeting.

(2) Unless this Act, the regulations or the bylaws require a meeting, a resolution of the directors may be passed without a meeting where:

- (a) all the directors consent to the resolution in writing; and
- (b) the consent is filed with the minutes of the proceedings of the directors.

1999, c.N-4.001, s.167.

Minutes of directors

168(1) The directors shall cause minutes to be kept of:

- (a) all appointments of officers and committee members made by them;
- (b) all the names of the directors present at each meeting of the directors; and
- (c) all resolutions and proceedings at meetings of the co-operative or the directors.

(2) Every committee of the co-operative shall cause minutes to be kept of:

- (a) the names of the committee members present at meetings of the committee; and
- (b) all proceedings and resolutions of the committee.

(3) The directors shall cause true accounts to be kept of:

- (a) all sums of money received and expended and the matters with respect to which the receipts and expenditures take place;
- (b) the assets and liabilities of the co-operative; and
- (c) every other transaction affecting the financial position of the co-operative.

1999, c.N-4.001, s.168.

Ceasing to hold office

169(1) A director of a co-operative ceases to hold office when the director:

- (a) dies or resigns;
 - (b) is removed in accordance with section 170; or
 - (c) is no longer qualified pursuant to section 165.
- (2) A resignation of a director becomes effective at the later of:
- (a) the time a written resignation is sent to the co-operative; and
 - (b) the time specified in the resignation.
- (3) Notwithstanding any provision in the bylaws of a co-operative, a director cannot be removed by the other directors of the co-operative.

1999, c.N-4.001, s.169.

Removal of directors

170(1) A director may be removed from office by ordinary resolution at a special meeting of the persons who are entitled to vote in the election of that director.

(2) A vacancy created by the removal of a director pursuant to subsection (1) may be filled at the meeting of the members or shareholders at which the director is removed.

1999, c.N-4.001, s.170.

Attendance at meeting

171(1) A director of a co-operative is entitled to receive notice of and to attend and be heard at every general meeting of members or holders of preferred shares.

(2) A director is entitled to submit to the co-operative a written statement giving the reasons for his or her resignation or the reasons he or she opposes any proposed action or resolution, where the director:

- (a) resigns;
 - (b) receives a notice or otherwise learns of a meeting of members or holders of preferred shares called for the purpose of removing the director from office; or
 - (c) receives a notice or otherwise learns of a meeting of directors, members or holders of preferred shares at which another person is to be elected to fill the office, whether because of his or her resignation or removal or because his or her term of office has expired or is about to expire.
- (3) A co-operative shall immediately send a copy of the statement mentioned in subsection (2) to the registrar and shall make available a copy of the statement to every member and every holder of preferred shares entitled to receive notice of the general meeting.
- (4) No co-operative or person acting on its behalf incurs any liability by reason only of circulating a director's statement sent in compliance with subsection (3).

1999, c.N-4.001, s.171.

Number of directors

172 Subject to section 246, the members of a co-operative may amend the articles to increase or, subject to subsection 6(4), decrease the number of directors, but no amendment to decrease is to shorten the term of an incumbent director.

1999, c.N-4.001, s.172.

Notice of change of directors

173(1) Within 30 days after a change is made in its directors, a co-operative shall send to the registrar a notice in the prescribed form setting out the change, and the registrar shall file the notice.

(2) Notwithstanding subsection (1), where a co-operative sends the annual return required pursuant to section 242 within 30 days after a change is made in its directors, it is not required to send the notice required in this section.

1999, c.N-4.001, s.173.

Meeting of directors

174(1) Unless the articles or bylaws provide otherwise, the directors may meet at any place, and on any notice, that they consider appropriate.

(2) The president may call a meeting of directors at any time and, on the written request of at least two directors, shall call a meeting within two weeks after the receipt of the request.

(3) Unless the articles or bylaws provide otherwise, a notice of a meeting of directors need not specify the purpose of or the business to be transacted at the meeting, except where the business is one mentioned in subsection 163(5).

(4) A director may, in any manner, waive a notice of a meeting of directors.

(5) For the purpose of subsection (4), attendance of a director at a meeting of directors is deemed to be a waiver of notice of the meeting, unless the director attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

(6) Where the time and place of an adjourned meeting is announced at the original meeting, notice of an adjourned meeting of directors is not required to be given.

(7) Unless the articles or the bylaws provide for a greater proportion, a majority of the directors constitutes a quorum at any meeting of directors or of a committee of directors and, despite any vacancy among the directors, a quorum of directors may exercise all of the powers of the directors.

(8) To constitute a quorum, a majority of the directors at the meeting must be members of the co-operative or representatives of members that are entities or members of members that are co-operative entities.

(9) An entry in the minutes of a co-operative of a vote taken or a resolution made is, in the absence of evidence to the contrary, proof of the outcome of the vote or resolution.

(10) Directors shall not transact business at a meeting of directors unless a majority of directors present are resident Canadian.

(11) Notwithstanding subsection (10), directors may transact business at a meeting of directors where a majority of resident Canadian directors is not present if:

(a) a resident Canadian director who is unable to be present approves in writing or by telephone or other communications facilities the business transacted at the meeting; and

(b) a majority of resident Canadian directors would have been present had that director been present at the meeting.

1999, c.N-4.001, s.174.

Validity of acts of directors and officers

175 An act of a director or officer is valid notwithstanding an irregularity in the election or appointment of the director or officer or a defect in his or her qualification.

1999, c.N-4.001, s.175.

Remuneration of directors

176(1) Unless it is authorized in the bylaws or approved by the members by ordinary resolution at a general meeting, the directors and members of a committee are not entitled to be paid any remuneration in connection with their duties as directors or committee members.

(2) Directors and members of committees may be reimbursed for expenses incurred by reason of the performance of their duties and functions as directors or committee members.

(3) A co-operative may purchase and maintain insurance for the benefit of a director, officer, member of a committee or employee against any liability incurred by the individual in the individual's capacity:

(a) as a director, officer, member of a committee or employee of the co-operative; or

(b) as a director, officer, member of a committee or employee of another entity, or in a similar capacity, if the individual acts or acted in that capacity at the co-operative's request.

1999, c.N-4.001, s.176; 2006, c.26, s.5.

Remuneration of officers and employees

177 Unless the bylaws provide otherwise, the directors shall:

- (a) fix the salary of any directors, officers or committee members appointed by them; and
- (b) approve a scale of remuneration for any employees of the co-operative.

1999, c.N-4.001, s.177.

Duty of care of directors and officers

178(1) Every director and officer of a co-operative, in exercising the powers and discharging the duties of a director or officer, shall:

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

(2) An officer or director has complied with his or her duty set out in subsection (1) if he or she relies and acts in good faith:

- (a) on statements of fact represented to him or her by an officer of the co-operative to be correct; or
- (b) on statements contained in a written report or opinion of the auditor of the co-operative or a professional person engaged by the co-operative who is competent to give advice with respect to the matter.

1999, c.N-4.001, s.178; 2006, c.26, s.5.

Directors and officer must comply

179 Every director and officer must comply with this Act, the regulations, the articles and the bylaws.

1999, c.N-4.001, s.179.

Liability of directors

180(1) Directors are jointly and severally liable to make good any loss or damage suffered by the co-operative where they vote for, consent to a resolution authorizing or approve by any other means:

- (a) the purchase of shares contrary to section 60;
- (b) the payment of a dividend on shares or interest on member loans contrary to section 54;
- (c) the payment of a patronage dividend contrary to section 54;
- (d) a loan or guarantee or the giving of financial assistance contrary to section 63;

- (e) a payment of an indemnity described in section 181 to a person mentioned in that section, without the approval of the court required in subsection 181(5);
 - (f) an act not consistent with the purpose of the co-operative as set out in its articles and with respect to which the co-operative has paid compensation to a person;
 - (g) payment of a commission contrary to section 38;
 - (h) payment to a member or holder of preferred shares contrary to section 259 or 291; or
 - (i) the issue of a share contrary to subsection 47(5).
- (2) On the application of a director, the court may declare whether or not, having regard to any of the circumstances the court considers appropriate, an act is in breach of subsection (1).
- (3) The liability imposed in subsection (1) is in addition to and not in derogation of a liability imposed on a director by any other Act or law.
- (4) For the purposes of this section, a director who is present at a meeting of directors or of a committee of directors is deemed to have cast an affirmative vote, given consent to a resolution or given the approval mentioned in subsection (1), unless:
- (a) the director's dissent is entered in the minutes of the meeting; or
 - (b) the director's written dissent is:
 - (i) delivered to the secretary of the meeting before its adjournment; or
 - (ii) delivered or sent by registered mail to the registered office of the co-operative immediately after the adjournment of the meeting.
- (5) A director who votes for a resolution mentioned in subsection (1) is not entitled to dissent pursuant to subsection (4).
- (6) Where a director is not present at a meeting of directors or of a committee of directors at which a vote, resolution or approval mentioned in subsection (1) is cast or given, the director is deemed to have cast an affirmative vote, consented to the resolution or given approval, unless, within 14 days after becoming aware of the proceedings, the director delivers or sends by registered mail a written dissent to the registered office of the co-operative.
- (7) On receipt of a written dissent, the secretary of the co-operative shall:
- (a) certify on the written dissent the day, time and place it is received; and
 - (b) keep the written dissent with the minutes of the meeting at which the resolution was passed.
- (8) For the purpose of applying *The Limitations Act* to a claim pursuant to subsection (1), the day on which the act or omission on which the claim is based takes place is the day of the meeting at which the vote was taken or the day on which the resolution was passed or the approval given.

(9) In an action to enforce a liability imposed in subsection (1), the court, on the application of the co-operative or a defendant, may:

(a) join as a defendant a person who received a benefit as a result of the resolution complained of; and

(b) make the person mentioned in clause (a) liable to the co-operative jointly and severally with the directors to the extent of the amount paid to that person.

(10) A director is not liable pursuant to subsection (1) where the director:

(a) proves that he or she did not know or could not reasonably have known that the act authorized by the resolution was contrary to this Act; or

(b) relies and acts in good faith:

(i) on statements of fact represented to him or her by an officer of the co-operative to be correct; or

(ii) on statements contained in a written report or opinion of the auditor of the co-operative or a professional person engaged by the co-operative who is competent to give advice with respect to the matter.

(11) A director who is found liable pursuant to subsection (1) is entitled to apply to a court for an order compelling a member, holder of preferred shares or other recipient to pay or deliver to the director any money or property that was paid or distributed to the member, holder of preferred shares or other recipient for which the director is liable pursuant to subsection (1).

(12) Respecting an application pursuant to subsection (11) and where the court is satisfied that it is equitable to do so, it may:

(a) order a member, holder of preferred shares or other recipient to pay or deliver to a director any money or property that was paid or distributed to the member, holder of preferred shares or other recipient for which the director is liable pursuant to subsection (1);

(b) make any order, other than an order described in clause (a), that it considers appropriate; and

(c) order a co-operative to return or issue shares to a person from whom the co-operative has purchased, redeemed or otherwise acquired shares.

Indemnification

181(1) A co-operative may indemnify a director or officer of the co-operative, a former director or officer of the co-operative, or another individual who acts or acted at the co-operative's request as a director or officer of or in a similar capacity for another entity, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, that the individual reasonably incurs with respect to any civil, criminal, administrative, investigative or other proceeding in which the individual is involved because of that association with the co-operative or other entity, if:

(a) the individual acted honestly and in good faith with a view to the best interests of, as the case may be:

(i) the co-operative; or

(ii) the other entity for which, at the co-operative's request, the individual acted as a director or officer or in a similar capacity; and

(b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the individual had reasonable grounds for believing that the individual's conduct was lawful.

(2) A co-operative may advance moneys to a director, officer or other individual for the costs, charges and expenses of a proceeding mentioned in subsection (1), but the individual must repay the moneys to the co-operative if the individual does not fulfil the conditions set out in clauses (1)(a) and (b).

(3) With respect to an action by or on behalf of a co-operative or other entity to procure a judgment in its favour, the co-operative or other entity, with the approval of the court, may indemnify an individual mentioned in subsection (1) against all costs, charges and expenses reasonably incurred by the individual in connection with that action, or advance moneys to that individual pursuant to subsection (2) for the costs, charges and expenses reasonably incurred by the individual in connection with that action, if the individual:

(a) is made a party to the action because of the individual's association with the co-operative or other entity as described in subsection (1); and

(b) fulfils the conditions set out in clauses (1)(a) and (b).

(4) Notwithstanding subsection (1), an individual mentioned in that subsection is entitled to indemnity from the co-operative against all costs, charges and expenses reasonably incurred by the individual in connection with the defence of any civil, criminal, administrative, investigative or other proceeding to which the individual is subject because of the individual's association with the co-operative or other entity as described in subsection (1), if the individual seeking indemnity:

(a) was not judged by the court or other competent authority to have committed any fault or to have omitted to do anything that the individual ought to have done; and

(b) fulfils the conditions set out in clauses (1)(a) and (b).

(5) A co-operative, an individual or an entity mentioned in subsection (1) may apply to the court for an order approving an indemnity pursuant to this section, and the court may so order and make any further order that it sees fit.

(6) On an application pursuant to subsection (5), the court may order notice to be given to any interested person, and that person is entitled to appear and be heard in person or by counsel.

2006, c.26, s.5.

Duty of director not to be limited

182 No provision in any contract, the articles, the bylaws or a resolution relieves a director or officer from complying with this Act and the regulations or from liability for non-compliance.

1999, c.N-4.001, s.182.

Material contracts

183(1) This section does not require the disclosure of an interest in a contract or transaction that is of a type available to and customarily entered into between the co-operative and its members if the contract or transaction is on the same terms as are generally available to members.

(2) A director or officer of a co-operative who is a party to a material contract or proposed material contract with the co-operative or is a director, officer or associate of, or has a material interest in, a person who is a party to a material contract or proposed material contract with the co-operative shall:

(a) disclose in writing to the co-operative the nature and extent of his or her interest; or

(b) request to have the nature and extent of his or her interest entered in the minutes of meetings of directors.

(3) Where the disclosure required in subsection (2) is to be made by a director, the director shall make the disclosure:

(a) at the meeting at which a proposed contract is first considered;

(b) where the director is not interested in a proposed contract at the meeting mentioned in clause (a), at the first meeting after the director acquires an interest;

(c) where the director becomes interested after a contract is made, at the first meeting after the director acquires an interest; or

(d) where the director has an interest in a contract before becoming a director, at the first meeting after he or she becomes a director.

(4) Where the disclosure required in subsection (2) is to be made by an officer who is not a director, the officer shall make the disclosure:

(a) immediately after the officer becomes aware that the contract or proposed contract is to be considered or has been considered at a meeting of directors;

- (b) where the officer acquires an interest after a contract is made, immediately after the officer acquires the interest; or
 - (c) where the officer has an interest in a contract before becoming an officer, immediately after becoming an officer.
- (5) Notwithstanding subsections (3) and (4), where a material contract or proposed material contract is one that in the ordinary course of the co-operative's business would not require approval by the directors or shareholders, a director or officer shall disclose in writing to the co-operative, or request to have entered in the minutes of meetings of directors, the nature and extent of his or her interest after the director or officer becomes aware of the contract or proposed contract.
- (6) No director mentioned in subsection (2) may take part in discussions considering or vote on a resolution approving a contract unless the contract is:
- (a) an arrangement by way of security for money lent by the director to the co-operative or obligations undertaken by the director for the benefit of the co-operative or subsidiary of the co-operative;
 - (b) a contract relating primarily to the director's remuneration as a director, officer, employee or agent of the co-operative or a subsidiary of the co-operative;
 - (c) a contract for indemnity or insurance pursuant to section 181;
 - (d) a contract with an affiliate.
- (7) Where a director is not entitled to vote at a meeting pursuant to subsection (6) and the director's presence is required to constitute a quorum at a meeting of directors, a decision of the directors is deemed not to be invalid only by reason of the absence of the director.
- (8) For the purposes of this section, a general notice to the directors by a director or officer declaring that he or she is to be regarded as interested in any contract made with that person is a sufficient declaration of interest in relation to any contract made with that person.
- (9) Where a director or officer discloses his or her interest in accordance with this section, and the contract in which the director or officer has a material interest is approved by the directors or members and is reasonable and fair to the co-operative at the time it was approved, the material contract is neither void nor voidable:
- (a) by reason only of that relationship; or
 - (b) by reason only that a director with an interest in the contract is present at or is counted to determine the presence of a quorum at a meeting of directors or committee of directors that authorized the contract.
- (10) Where a director or officer of a co-operative fails to disclose his or her interest in a material contract in accordance with this section, a court may, on the application of the co-operative or a member of the co-operative, set aside the contract on any terms that the court considers appropriate.

Officers

184(1) A co-operative must have a president and a secretary, and may have any additional officers that are provided for in the bylaws or in a resolution of the directors.

(2) Unless the articles or bylaws provide otherwise:

(a) the directors may:

(i) designate the offices of the co-operative;

(ii) appoint persons as officers;

(iii) specify the officers' duties; and

(iv) delegate powers to manage the business and affairs of the co-operative to the officers; and

(b) a director may be appointed to any office of the co-operative.

(3) Unless the bylaws provide otherwise, no person shall be president or vice-president of a co-operative unless that person is a director of the co-operative.

1999, c.N-4.001, s.184.

Declaration by directors and officers

185 A co-operative may, by ordinary resolution at an annual or special meeting, require all directors and officers to sign, annually or at any other time that may be specified in the resolution, a declaration relating to:

(a) the faithful performance of duties;

(b) the secrecy of transactions with members and patrons; and

(c) the faithful and loyal support of the co-operative.

1999, c.N-4.001, s.185.

Organization meeting

186(1) This section does not apply to a co-operative that is continued pursuant to this Act.

(2) The directors shall hold a meeting as soon as possible after the issue of the co-operative's certificate of incorporation.

(3) At the meeting mentioned in subsection (2), the directors may:

(a) pass resolutions establishing policies of the co-operative;

(b) admit persons to membership;

(c) adopt forms of corporate records and security certificates;

(d) authorize the issuance of common shares, member loans and securities;

(e) appoint officers;

(f) appoint an auditor to hold office until the first general meeting of the members;

- (g) appoint an audit committee;
 - (h) make banking or other financial arrangements;
 - (i) appoint authorized signing officers;
 - (j) adopt operating policies; and
 - (k) transact any business in addition to that described in clauses (a) to (j).
- (4) An incorporator or a director may call the meeting of directors mentioned in subsection (2) by giving not less than five days' notice of the meeting to each director, stating the time and place of the meeting.
- (5) The notice mentioned in subsection (4) may be waived where all directors are in attendance at the meeting of directors.

1999, c.N-4.001, s.186.

PART XII

Members and Meetings

Bylaws to govern

187 Subject to this Act, the bylaws govern membership in a co-operative.

1999, c.N-4.001, s.187.

Eligibility

188(1) Every subscriber to the articles of incorporation, on incorporation of the co-operative, is to be entered on the co-operative's register of members.

(2) Unless the bylaws provide otherwise, no person, other than one described in subsection (1), is eligible to become a member of a co-operative until the written application for membership is approved by resolution of the directors and recorded in the co-operative's register of members.

(3) Where an application for membership is approved within six months after the day the application for membership is received by the co-operative, the directors may make the membership effective as at the day of the application.

(4) The directors shall cause each applicant for membership to be notified in writing that the application has been approved or not approved.

1999, c.N-4.001, s.188.

Eligible age for membership

189(1) Unless the bylaws provide otherwise, an individual who is 16 years of age or older is eligible to become a member.

(2) A member who is under the age of majority is competent to enter into a contract with the co-operative and, with respect to the contract, has full capacity to act for himself or herself.

1999, c.N-4.001, s.189.

Place of meetings

190(1) General meetings of members are to be held at the place within Saskatchewan that is provided in the bylaws or, where the bylaws contain no provision, that is determined by the directors.

(2) Notwithstanding subsection (1), a general meeting of a co-operative may be held outside Saskatchewan where all the members entitled to vote at that meeting agree.

(3) A member who attends a general meeting held outside Saskatchewan is deemed to have agreed to hold the meeting outside Saskatchewan, unless the member attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully held.

(4) Notwithstanding subsections (1) to (3), where the articles provide for general meetings to be held outside Saskatchewan, the members may meet at any place specified in the articles.

(5) Meetings of the holders of preferred shares must be held at the place set out in the articles and if the articles do not set out that place, the meetings are to be held at a place in Canada that the directors determine unless all holders entitled to vote at the meeting agree that the meetings are to be held at a place outside of Canada.

1999, c.N-4.001, s.190.

First general meeting

191(1) This section does not apply to a co-operative that is continued pursuant to this Act.

(2) Within four months after the day of its incorporation, a co-operative shall hold a general meeting at which all members are to be entitled to be present and vote.

(3) Notwithstanding subsection (2), where the directors apply to the registrar, the registrar may extend the time for holding the general meeting.

(4) The business at the general meeting mentioned in subsection (2) must include:

(a) the adoption of bylaws;

(b) the election of directors; and

(c) the appointment of an auditor in accordance with section 231.

1999, c.N-4.001, s.191.

Annual meetings of members

192(1) A co-operative shall hold an annual general meeting of the members in each year not later than six months after the end of the financial year of the co-operative.

(2) Notwithstanding subsection (1) and notwithstanding that the time for holding a general meeting as required in this section is expired, where the registrar receives a written request from the directors, the registrar may authorize the co-operative to hold the annual general meeting at any later day that the registrar considers appropriate.

(3) The authorization of the registrar given pursuant to subsection (2) may be continuing.

(4) The bylaws may provide for holding semi-annual or other periodic meetings.

1999, c.N-4.001, s.192.

Special meetings

193(1) The directors may call a special meeting of members at any time.

(2) Subject to subsection (3), the directors shall call a special meeting of the members on receipt of a written request specifying the purpose of the meeting from:

(a) in the case of a co-operative with 1,000 or more members, the lesser of 5% of the membership and 300 members, but in no case less than 100 members; and

(b) in the case of a co-operative with less than 1,000 members, 10% of the membership.

(3) Where the co-operative has a delegate structure, the directors are not required to call a special meeting on the request of members pursuant to subsection (2), but shall call a special meeting of delegates on receipt of a written request from 25% of the delegates specifying the purpose of the meeting.

(4) The directors may call a special meeting of the holders of preferred shares at any time and shall call the special meeting if two or more persons who, together, hold not less than 5% of the voting rights that could be exercised at the meeting request, in writing, the directors to call the meeting.

(5) The directors shall call a special meeting mentioned in subsection (2), (3) or (4) within 20 days after their receipt of the request, and the special meeting must dispose of the specific business outlined in the request, unless the court determines that the meeting should be called at a later date or that the meeting is not required.

(6) If the directors, as required by subsection (5), do not call a meeting as requested pursuant to subsection (2), (3) or (4), any person who signed the written request may call the meeting.

(7) The registrar may call a special meeting of the members:

(a) for the purpose of reporting to the members the results of any audit, examination or other investigation of the co-operative's affairs ordered or made by the registrar; or

(b) where the co-operative fails to hold an annual general meeting in the period set out in subsection 192(1) or (2), for the purpose of enabling members to secure any information regarding the affairs of the co-operative that they are entitled to receive pursuant to this Act and to deal with any matters affecting the co-operative.

(8) All matters dealt with at a special meeting and all matters dealt with at an annual general meeting are special business except consideration of financial statements, the auditor's report, the business of the co-operative, the election of directors, the remuneration of directors and the reappointment of the incumbent auditor.

1999, c.N-4.001, s.193.

Notice of meetings

194(1) Subject to subsections (2) and (4), a co-operative shall give not less than 21 and not more than 50 days' notice of any annual or special meeting to its members, delegates or holders of preferred shares entitled to attend the meeting:

- (a) by sending the notice by mail to the members, delegates or holders of preferred shares at the addresses given in the register of members or holders of preferred shares; or
 - (b) in the case of a meeting of members, by inserting the notice in not less than two issues of a newspaper circulated in the area served by the co-operative and posting the notice in a place that, in the opinion of the directors, is prominent and accessible to members.
- (2) A member, delegate or holder of preferred shares who is entitled to attend an annual or special meeting may in any manner waive notice of the meeting.
- (3) For the purposes of subsection (2), the attendance of a member, delegate or holder of preferred shares at a meeting is deemed to be a waiver of notice of the meeting unless the member, delegate or holder of preferred shares attends the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called.
- (4) Notice of an adjourned meeting is not required to be given to members, delegates or holders of preferred shares if:
- (a) the time and place of the adjourned meeting is announced at the original meeting; and
 - (b) the meeting is adjourned for less than 30 days.
- (5) Notwithstanding any other provision of this Act, where a co-operative is required to send a statement, agreement, proposal or other document to its members, delegates, directors or holders of preferred shares with a notice of a meeting and decides to insert the notice of a meeting in a newspaper pursuant to clause (1)(b), the co-operative shall:
- (a) in the notice, inform the members, delegates, directors or holders of preferred shares of the document, giving a description of the document that, in the opinion of the directors, is adequate to describe its nature; and
 - (b) make a copy of the document available to any member, delegate, director or holder of preferred shares who so requests and who is entitled to attend the meeting.
- (6) The notice of any special meeting must specify the purpose for which the meeting is being called.
- (7) The proceedings or the business transacted at a general meeting is deemed not to be invalidated by reason only of the non-receipt by a member, delegate, director or holder of preferred shares of notice of the meeting.

(8) Failure to receive notice of a meeting does not deprive a person of a right to vote at the meeting to which the person is otherwise entitled.

(9) A notice of a meeting of a co-operative need not be sent to a holder of preferred shares who was not registered on the records of the co-operative or its transfer agent on the record date fixed or determined pursuant to section 195.

1999, c.N-4.001, s.194.

Fixing record date

195(1) Subject to subsection (2), the directors may fix in advance a day as the record date for the determination of members and of the holders of preferred shares:

- (a) for the purpose of determining members who are entitled to:
 - (i) receive payment of a dividend or interest; or
 - (ii) participate in a distribution on liquidation; or
 - (b) for any purpose in addition to that described in clause (a) except the right to receive notice of a general meeting.
- (2) The record date mentioned in subsection (1) is not to precede by more than 50 days the particular action to be taken.
- (3) Subject to subsection (4), for the purpose of determining members or holders of preferred shares who are entitled to receive notice of a general or special meeting, the directors may fix in advance a day as the record date for the determination of members or holders of preferred shares.
- (4) The record date mentioned in subsection (3) is not to precede by more than 50 days nor by less than 21 days the day on which the meeting is to be held.
- (5) Where the directors do not fix a record date:
- (a) the record date for the determination of members or holders of preferred shares who are entitled to receive notice of a general meeting or a special meeting is deemed to be at the close of business on the day preceding the day on which the notice is given; and
 - (b) the record date for the determination of members or holders of preferred shares for any purpose other than that described in clause (a) is deemed to be at the close of business on the day on which the directors pass a resolution relating to that purpose.
- (6) If a record date is fixed, notice of the record date must, not less than seven days before that date, be given:
- (a) by advertisement in a newspaper published or distributed in the place where the co-operative has its registered office and in each place in Canada where it has a transfer agent or where a transfer of its shares may be recorded; and
 - (b) by written notice to each stock exchange in Canada on which the shares of the co-operative are listed for trading.

1999, c.N-4.001, s.195.

Quorum

196(1) Subject to subsections (2) to (4), the quorum at any annual or special meeting of members or delegates is:

- (a) in the case of a meeting of members, the lesser of:
 - (i) 15 members; and
 - (ii) 10% of the membership; and
 - (b) in the case of a meeting of delegates, 50% of the delegates.
- (2) Where all the members are directors, the quorum at any annual or special meeting is a number that would equal a majority of the directors.
- (3) At a meeting of members, except where all the members are directors, the quorum at any annual or special meeting is not less than the number that would equal a majority of the directors plus one.
- (4) A co-operative may provide in its bylaws for a quorum that is greater than that set out in subsection (1).
- (5) Unless the bylaws provide otherwise, a quorum for a meeting of the holders of preferred shares consists of the persons holding a majority of the voting rights that may be exercised at the meeting who are present in person or are represented in a manner provided for by this Act or permitted by the bylaws.
- (6) Unless the bylaws provide otherwise, where a quorum is present at the opening of a meeting, the members who are present may proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting.
- (7) If a quorum is not present at the opening of a meeting, the persons who are present and entitled to vote may adjourn the meeting to a fixed time and place but may not transact any other business.

1999, c.N-4.001, s.196.

District meetings

197(1) Instead of holding one general meeting of all members, a co-operative may, in its bylaws, divide the territory in which it does business and has members into districts for the purpose of holding annual meetings or special meetings of the co-operative by calling and holding a meeting in each district of the members who reside in the district.

(2) A co-operative shall set out in its bylaws the procedure to be followed in the conduct of district meetings.

1999, c.N-4.001, s.197.

Delegates

198(1) Where the bylaws of a co-operative provide for the nomination and appointment of delegates to a general meeting:

- (a) the members represented by the delegates, as long as those bylaws remain in force, shall not exercise the powers of membership at any annual or special meeting;
 - (b) any reference in this Act to members with respect to the exercise of any power mentioned in clause (a) is deemed to be a reference to delegates; and
 - (c) unless otherwise provided in the bylaws, the delegates may exercise at annual meetings or special meetings the full powers of the members.
- (2) The member group that elects a delegate may, at an annual or special meeting called for that purpose, remove the delegate in any manner provided for in the bylaws.
- (3) Notwithstanding subsection (1), at an annual or a special meeting called for the purpose, the members may amend the bylaws to eliminate the nomination and appointment of delegates to general meetings.

1999, c.N-4.001, s.198.

Voting rights

199(1) No member or delegate is entitled to more than one vote, but a member who is a holder of preferred shares may exercise any voting rights associated with those preferred shares.

- (2) Where the holder of a preferred share is entitled to vote on a matter, that holder is entitled to one vote for each preferred share of which that person is the holder.
- (3) A vote on any matter by a member shall be at a meeting separate and apart from a vote on that matter by a holder of preferred shares.

1999, c.N-4.001, s.199.

Proposals

200(1) In this section, “**proposal**” means a notice submitted to a co-operative pursuant to clause (2)(a).

- (2) A member who is entitled to vote at an annual meeting of members may:
 - (a) submit to the co-operative notice of any matter that the member proposes to raise at the meeting; and
 - (b) discuss at the meeting any matter with respect to which the member would have been entitled to submit a proposal.

- (3) Where the person who submitted the proposal so requests, the directors of the co-operative shall:
- (a) send the proposal with the notice of the meeting at which the proposal is to be presented; or
 - (b) make the proposal available to all persons entitled to attend and vote at that meeting.
- (4) Where the person who submitted the proposal so requests, the co-operative shall include in or attach to the notice:
- (a) a statement by the person of not more than 200 words in support of the proposal; and
 - (b) the name and address of the person.
- (5) A co-operative is not required to comply with subsections (3) and (4) where:
- (a) the proposal is not submitted to the co-operative at least 45 days before the anniversary date of the previous annual meeting;
 - (b) in the opinion of the directors, the proposal is submitted by the person primarily for the purpose of:
 - (i) enforcing a personal claim or redressing a personal grievance against the co-operative or its directors, officers, members or other security holders; or
 - (ii) promoting general economic, political, racial, religious, social or similar causes;
 - (c) the co-operative, at the person's request, included a proposal in a notice of meeting held within two years preceding the receipt of the proposal submitted pursuant to subsection (2), and the person failed to present the proposal at the meeting;
 - (d) substantially the same proposal was submitted in the notice of a meeting held within two years preceding the receipt of the person's request, and the proposal was defeated; or
 - (e) in the opinion of the directors, the rights conferred by this section are being abused to secure publicity.
- (6) No co-operative and no person acting on behalf of a co-operative incur any liability by reason only of circulating a proposal or statement in compliance with this section.
- (7) Where a co-operative refuses to include a proposal in a notice of meeting, the co-operative shall, within 30 days after receiving the proposal:
- (a) notify the person submitting the proposal of its intention to omit the proposal from the notice of meeting; and
 - (b) send to the person a statement of the reasons for the refusal.

(8) Where a person claiming to be aggrieved by a refusal pursuant to subsection (7) applies to the court, the court may restrain the holding of the meeting to which the proposal is sought to be presented and make any further order it considers appropriate.

(9) The co-operative or a person claiming to be aggrieved by a proposal may apply to the court for an order permitting the co-operative to omit the proposal from the notice of meeting and, where the court is satisfied that subsection (5) applies, it may make the order.

(10) An applicant mentioned in subsection (8) or (9) shall give the registrar notice of the application, and the registrar is entitled to appear and be heard in person or by counsel.

1999, c.N-4.001, s.200.

Power to enact bylaws

201(1) The members of a co-operative may by a special resolution, at any annual meeting or any special meeting called for the purpose, enact, amend, repeal, replace or confirm a bylaw.

(2) A member may make a proposal, in the manner provided in section 200, to enact, amend, repeal, replace or confirm any bylaw.

1999, c.N-4.001, s.201.

Directors cannot change bylaws

202 Nothing in this Act, the regulations or the bylaws is to be construed as conferring on the directors of a co-operative the power to enact, amend, repeal, replace or confirm any bylaws.

1999, c.N-4.001, s.202.

Effective day of bylaw

203(1) No bylaw is in force until two copies of the bylaw, certified to be true copies by the president and secretary of the co-operative, are filed with, and approved by, the registrar.

(2) Notwithstanding subsection (1), where the registrar considers it appropriate for the members or members and delegates present at a general meeting of the co-operative to implement the proposed bylaw at the meeting at which the bylaw is submitted for their approval, the registrar may approve the proposed bylaw prior to the meeting.

(3) Subject to subsection (4), where a proposed bylaw is approved pursuant to subsection (2) and is approved by the votes of a sufficient number of members in accordance with subsection 201(1), the bylaw comes into force immediately.

(4) A bylaw described in subsection (3) ceases to be in force on the expiration of 30 days after the day of the general meeting in which it is approved by the members, unless, within that 30-day period, the bylaw is filed with the registrar pursuant to subsection (1).

(5) Where the registrar approves a bylaw, the registrar shall return to the co-operative one copy of the bylaw with the approval stamped on the bylaw.

1999, c.N-4.001, s.203.

Representative of member who is not an individual

204(1) Where an entity or a public body is a member of a co-operative, the co-operative shall recognize any individual authorized by a resolution of the directors or governing body of the entity or public body to represent it at meetings of the co-operative.

(2) An individual authorized pursuant to subsection (1) may exercise, on behalf of the entity or a public body that he or she represents, all the powers that the entity or public body could exercise if it were an individual member.

1999, c.N-4.001, s.204.

Voting procedures

205(1) Unless the bylaws provide otherwise, members shall vote:

(a) by a show of hands; or

(b) where three members entitled to vote at a meeting so demand, by secret ballot.

(2) Unless the bylaws provide otherwise, where a co-operative has divided the territory in which it does business into districts, a member is entitled to vote only at the district meeting designated by the directors.

(3) The chairperson of the meeting has the right to vote, but is not entitled to a second vote in the event of a tie.

(4) Unless this Act, the articles or the bylaws provide otherwise, at a meeting of members a majority of the members or delegates who are present and cast votes at the meeting shall decide all questions.

(5) Where a special resolution is required pursuant to this Act or the bylaws, the content of the proposed special resolution may be amended by ordinary resolution.

(6) Where there is an equality of votes, the motion is to be declared lost.

(7) Unless the bylaws provide otherwise, voting by holders of preferred shares is to take place by a show of hands, except when a secret ballot is demanded by any person who is entitled to vote at the meeting, and any person entitled to vote at the meeting of holders of preferred shares may demand a vote by secret ballot either before or after a vote by a show of hands.

(8) Unless the bylaws provide otherwise, if two or more persons hold preferred shares jointly, one of those holders present at a meeting of holders of preferred shares may, in the absence of the others, vote the preferred shares, but if two or more of those persons who are present, in person or by proxy, vote, they shall vote as one on the preferred shares jointly held by them.

(9) Unless a secret ballot is demanded, an entry in the minutes of a meeting of holders of preferred shares to the effect that the chairperson of the meeting declared a motion to be carried or defeated is admissible in the absence of evidence to the contrary as proof of the fact without proof of the number or proportion of the votes recorded in favour of or against the motion.

1999, c.N-4.001, s.205.

Resolution in lieu of meeting

206(1) Except where a written statement is submitted by an auditor pursuant to section 237:

- (a) a written resolution signed by all the members entitled to vote on that resolution at a general meeting of members is as valid as if it had been passed at a general meeting of the members;
 - (b) a written resolution dealing with any matter required by this Act to be dealt with at a general meeting of members and signed by all the members entitled to vote at that meeting satisfies all the requirements of this Act relating to meetings of members;
 - (c) a written resolution signed by all persons entitled to vote at a meeting of holders of preferred shares is as valid as if it had been passed at a general meeting of those holders.
- (2) A copy of every resolution described in subsection (1) is to be kept with the minutes of the meetings of members and of the meetings of the holders of preferred shares.

1999, c.N-4.001, s.206.

Meeting called by the registrar

207(1) On the application of a director or a member entitled to vote at the meeting or on the registrar's own initiative, the registrar may order a general meeting to be called, held and conducted in any manner that the registrar directs, where:

- (a) in the opinion of the directors it is impracticable:
 - (i) to call a general meeting of members or the holders of preferred shares in the manner in which the meetings may be called; or
 - (ii) to conduct a general meeting of members or the holders of preferred shares in the manner set out in this Act or in the bylaws; or
 - (b) for any reason in addition to those described in clause (a), the registrar considers it appropriate.
- (2) Without restricting the generality of subsection (1), the registrar may order that the quorum required in this Act or the bylaws be varied or dispensed with at a general meeting called pursuant to this section.
- (3) A general meeting called pursuant to this section is deemed to be a valid meeting.

1999, c.N-4.001, s.207.

Compulsory sale of shares

208 Subject to sections 60, 210 and 211, a co-operative may, by written notice to a member of the co-operative, require the member to sell his or her common shares to the co-operative in accordance with section 59, and the member shall sell the shares, where:

- (a) the member is a body corporate, and winding-up proceedings have commenced with respect to that body corporate; or
- (b) the member has, during a period of two years, failed to transact any business with the co-operative.

1999, c.N-4.001, s.208.

Withdrawal of members

209(1) Subject to subsections (2) to (5), a member may, by notice, withdraw from a co-operative, on the terms and conditions provided in the bylaws, and the withdrawal is effective on the later of the date specified in the notice from the member and the date on which the co-operative receives the notice.

(2) Subject to section 60, the co-operative shall, not later than five years from the date of the withdrawal of a member:

- (a) purchase from the member:
 - (i) all common shares at their par value; and
 - (ii) all preferred shares mentioned in section 35 at the price or formula stated in the articles, or in the absence of a price or formula, at their fair market value on the date of withdrawal; and
- (b) pay to the member:
 - (i) the amount of all member loans; and
 - (ii) all other amounts that are held to the member's credit, other than an amount outstanding that has a fixed maturity that has not arrived.

(3) The bylaws shall not derogate from the effect of subsection (2).

(4) Unless the directors determine otherwise, the withdrawal of a member from the co-operative does not release the member from a supply contract or from any debt or obligation to the co-operative.

(5) In this section and in section 210, "**supply contract**" means an obligation of a member to sell or deliver a good or supply a service to the co-operative pursuant to the bylaws or pursuant to an agreement mentioned in section 215.

1999, c.N-4.001, s.209.

Termination of membership by directors

210(1) The bylaws of a co-operative may derogate from the rights and procedure applying to the termination of a member from a co-operative as set out in this section, but only respecting the manner in which the membership of the member may be terminated.

(2) The directors may, by a special resolution, order the termination of the membership of a member.

(3) The secretary of the co-operative shall, within 10 days after the resolution of the directors, notify the member of the termination and the reasons for the termination, and subject to subsections (4) and (5), the effective date of the termination is the later of the date specified in the notice to the member and 30 days after the member receives the notice.

(4) A member whose membership has been terminated may appeal the decision of the directors to a meeting of the members by giving written notice to the secretary of the member's intention to appeal not later than 30 days after receiving the notice of the termination from the co-operative.

(5) If a member gives notice of an appeal, the effect of the termination from membership is suspended until the vote of the members pursuant to subsection (6).

(6) If a member appeals the termination of membership, a vote of members must be taken at the next general meeting of the members or at a special meeting of the members called for that purpose, as to whether the member's membership should be terminated as of the effective date mentioned in subsection (3), and the vote of the members is to be by a majority of the members present at that meeting unless a greater proportion is specified in the articles or the bylaws.

(7) Subject to section 60, if a member's membership is terminated, the co-operative must, not later than one year after the date of the special resolution:

(a) purchase from the member:

(i) all common shares at their par value; and

(ii) all preferred shares mentioned in section 35 at the price or formula stated in the articles, or in the absence of a price or formula, at their fair market value on the date of termination; and

(b) pay to the member:

(i) the amount of all member loans; and

(ii) all other amounts that are held to the member's credit.

(8) On the date of the termination of the membership of the member:

(a) any supply contract between the member and the co-operative is terminated;

c. N-4.001**NEW GENERATION CO-OPERATIVES**

- (b) notwithstanding clause (a), the rights of the members of the co-operative arising from the contract and resulting from the termination of the contract shall be determined as at that date; and
 - (c) unless the directors determine otherwise, the termination of the membership of the member does not release the member from any debt to the co-operative.
- (9) Where the address of a member whose termination is ordered pursuant to subsection (2) is unknown to the co-operative after all reasonable efforts have been made to ascertain the member's address for the purpose of making payment to the member of all amounts held to the member's credit, the co-operative shall transfer those amounts to its reserve fund.
- (10) Where any amounts are transferred pursuant to subsection (9), the co-operative shall pay those amounts to the person entitled to them on proof of the person's claim that is satisfactory to the co-operative.
- (11) Where a co-operative transfers amounts held to the credit of a member pursuant to subsection (9), it shall immediately submit to the registrar a return showing:
- (a) the member's name;
 - (b) the member's last known address; and
 - (c) the amounts transferred.

1999, c.N-4.001, s.210.

Termination of membership by members**211(1)** Members may terminate the membership of a member where:

- (a) the member has received at least 21 days' notice of the general meeting at which his or her membership is to be considered; and
 - (b) the termination is approved by a majority of at least two-thirds of the members who:
 - (i) are present at the general meeting; and
 - (ii) cast votes on the resolution.
- (2) Where the members of a co-operative terminate the membership of a member:
- (a) within 10 days after the decision of the members, the secretary of the co-operative shall advise the member of the decision;
 - (b) the effective date of the termination will be the later of the date specified in the notice and 30 days after the member receives the notice; and
 - (c) subsections 210(7) and (8) apply.

1999, c.N-4.001, s.211.

Appeal

212(1) Where a person's membership is terminated pursuant to section 210 or 211, that person may appeal the termination to the registrar in the prescribed manner, and the registrar shall confirm or set aside the resolution terminating the membership.

(2) No person whose membership is terminated for failure to fulfil financial or contractual obligations to the co-operative is eligible to appeal the termination to the registrar pursuant to subsection (1).

(3) Where a person appeals the termination of his or her membership pursuant to this section, notwithstanding the resolution terminating the membership, the person continues to be a member until the termination of membership is confirmed by the registrar pursuant to this section.

1999, c.N-4.001, s.212.

Re-admittance

213 A person whose membership is terminated pursuant to section 211 may be re-admitted to membership only by a two-thirds majority vote of members.

1999, c.N-4.001, s.213.

Contracts

214(1) Subject to the articles and section 63, a co-operative may advance money to its members or patrons as part payment for commodities delivered or agreed to be delivered to it pursuant to a contract or arrangement made with the member or patron.

(2) Where a member or co-operative breaches a material provision of a contract, including any obligation in the bylaws, the member or co-operative is entitled:

- (a) to an injunction to prevent any further breach;
- (b) to any equitable relief, in addition to the injunction mentioned in clause (a), that may be provided in the terms of the contract; and
- (c) to specific performance of the provision.

1999, c.N-4.001, s.214.

Marketing contracts

215(1) The co-operative may enter into agreements with its members and patrons requiring the members and patrons to sell or deliver exclusively to or through the co-operative for sale, processing or preparation for market goods for the period specified in the agreement.

(2) An agreement mentioned in subsection (1) may provide:

- (a) that the products or commodities are to be delivered to the co-operative without the co-operative acquiring title to the goods; and
- (b) for the co-operative to act as an agent for the members or patrons.

(3) If the co-operative acquires goods from members or patrons without acquiring title to the goods, the co-operative holds the goods for the members and patrons free from any liability to attachment by any creditor of the co-operative.

- (4) The co-operative may operate pools for the members and patrons and may distribute the proceeds from any pool among the persons contributing to that pool.
- (5) The co-operative may, in an agreement mentioned in subsection (1) or in its bylaws, establish rules respecting:
- (a) the payment to its members and patrons of the proceeds for goods sold or delivered to the co-operative;
 - (b) the manner for charging expenditures of the co-operative against those proceeds; and
 - (c) the deduction from the proceeds of an amount that is to be loaned to the co-operative or used to purchase shares in the co-operative, subject to the restrictions mentioned in section 55 for the application of patronage dividends.

1999, c.N-4.001, s.215.

PART XIII Proxies

Interpretation of Part

216(1) In this Part:

- (a) **“form of proxy”** means a written or printed form that, on completion and execution by or on behalf of a holder of preferred shares, becomes a proxy;
- (b) **“intermediary”** means a securities broker or dealer required to be registered to trade or deal in securities under the laws of any jurisdiction and includes:
 - (i) a securities depository;
 - (ii) a financial institution;
 - (iii) respecting a clearing agency, a securities dealer, trust company, bank or other person, including another clearing agency, on whose behalf the clearing agency or its nominees hold securities of an issuer;
 - (iv) a trustee or administrator of a self-administered retirement savings plan, retirement income fund, education savings plan or other similar self-administered savings or investment plan registered pursuant to the *Income Tax Act* (Canada);
 - (v) a nominee of a person mentioned in subclauses (i) to (iv); and
 - (vi) a person who carries out functions similar to those carried out by individuals or entities mentioned in subclauses (i) to (iv) and who holds a security registered in his or her name, or in the name of its nominee, on behalf of another person who is not the registered holder of the security;
- (c) **“solicit”** or **“solicitation”** includes:
 - (i) a request for a proxy whether or not accompanied by or included in a form of proxy;

- (ii) a request to execute or not to execute a form of proxy or to revoke a proxy;
- (iii) the sending of a form of proxy or other communication to a holder of preferred shares under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy; and
- (iv) the sending of a form of proxy to a holder of preferred shares pursuant to section 218;

but does not include:

- (v) the sending of a form of proxy in response to an unsolicited request made by or on behalf of a holder of preferred shares;
- (vi) the performance of administrative acts or professional services on behalf of a person soliciting a proxy;
- (vii) the sending by an intermediary of the documents mentioned in section 218;
- (viii) a solicitation by a person respecting preferred shares of which the person is the beneficial owner;
- (ix) a public announcement by a holder of preferred shares of how the holder of preferred shares intends to vote and the reasons for that decision;
- (x) anything that would be a solicitation pursuant to this definition but is conveyed by public broadcast, speech or publication, if a proxy circular in final form is sent to the co-operative and is filed with the registrar; and
- (xi) a communication, other than a solicitation by or on behalf of the management of the co-operative, that is made to a holder of preferred shares, in any circumstances that may be prescribed;

(d) **“solicitation by or on behalf of the management of a co-operative”** means a solicitation by a person pursuant to a resolution or instructions of, or with the acquiescence of, the directors or a committee of directors.

(2) This Part does not apply to a member or common shares, but a member who is a holder of preferred shares may exercise the rights given to a holder of preferred shares by this Part for all preferred shares held.

1999, c.N-4.001, s.216.

Proxy may be appointed

217(1) A holder of preferred shares who is entitled to vote at a meeting of holders of preferred shares may appoint a proxyholder or one or more alternative proxyholders, who are not required to be holders of preferred shares, to attend and act at the meeting in the manner and to the extent authorized by the proxy and with the authority conferred by the proxy.

(2) For a proxy to be valid, it must be executed by the holder of preferred shares or by his or her legal representative authorized in writing.

- (3) A proxy is valid only at the meeting with respect to which it is given or at any adjournment of that meeting.
- (4) A holder of preferred shares may revoke a proxy:
- (a) by depositing a document in writing executed by the holder of preferred shares or by his or her legal representative authorized in writing:
 - (i) at the registered office of the co-operative at any time up to and including the last business day before the day of the meeting or adjournment at which the proxy is to be used; or
 - (ii) with the chairperson of the meeting on the day of the meeting or adjournment; or
 - (b) in any other manner permitted by law.
- (5) The directors may specify in a notice calling a meeting of holders of preferred shares a time not more than 48 hours, excluding Saturdays and holidays, before the meeting or adjournment before which time proxies to be used at the meeting must be deposited with the co-operative or its agent.

1999, c.N-4.001, s.217.

Management to send form of proxy

- 218(1)** Subject to subsection (2), the management of a co-operative shall, concurrently with giving notice of a meeting of the holders of preferred shares, send a form of proxy in the prescribed form to each holder who is entitled to receive notice of the meeting.
- (2) The management of a co-operative is not required to send a form of proxy pursuant to subsection (1) if:
- (a) it is not a distributing co-operative; and
 - (b) it has fewer than 50 holders of preferred shares entitled to vote at a meeting, two or more joint holders being counted as one shareholder.

1999, c.N-4.001, s.218.

Circulars

- 219(1)** No person may solicit a proxy unless the applicable circular described in subsection (2) is sent to the auditor of the co-operative, to each holder of preferred shares whose proxy is solicited, to each director and, if clause (2)(b) applies, to the co-operative.
- (2) The circular that is to be sent pursuant to subsection (1) is:
- (a) in the case of solicitation by or on behalf of the management of a co-operative, a management proxy circular in the prescribed form, either as an appendix to or as a separate document accompanying the notice of the meeting; and
 - (b) in the case of any other solicitation, a dissident's proxy circular in the prescribed form stating the purposes of the solicitation.

- (3) When a management proxy circular or dissident's proxy circular is sent, a copy of it must be sent to the registrar together with a statement in the prescribed form and a copy of any notice of meeting, form of proxy and any other documents for use in connection with the meeting.
- (4) A person may, notwithstanding subsection (1), commence a solicitation if he or she has filed a preliminary proxy circular with the co-operative and the registrar, as long as the form of proxy is not sent before the proxy circular in final form is sent.
- (5) A management proxy circular need not be sent if:
- (a) all the holders of preferred shares of a co-operative are members; and
 - (b) management has sent to the holders of preferred shares substantially the same information as that required to be sent in the circular, not less than 21 days nor more than 60 days before the meeting at which the vote to which the circular relates is to be held.

1999, c.N-4.001, s.219.

Exemptions

220(1) On the application of any interested person, the registrar may, retrospectively or otherwise, exempt, on any terms that the registrar considers appropriate, the person from any of the requirements of section 218 or subsection 219(1).

(2) The registrar shall set out in a publication generally available to the public the particulars of all exemptions granted pursuant to this section together with the reasons for the exemptions.

1999, c.N-4.001, s.220.

Rights and obligations of proxyholder

221(1) An individual who solicits a proxy and is appointed proxyholder shall attend the meeting with respect to which the proxy is given in person, or cause an alternative proxyholder to attend it, and shall comply with the directions of the holder of preferred shares who appointed the proxyholder.

(2) A proxyholder or an alternative proxyholder has the same rights as the holder of preferred shares who appointed the proxyholder to speak at a meeting of holders of preferred shares respecting any matter, to vote by way of ballot at the meeting and, except if the proxyholder or alternative proxyholder has conflicting instructions from more than one holder, to vote at the meeting respecting any matter by a show of hands.

(3) Notwithstanding subsections (1) and (2), if the chairperson of a meeting of the holders of preferred shares declares to the meeting that, if a ballot is conducted, the total number of votes attached to shares represented at the meeting by proxy required to be voted against what to the knowledge of the chairperson will be the decision of the meeting in relation to any matter or group of matters is less than five per cent of all the votes that might be cast by the holders present in person or represented by proxy at the meeting on the ballot, unless a holder of preferred shares or proxyholder demands a ballot:

- (a) the chairperson may conduct the vote respecting that matter or group of matters by a show of hands; and
- (b) a proxy holder or alternative proxy holder may vote respecting that matter or group of matters by a show of hands.

1999, c.N-4.001, s.221.

Proxies and preferred shares

222(1) Preferred shares of a co-operative that are registered in the name of an intermediary or a nominee of an intermediary and not beneficially owned by the intermediary must not be voted unless the intermediary, without delay after receipt of the notice of the meeting, management proxy circular, dissident's proxy circular and any other documents other than the form of proxy sent to the holders of preferred shares by or on behalf of any person for use in connection with the meeting, sends a copy of the document to the beneficial owner and, except when the intermediary has received written voting instructions from the beneficial owner, a written request for those instructions.

(2) An intermediary may not vote or appoint a proxyholder to vote preferred shares registered in the name of the intermediary or in the name of a nominee of the intermediary that the intermediary does not beneficially own unless the intermediary receives voting instructions from the beneficial owner.

(3) A person by or on behalf of whom a solicitation is made must provide, at the request of an intermediary, without delay, to the intermediary at the person's expense the necessary number of copies of the documents mentioned in subsection (1), other than copies of the document requesting voting instructions.

(4) An intermediary shall vote or appoint a proxyholder to vote any preferred shares mentioned in subsection (1) in accordance with any written voting instructions received from the beneficial owner.

(5) If requested by a beneficial owner, an intermediary must appoint the beneficial owner or a nominee of the beneficial owner as proxyholder.

(6) The failure of an intermediary to comply with this section does not render null or void any meeting of the holders of preferred shares or any action taken at the meeting.

(7) Nothing in this section gives an intermediary the right to vote preferred shares that the intermediary is otherwise prohibited from voting.

1999, c.N-4.001, s.222.

Misstatement of facts in proxy

223(1) If a form of proxy, management proxy circular or dissident's proxy circular contains an untrue statement of a material fact or omits to state a material fact required in it or necessary to make a statement contained in it not misleading in the light of the circumstances in which it was made, the registrar or any other interested person may apply to a court and the court may make any order it considers appropriate, including:

- (a) an order restraining the solicitation or the holding of the meeting, or restraining any person from implementing or acting on a resolution passed at the meeting to which the form of proxy, management proxy circular or dissident's proxy circular relates;
 - (b) an order requiring correction of any form of proxy or proxy circular and a further solicitation; and
 - (c) an order adjourning the meeting.
- (2) An applicant pursuant to this section must give the registrar notice of the application and the registrar is entitled to appear and to be heard in person or by counsel.

1999, c.N-4.001, s.223.

Application

224 This Part does not apply to a co-operative that is required, pursuant to the securities legislation of Saskatchewan or another jurisdiction, to provide, in accordance with that legislation, a form of proxy to the holders of preferred shares.

1999, c.N-4.001, s.224.

PART XIV Financial Disclosure

Annual financial statement

225(1) The directors of a co-operative shall place before the members at every annual meeting:

- (a) the prescribed comparative financial statements relating separately to:
 - (i) the period that began on the day the co-operative came into existence and ended not more than six months before the annual meeting or, where the co-operative has completed a financial year, the period that began immediately after the end of the last completed financial year and ended not more than six months before the annual meeting; and
 - (ii) the financial year that immediately preceded the period described in subclause (i);

c. N-4.001

NEW GENERATION CO-OPERATIVES

- (b) where the co-operative has an auditor, the report of the auditor; and
 - (c) any information, in addition to that mentioned in clauses (a) and (b), respecting the financial position of the co-operative and the results of its operations that are required in the articles or the bylaws.
- (2) Notwithstanding subsection (1), the directors may omit the financial statements mentioned in subclause (1)(a)(ii) where the reason for the omission is set out in the financial statement to be placed before the members or in a note attached to those financial statements.
- (3) If the holders of the preferred shares have a right to have an annual meeting pursuant to subsection 164(6), the directors must place the documents mentioned in subsection (1) before those holders at every annual meeting of those holders.

1999, c.N-4.001, s.225.

Approval of financial statements

226(1) Before the financial statements mentioned in section 225 are placed before the members or holders of preferred shares:

- (a) the directors shall approve the financial statements; and
 - (b) the approval must be evidenced by the signature of one or more directors.
- (2) No co-operative shall issue, publish or circulate copies of the financial statements mentioned in section 225 unless the financial statements:
- (a) are approved and signed in accordance with subsection (1); and
 - (b) where the co-operative has an auditor, are accompanied by the report of the auditor of the co-operative.

1999, c.N-4.001, s.226.

Providing financial statements

227(1) Not less than 21 days before each annual meeting of members, a co-operative shall make copies of the financial statements and report of the auditor mentioned in section 225 available to any member who requests them.

- (2) A co-operative shall send copies of interim financial statements or related documents to the registrar when the co-operative:
- (a) sends interim financial statements or related documents to its shareholders; or
 - (b) is required to file interim financial statements or related documents with a public authority or a recognized stock exchange or send interim financial statements or related documents to a public authority or a recognized stock exchange.

- (3) The registrar may, on application of a co-operative, authorize the co-operative:
- (a) to omit from its financial statements any item and the registrar may, if the registrar reasonably believes that the disclosure of any information to be contained in the statements would be detrimental to the co-operative, permit the omission on any reasonable conditions that the registrar considers appropriate;
 - (b) to prepare its financial statements in a manner other than required by section 225 if the registrar is of the opinion that it is reasonable to so do; or
 - (c) to abridge the time for sending or filing a financial statement.

1999, c.N-4.001, s.227.

Financial statements

228(1) A co-operative must keep at its registered office a copy of the financial statements of each of its subsidiaries and of each entity, the accounts of which are consolidated in its financial statements.

(2) The members and the holders of the preferred shares of the co-operative, their agents, mandataries and legal representatives may, on request, examine the statements mentioned in subsection (1) during the usual business hours of the co-operative and may take extracts from them free of charge.

(3) A co-operative may, not later than 15 days after a request to examine pursuant to subsection (2), apply to a court for an order barring the right of any person to so examine, and the court may, if it is satisfied that the examination would be detrimental to the co-operative or a subsidiary, bar the right and make any further order it considers appropriate.

(4) A co-operative must give the person requesting to examine pursuant to subsection (2) and the registrar notice of an application pursuant to subsection (3) and that person and the registrar may appear and be heard in person or by counsel.

1999, c.N-4.001, s.228.

Annual financial statements

229(1) A co-operative shall send a copy of the documents mentioned in section 225 to each holder of preferred shares, except:

- (a) a holder of preferred shares mentioned in section 35 who has received the documents as a member; and
 - (b) a holder who has informed the co-operative in writing that the documents are not wanted.
- (2) The documents shall be sent not less than 21 days before each annual meeting of members.

1999, c.N-4.001, s.229.

Qualification of auditor

230(1) Subject to subsections (2) and (3), a person is qualified to be an auditor of a co-operative only where he or she is:

- (a) independent of:
 - (i) the co-operative;
 - (ii) any subsidiary of the co-operative; and
 - (iii) the directors or officers of the co-operative or its subsidiary; and
 - (b) a member of a recognized accounting professional association or is approved by the registrar.
- (2) A person is not disqualified from being an auditor of a co-operative only by reason of membership in the co-operative.
- (3) For the purposes of this section:
- (a) independence is a question of fact; and
 - (b) a person is deemed not to be independent where the person or the person's business partner:
 - (i) is a business partner, a director, an officer or an employee of the co-operative or of any of its subsidiaries, or a business partner of any director, officer or employee of the co-operative or its subsidiaries;
 - (ii) beneficially owns or controls, directly or indirectly, a material interest in the securities of the co-operative or any of its subsidiaries; or
 - (iii) has been a receiver, receiver-manager, liquidator or trustee in bankruptcy of the co-operative or any of its subsidiaries within two years before his or her proposed appointment as auditor of the co-operative.
- (4) An auditor who becomes disqualified pursuant to this section shall resign immediately after becoming aware of his or her disqualification.
- (5) An interested person may apply to the registrar for an order declaring:
- (a) an auditor to be disqualified pursuant to this section; and
 - (b) the office of auditor to be vacant.
- (6) Notwithstanding subsection (4), an interested person may apply to the registrar for an order exempting an auditor from disqualification pursuant to this section and, where the registrar is satisfied that an exemption would not unfairly prejudice the members and shareholders, the registrar may make an exemption order on any terms that the registrar considers appropriate.
- (7) The registrar may make an order described in subsection (6) retroactive to any day that the registrar considers appropriate.

Appointment of auditor

231(1) Subject to section 232, at the first general meeting of members and at each succeeding annual meeting, the members shall, by ordinary resolution, appoint an auditor to hold office until the close of the next annual meeting.

(2) Notwithstanding subsection (1), where an auditor is not appointed at a meeting of members, the incumbent auditor continues in office until a successor is appointed.

(3) The remuneration of an auditor may be fixed:

(a) by ordinary resolution of the members; or

(b) where not fixed by the members, by the directors.

1999, c.N-4.001, s.231.

Resolution to not appoint

232(1) A co-operative may resolve not to appoint an auditor if:

(a) notice of the proposed resolution is given with the notice of the meeting at which a vote on the resolution is to be held; and

(b) notice of the resolution is filed with the registrar within 30 days after the day on which the resolution is passed.

(2) A resolution passed pursuant to subsection (1) is valid only until the next succeeding annual meeting of members.

(3) A resolution passed pursuant to subsection (1) is not valid unless it is consented to by all members who voted on the resolution.

(4) Notwithstanding subsection (1), a co-operative shall appoint an auditor if:

(a) the co-operative receives or has received any grant of money or property from a government or government agency in any financial year of the co-operative that is in excess of 10% of its total income for that financial year or any greater amount that may be prescribed; or

(b) the co-operative is a distributing co-operative.

1999, c.N-4.001, s.232.

Ceasing to hold office

233(1) An auditor of a co-operative ceases to hold office when:

(a) he or she dies or resigns;

(b) another auditor is appointed pursuant to section 231; or

(c) he or she is removed pursuant to section 234.

(2) The resignation of an auditor becomes effective at the later of:

(a) the time at which the written resignation is sent to the co-operative; and

(b) the time specified in the written resignation.

1999, c.N-4.001, s.233.

Removal and vacancy

234(1) The members of a co-operative may, by ordinary resolution at a general or special meeting, remove from office an auditor other than an auditor appointed by the registrar pursuant to section 236.

- (2) A vacancy created by the removal of an auditor may be filled:
- (a) at the meeting at which the auditor is removed; or
 - (b) pursuant to section 235.

1999, c.N-4.001, s.234.

Filling vacancy

235(1) Subject to subsection (4), the directors shall immediately fill a vacancy in the office of auditor.

(2) Where there is not a quorum of directors, the directors then in office shall call, within 60 days after a vacancy of auditor occurs, a special meeting of members to fill the vacancy.

(3) Where the directors fail to call a special meeting pursuant to subsection (2) or where there are no directors, a meeting for the purpose of filling a vacancy in the office of auditor may be called by any member.

(4) A co-operative may provide in its bylaws that a vacancy in the office of auditor is only to be filled by ordinary resolution.

(5) An auditor appointed to fill a vacancy holds office for the unexpired term of the former auditor.

1999, c.N-4.001, s.235.

Appointment by registrar

236(1) Where a co-operative does not have an auditor and a member applies to the registrar, the registrar may:

- (a) appoint an auditor to hold office until an auditor is appointed by the members;
 - (b) fix the remuneration of the auditor; and
 - (c) determine who is responsible for paying the remuneration.
- (2) Where the members have resolved pursuant to section 232 not to appoint an auditor, a member of that co-operative may not apply to the registrar pursuant to this section.

1999, c.N-4.001, s.236.

Rights to attend meeting

237(1) The auditor of a co-operative is entitled:

- (a) to receive notice of every general meeting of members and holders of preferred shares; and
 - (b) at the expense of the co-operative, to attend and be heard at those meetings on matters relating to the duties of an auditor.
- (2) Where a director, member or a holder of preferred shares entitled to vote at a meeting gives written notice not less than seven days before a general meeting of members or a meeting of the holders of preferred shares to the auditor or a former auditor of the co-operative and to the co-operative, the auditor or former auditor shall attend the meeting at the expense of the co-operative and answer questions relating to his or her duties as auditor.
- (3) An auditor is entitled to submit to the co-operative a written statement giving the reasons for his or her resignation or the reasons why he or she opposes any proposed action or resolution where the auditor:
- (a) resigns;
 - (b) receives a notice or learns by means other than a notice of a general meeting:
 - (i) of members called for the purpose of removing the auditor from office; or
 - (ii) of directors or members at which another person is to be appointed to fill the office of auditor, whether because of his or her resignation or removal or because his or her term of office has expired or is about to expire; or
 - (c) receives a notice or otherwise learns of a special meeting of members at which a resolution mentioned in section 234 is to be proposed.
- (4) Where a co-operative receives a written statement pursuant to subsection (3), it shall make available a copy of the statement to the registrar, to every member entitled to receive notice of the general meeting and to every holder of preferred shares.
- (5) No person may accept appointment or consent to be appointed as auditor of a co-operative if the person is replacing an auditor who has resigned or been removed or whose term of office has expired or is about to expire until the person has requested and received from the auditor a written statement of the circumstances and the reasons why, in that auditor's opinion, the auditor is to be replaced.
- (6) Notwithstanding subsection (5), a person otherwise qualified may accept appointment or consent to be appointed as auditor of a co-operative if, not later than 15 days after making the request mentioned in that subsection, the person does not receive a reply.
- (7) Unless subsection (6) applies, an appointment as auditor of a co-operative of a person who has not complied with subsection (5) is null and void.

Examination by auditor

238(1) An auditor of a co-operative shall make any examination that is, in the auditor's opinion, necessary to enable the auditor to report in the prescribed manner on the financial statements that are required in this Act to be placed before the members or shareholders, other than any financial statements or part of any financial statements that relate to the period mentioned in subclause 225(1)(a)(ii).

(2) An auditor of a co-operative may reasonably rely on the report of an auditor of a body corporate or unincorporated business the accounts of which are included in whole or in part in the financial statements of the co-operative.

1999, c.N-4.001, s.238.

Rights to information

239(1) On the demand of an auditor of a co-operative, the present or former directors, officers, employees or agents of the co-operative shall provide any information and explanations, and provide access to any records, documents, books, accounts and vouchers of the co-operative or any of its subsidiaries that, in the opinion of the auditor, are necessary to enable the auditor to make the examination and report required pursuant to section 238 and that the directors, officers, employees or agents are reasonably able to provide.

(2) On the demand of the auditor of a co-operative, the directors of the co-operative shall obtain from the present or former directors, officers, employees or agents of any subsidiary of the co-operative, and provide to the auditor, the information and explanations that are described in subsection (1).

(3) A person who, in good faith, makes an oral or written communication pursuant to subsection (1) or (2) is not liable in any civil action arising from having made the communication.

1999, c.N-4.001, s.239.

Audit committee

240(1) A co-operative shall have an audit committee composed of not less than three directors.

(2) Before the financial statements of a co-operative are approved pursuant to section 226, the auditor shall:

- (a) send the audit committee a report outlining the auditor's comments with respect to the financial statements and copies of all letters the auditor has sent to the management of the co-operative; or
- (b) review the financial statements with the audit committee.

(3) The auditor of a co-operative is entitled:

- (a) to receive notice of every meeting of the audit committee; and
- (b) at the expense of the co-operative, to attend and be heard at a meeting of the audit committee.

- (4) Where a member of the audit committee requests, the auditor shall attend every meeting of the committee held during his or her term of office.
- (5) The auditor of a co-operative or a member of the audit committee may call a meeting of the committee.
- (6) A director or an officer of a co-operative shall immediately notify the audit committee and the auditor of any error or misstatement of which the director or officer becomes aware in a financial statement that the auditor or a former auditor has reported on.
- (7) Where the auditor or former auditor of a co-operative is notified or becomes aware of an error or misstatement in a financial statement on which he or she has reported and, in the opinion of the auditor, the error or misstatement is material, the auditor shall inform each director of the error or misstatement.
- (8) Where, pursuant to subsection (7), the auditor or former auditor informs the directors or the directors otherwise have knowledge of an error or misstatement in a financial statement, the directors shall:
- (a) prepare and issue revised financial statements; or
 - (b) inform the members, the holders of the preferred shares and the registrar of the error or misstatement by a means other than that described in clause (a).

1999, c.N-4.001, s.240.

Qualified privilege, defamation

241 An auditor is not liable to any person in an action for defamation based on any act done or not done or any statement made by the auditor in good faith in connection with any matter that the auditor is authorized or required to do pursuant to this Act.

1999, c.N-4.001, s.241.

PART XV
Annual and Special Returns

Annual and special returns

242(1) Within 30 days after the day of its annual meeting, a co-operative shall:

- (a) file with the registrar an annual return for the previous year, on any form that is approved by the registrar;
- (b) provide the registrar with a copy of the financial statement placed before its members at its last annual meeting; and
- (c) pay any prescribed filing fee.

(2) The registrar may require, by written notice, a co-operative or a director or an officer of a co-operative to make a special return on any subject connected with the business and affairs of the co-operative and, when the registrar requires a special return, the registrar shall specify in the notice a time within which the special return is to be made.

(3) A co-operative that defaults in filing with the registrar an annual return is liable to payment of a prescribed special filing fee.

1999, c.N-4.001, s.242.

PART XVI Fundamental Changes and Amalgamations

Amendments to articles

243(1) Subject to section 246 and to the approval of the registrar, the members may, by special resolution, amend the articles to:

- (a) change the name of the co-operative;
- (b) add, change or remove any restriction on the business or businesses that the co-operative may carry on except the restriction mentioned in clause 6(2)(h);
- (c) create new classes of preferred shares;
- (d) change the designation of all or any of its preferred shares and add, change or remove any rights or restrictions, including rights to accrued dividends, with respect to all or any of its shares, whether issued or unissued;
- (e) authorize the directors to change the rights or restrictions attached to unissued preferred shares of any series;
- (f) revoke, diminish or enlarge any authority conferred pursuant to clause (e);
- (g) add, change or remove restrictions on the transfer of shares except that, subject to this Act, only a member may be a holder of common shares or preferred shares mentioned in section 35;
- (h) subject to sections 6 and 172, increase or decrease the number of directors; or
- (i) add, change or remove any other provision that is permitted in this Act to be set out in the articles.

(2) Where, in a special resolution made pursuant to subsection (1), the members authorize the directors to revoke the resolution, the directors of a co-operative may revoke the resolution before it is acted on without further approval of the members.

1999, c.N-4.001, s.243.

Amendment re authorized capital

244(1) Subject to section 246 and to the approval of the registrar, the members may, by special resolution, amend the articles to:

- (a) subdivide any preferred shares of any class;
 - (b) consolidate common shares into shares of a larger par value;
 - (c) cancel any shares that, at the day on which the special resolution is passed, have not been subscribed for or agreed to be issued, and diminish the amount of the authorized capital of the co-operative by the amount of the par value of the shares so cancelled;
 - (d) reduce or increase the par value of common shares;
 - (e) change any formula or price at which redeemable preferred shares may be acquired by the co-operative;
 - (f) change any maximum number of shares that the co-operative is authorized to issue;
 - (g) reduce or increase its stated capital, which, for the purposes of the amendment, is deemed to be set out in the articles;
 - (h) change the preferred shares of any class or series, whether issued or unissued, into a different number of preferred shares of the same class or series or into the same or a different number of preferred shares of other classes or series; and
 - (i) divide a class of preferred shares, whether issued or unissued, into series and fix the number of preferred shares in each series and the special rights or restrictions of them.
- (2) Where, in a special resolution made pursuant to subsection (1), the members authorize the directors to revoke the resolution, the directors of a co-operative may revoke the resolution before it is acted on without further approval of the members.

1999, c.N-4.001, s.244.

Proposal to amend

245(1) A member, a director or a holder of preferred shares may make a proposal to amend the articles in the manner mentioned in sections 243 and 244.

- (2) Section 200 applies to a proposal mentioned in subsection (1).

1999, c.N-4.001, s.245.

Preferred shareholder vote

246(1) The registrar shall not approve a proposed amendment to the articles mentioned in section 243 or 244 if the amendment affects a class or series of preferred shares unless it is approved by a special resolution of the holders of the class or the series affected.

(2) Where the holders of preferred shares are entitled to vote pursuant to subsection (1) and the co-operative has two or more classes of preferred shares, the holders of the preferred shares of each class are entitled to vote separately as a class or, subject to subsection (3), as the holders of a series of a class on a proposal to amend the articles.

(3) The holders of a series of a class of preferred shares are entitled to vote separately as a series pursuant to subsection (1) only where that series is affected by an amendment in a manner different from other shares of the same class.

(4) Each preferred share of the co-operative carries the right to vote pursuant to this section whether or not it otherwise carries the right to vote.

(5) Subject to the approval of the registrar, a proposed amendment to the articles mentioned in subsection (1) is adopted when:

(a) the members who vote at a general meeting of members have at a separate meeting approved the amendment by a special resolution; and

(b) the holders of preferred shares of each class or series who vote separately on the resolution as a class or series have approved the amendment by a special resolution.

1999, c.N-4.001, s.246.

Delivery of articles

247(1) Except where a resolution is revoked pursuant to subsection 243(2) or 244(2), when an amendment is adopted pursuant to section 243 or 244 and, where required, section 246, the co-operative shall send articles of amendment in the prescribed form to the registrar.

(2) Where the registrar receives articles of amendment pursuant to subsection (1), the registrar may approve the amendment and issue a certificate of amendment in accordance with section 338 if the registrar is satisfied that the amendment:

(a) has been duly approved by the members and, where applicable, the holders of preferred shares; and

(b) does not contravene any provision of this Act.

1999, c.N-4.001, s.247.

Effect of certificate

248(1) An amendment to the articles is effective on the day shown in the certificate of amendment mentioned in subsection 247(2).

(2) No amendment to the articles affects:

- (a) an existing cause of action or claim or liability to prosecution in favour of or against the co-operative or its directors or officers; or
- (b) any civil, criminal or administrative action or proceeding to which a co-operative or its directors or officers is a party.

1999, c.N-4.001, s.248.

Restated articles

249(1) The directors may at any time, and shall when directed by the registrar, restate the articles of incorporation as amended.

(2) A co-operative shall send restated articles of incorporation in the prescribed form to the registrar.

(3) Where the registrar receives restated articles of incorporation, the registrar shall issue a certificate of restated articles of incorporation in accordance with section 338.

(4) Restated articles of incorporation:

- (a) are effective on the day shown in the certificate of restated articles of incorporation issued pursuant to subsection (3); and
- (b) supersede the original articles of incorporation and all amendments to the original articles of incorporation.

1999, c.N-4.001, s.249.

Amalgamation

250(1) Two or more co-operatives or a co-operative and a corporation may amalgamate and continue as one co-operative subject to this Act if the articles of amalgamation issued to the amalgamated co-operative would permit the issue of articles of incorporation pursuant to section 8.

(2) A co-operative may amalgamate with a corporation that is incorporated or continued pursuant to an Act that is a subsidiary of the co-operative and may continue as one co-operative.

1999, c.N-4.001, s.250.

Amalgamation agreement

251(1) Each co-operative and corporation proposing to amalgamate shall enter into an agreement setting out the terms and means of effecting the amalgamation, including:

- (a) the provisions that are required to be included in articles of incorporation pursuant to section 6;
 - (b) the name and address of each proposed director of the amalgamated co-operative;
 - (c) the manner in which the shares or memberships of each amalgamating co-operative or corporation are to be converted into shares or memberships or other securities of the amalgamated co-operative;
 - (d) where shares of an amalgamating co-operative or corporation are not to be converted into securities or memberships of the amalgamated co-operative, the amount of money or securities of any body corporate that the holders of those shares are to receive instead of securities of the amalgamated co-operative;
 - (e) the manner of payment of money instead of the issue of fractional shares of the amalgamated co-operative or of any other body corporate of which the securities are to be received in the amalgamation;
 - (f) whether the bylaws of the amalgamating co-operative are to be those of one of the amalgamated co-operatives and, where 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 co-operative.
- (2) Where shares of one of the amalgamating co-operatives or corporations are held by or on behalf of another of the amalgamating co-operatives or corporations:
- (a) the amalgamation agreement must provide for the cancellation of those shares when the amalgamation becomes effective without any repayment of capital with respect to those shares; and
 - (b) no provision is to be made in the agreement for the conversion of those shares into shares of the amalgamated co-operative.

1999, c.N-4.001, s.251.

Member approval

252(1) The directors of each amalgamating co-operative shall submit an amalgamation agreement made pursuant to section 251 for approval to a general meeting of:

- (a) the members of the amalgamating co-operative of which they are directors; and
- (b) the holders of each class or series of preferred shares of the co-operative.

- (2) The directors of each amalgamating corporation shall submit an amalgamation agreement made pursuant to section 251 for approval to a general meeting of the members and holders of each class or series of its shares.
- (3) A notice of a general meeting of members, holders of preferred shares and shareholders shall be sent in the manner provided in section 194 to each member, holder of preferred shares and shareholder of the amalgamating co-operative or corporation together with a copy or summary of the amalgamation agreement.
- (4) Each preferred share of an amalgamating co-operative and each share of an amalgamating corporation carries the right to vote respecting an amalgamation, in the manner mentioned in section 246, whether or not it otherwise carries the right to vote.
- (5) Where an amalgamation agreement contains a provision that if contained in a proposed amendment to the articles would entitle the holders of a class of preferred shares or a series of preferred shares to vote as a class or series pursuant to section 246, the holders of a class of preferred shares or a series of preferred shares of an amalgamating co-operative or an amalgamating corporation are entitled to vote separately as a class or series respecting an amalgamation.
- (6) An amalgamation agreement is adopted when:
- (a) in the case of a co-operative:
 - (i) the members at a separate meeting approve the amalgamation by special resolution; and
 - (ii) where the co-operative has preferred shares, the holders of preferred shares approve the amalgamation by special resolution in the manner mentioned in section 246; and
 - (b) in the case of a corporation, the members and the holders of each class or series of shares entitled to vote with respect to the amalgamation approve the amalgamation by special resolution in the manner mentioned in section 246.
- (7) An amalgamation agreement may provide that at any time before the issue of a certificate of amalgamation the agreement may be terminated by the directors of an amalgamating co-operative, notwithstanding approval of the agreement by the members or shareholders of all or any of the amalgamating co-operatives or corporations.

Sending of articles

253(1) After an amalgamation agreement is adopted pursuant to section 252, the amalgamating co-operatives and corporations shall send articles of amalgamation in the prescribed form to the registrar.

(2) The articles of amalgamation are required to have attached to them a statutory declaration of a director or an officer of each amalgamating co-operative and corporation that establishes to the satisfaction of the registrar that there are reasonable grounds for believing that:

(a) the amalgamated co-operative will be able to pay its liabilities as they become due; and

(b) the realizable value of the amalgamated co-operative's assets will not be less than the aggregate of its liabilities, the aggregate of the par value of the issued common shares of the amalgamating co-operatives and the stated capital of all classes of preferred shares of the amalgamating co-operative and the aggregate of the par value of any issued par value shares and the stated capital of all other classes of shares of each amalgamating corporation; and

(c) no creditor will be prejudiced by the amalgamation or that adequate notice has been given to all known creditors of the amalgamating co-operatives and corporations and no creditor has objected to the amalgamation on any ground other than grounds that are frivolous or vexatious.

(3) For the purposes of clause (2)(c), adequate notice is given where:

(a) a written notice is sent to each known creditor having a claim against the co-operative or corporation that is greater than \$1,000;

(b) a notice is published once in a newspaper published or distributed in the place where the co-operative or corporation has its registered office and reasonable notice of the amalgamation is given in each province or territory of Canada where the co-operative or corporation carries on business; and

(c) each notice states that the co-operative or corporation intends to amalgamate with one or more co-operatives or corporations in accordance with this Act and that a creditor of the co-operative or corporation may object to the amalgamation within 30 days after the day of the notice.

1999, c.N-4.001, s.253.

Effect of certificate

254(1) Where the registrar receives articles of amalgamation and is satisfied that the conditions described in subsection 253(2) are met, the registrar shall issue a certificate of amalgamation in accordance with section 338.

(2) On the day shown in a certificate of amalgamation issued pursuant to subsection (1):

(a) the amalgamation of the amalgamating co-operatives and corporations and their continuance as one co-operative becomes effective;

(b) the property of each amalgamating co-operative and corporation continues to be the property of the amalgamated co-operative;

- (c) the amalgamated co-operative continues to be liable for the obligations of each amalgamating co-operative and corporation;
- (d) an existing cause of action, claim or liability to prosecution relating to each amalgamating co-operative or corporation is deemed not to be affected;
- (e) a civil, criminal or administrative action or proceeding pending by or against an amalgamating co-operative or corporation may be continued by or against the amalgamated co-operative;
- (f) a conviction against or ruling, order or judgment in favour of or against an amalgamating co-operative or corporation may be enforced by or against the amalgamated co-operative; and
- (g) the articles of amalgamation are deemed to be the articles of incorporation of the amalgamated co-operative, and the certificate of amalgamation is deemed to be the certificate of incorporation of the amalgamated co-operative.

1999, c.N-4.001, s.254.

Continuance pursuant to this Act

255(1) A body corporate may apply to the registrar for a certificate of continuance where:

- (a) in the case of an extra-provincial co-operative, it is authorized to do so by the laws of the jurisdiction where it is incorporated; or
 - (b) in the case of another body corporate:
 - (i) it is authorized to do so by the Act pursuant to which it was incorporated; and
 - (ii) in the opinion of the registrar, the articles of continuance would permit the issuance of articles of incorporation pursuant to section 8.
- (2) A body corporate that applies for a certificate of continuance pursuant to subsection (1) may effect in its articles of continuance any change or amendment to its articles, where the change or amendment is a change or amendment a co-operative incorporated pursuant to this Act may make to its articles.
- (3) A body corporate that applies for a certificate of continuance shall send articles of continuance in the prescribed form and its bylaws to the registrar.
- (4) Where the registrar receives articles of continuance and bylaws pursuant to subsection (3), the registrar may issue a certificate of continuance in accordance with section 338 if the registrar approves the articles and bylaws and is satisfied that all the requirements of this Act are met.
- (5) On the day shown in the certificate of continuance issued pursuant to subsection (4):
- (a) the body corporate becomes a co-operative to which this Act applies as if it had been incorporated pursuant to this Act;
 - (b) the articles of continuance are deemed to be the articles of incorporation of the continued co-operative;

- (c) the certificate of continuance is deemed to be the certificate of incorporation of the continued co-operative; and
 - (d) the articles and bylaws of the body corporate in effect prior to the day shown in the certificate of continuance do not apply.
- (6) When the registrar issues a certificate of continuance to a body corporate mentioned in subsection (1), the registrar shall at the same time send a copy of the certificate of continuance to the appropriate official or public body in the jurisdiction in which continuance pursuant to this Act was authorized.
- (7) When a body corporate is continued as a co-operative pursuant to this Act:
- (a) the property of the body corporate continues to be the property of the co-operative;
 - (b) the co-operative continues to be liable for the obligations of the body corporate;
 - (c) an existing cause of action, claim or liability to prosecution respecting the body corporate is deemed not to be affected;
 - (d) a civil, criminal or administrative action or proceeding pending by or against the body corporate may be continued by or against the co-operative; and
 - (e) a conviction against or ruling, order or judgment in favour of or against the body corporate may be enforced by or against the co-operative.
- (8) Where a body corporate is continued as a co-operative pursuant to this Act:
- (a) its shares to which no special rights or restrictions are attached are deemed to be common shares; and
 - (b) the holders of the common shares are deemed to be members of the co-operative.
- (9) A share of a body corporate issued before the body corporate was continued pursuant to this Act is deemed to have been issued in compliance with this Act and with the provisions of the articles of continuance regardless of:
- (a) whether the share is fully paid; and
 - (b) any designation, rights or restrictions set out on or mentioned in the certificate representing the share.
- (10) Subject to subsection (8), continuance of a body corporate as a co-operative pursuant to this section does not deprive a member or a shareholder of any right or privilege that the member had or the shareholder has respecting the body corporate or claims under an issued share or relieve a member or shareholder of any liability to the body corporate with respect to an issued share.

Discontinuance

256(1) Subject to subsection (9), a co-operative may apply to the appropriate official or public body of another jurisdiction or to the registrar pursuant to *The Co-operatives Act, 1996* requesting that the co-operative be continued as if it had been incorporated pursuant to the laws of that other jurisdiction or that Act where the co-operative:

- (a) is authorized to continue outside Saskatchewan or pursuant to *The Co-operatives Act, 1996* by the members and holders of preferred shares in accordance with this section; and
 - (b) establishes to the satisfaction of the registrar that its proposed continuance in the other jurisdiction will not adversely affect creditors, members or shareholders of the co-operative.
- (2) The directors shall cause a notice of a general meeting of members and of holders of preferred shares to be sent, in the manner set out in section 194, to each member and holders of preferred shares for the purpose of authorizing continuance.
- (3) Each preferred share of the co-operative carries the right to vote with respect to a continuance in the manner mentioned in section 246 whether or not it otherwise carries the right to vote.
- (4) For the purposes of clause (1)(a), an application for continuance is authorized when:
- (a) the members approve the continuance by a special resolution at a separate meeting; and
 - (b) where the co-operative has preferred shares, the holders of preferred shares approve the continuance by a special resolution in the manner mentioned in section 246.
- (5) Where, in the special resolutions mentioned in subsection (4), the members and holders of preferred shares authorize the directors to abandon the application for continuance, the directors may abandon the application without further approval of the members or the holders of preferred shares.
- (6) Where the registrar receives notice, in a form satisfactory to the registrar, that the co-operative is continued pursuant to the laws of another jurisdiction, the registrar shall:
- (a) file the notice; and
 - (b) issue a certificate of discontinuance in accordance with section 338.
- (7) Notwithstanding subsection 338(4), a certificate of discontinuance mentioned in subsection (6) may be dated as of the day when a co-operative is continued pursuant to the laws of another jurisdiction or *The Co-operatives Act, 1996*.
- (8) This Act ceases to apply to the co-operative on the day shown in the certificate of discontinuance.

(9) No co-operative shall be continued as a body corporate pursuant to the laws of another jurisdiction unless those laws provide that:

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

1999, c.N-4.001, s.256.

Reorganization

257(1) In this section, “**reorganization**” means a court order made pursuant to:

- (a) section 291;
 - (b) the *Bankruptcy and Insolvency Act* (Canada) approving a proposal within the meaning of that Act; or
 - (c) any Act or any Act of the Parliament of Canada that affects the rights among the co-operative, its members, shareholders and creditors.
- (2) Where a co-operative is subject to a reorganization, its articles may be amended by the order to effect any change that might be made by an amendment pursuant to section 243 or 244.
- (3) Where a court orders a reorganization, it may also:
- (a) authorize the issue of debt obligations of the co-operative, whether or not convertible into common shares or preferred shares of any class or having attached any rights or options to acquire preferred shares of any class, and fix the terms of the debt obligations; and
 - (b) appoint directors in place of or in addition to all or any of the directors then in office.
- (4) After a reorganization is made, the co-operative shall send articles of reorganization in the prescribed form to the registrar.
- (5) Where the registrar receives articles of reorganization pursuant to subsection (4), the registrar shall issue a certificate of amendment in accordance with section 338.

- (6) A reorganization is effective on the day shown in the certificate of amendment and the articles of incorporation are deemed to be amended accordingly.
- (7) Section 259 does not apply to an amendment to the articles of incorporation of a co-operative effected pursuant to this section.

1999, c.N-4.001, s.257.

Arrangement

258(1) In this section, “**arrangement**” includes:

- (a) an amendment to the articles of a co-operative;
 - (b) an amalgamation of two or more co-operatives;
 - (c) an amalgamation of a body corporate with a co-operative that results in the formation of an amalgamated co-operative that is subject to this Act;
 - (d) a transfer of all or substantially all of the property of a co-operative to another body corporate in exchange for property, money or securities of the body corporate;
 - (e) an exchange of securities of a co-operative held by a security holder for property, money or other securities of the co-operative or property, money or securities of another body corporate;
 - (f) a liquidation and dissolution of a co-operative; or
 - (g) any combination of the matters described in clauses (a) to (f).
- (2) Where it is not practicable for a co-operative that is not insolvent to effect a fundamental change in the nature of an arrangement pursuant to any other provision of this Act, the co-operative may apply to the court for an order approving an arrangement proposed by the co-operative.
- (3) Where the court receives an application pursuant to this section, the court may make any interim or final order it considers appropriate, including:
- (a) an order determining the notice to be given to any interested person or dispensing with notice to any person other than the registrar;
 - (b) an order appointing counsel, at the expense of the co-operative, to represent the interests of the members;
 - (c) an order requiring a co-operative to call, hold and conduct a meeting of holders of securities or options or rights to acquire securities in any manner that the court directs;
 - (d) an order approving an arrangement as proposed by the co-operative or as amended in any manner that the court may direct; and
 - (e) an order declaring whether section 259 applies to the arrangement.

- (4) An applicant pursuant to this section shall give the registrar notice of the application, and the registrar is entitled to appear and be heard in person or by counsel.
- (5) After an order mentioned in clause (3)(d) is made, the co-operative shall send the articles of arrangement in the prescribed form to the registrar.
- (6) Where the registrar receives articles of arrangement pursuant to subsection (5), the registrar shall issue a certificate of arrangement in accordance with section 338.
- (7) An arrangement becomes effective on the day shown in the certificate of arrangement.

1999, c.N-4.001, s.258.

Dissenting rights

- 259(1)** Unless section 257 or 291 applies and subject to clause 258(3)(e), a member or a holder of preferred shares may dissent if a co-operative resolves to:
- (a) amend its articles in a manner that adversely affects a member's membership rights or that affects the rights of a holder of preferred shares respecting a preferred share;
 - (b) amend its articles to add, change or remove a restriction on the business the co-operative may carry on;
 - (c) amalgamate other than with a corporation that is a subsidiary of the co-operative;
 - (d) apply for continuance pursuant to section 256; or
 - (e) sell, lease or exchange all or substantially all of its property pursuant to section 260.
- (2) A holder of preferred shares of any class or series of preferred shares entitled to vote pursuant to section 246 may dissent if the co-operative resolves to amend its articles in a manner described in sections 243 and 244 other than clauses 243(1)(a) and (h).
- (3) A dissenting member or holder of preferred shares shall send to the co-operative, at or before any meeting of members or meeting of holders of preferred shares at which a resolution mentioned in subsection (1) or (2) is to be voted on, a written objection to the resolution, unless the co-operative did not give notice to the member or holder of preferred shares of the purpose of the meeting and of the right to dissent.
- (4) A dissenting member is deemed to have given notice of intent to withdraw from the co-operative pursuant to this section if the resolution is passed and a dissenting holder of preferred shares is deemed to have claimed pursuant to this section on behalf of all preferred shares in a class held by the holder of preferred shares if the resolution is passed.

- (5) The co-operative must, not later than 10 days after the members and holders of preferred shares have adopted the resolution, send to each dissenting member and holder of preferred shares notice that the resolution has been adopted.
- (6) A dissenting member or holder of preferred shares may, not later than 21 days after receiving the notice pursuant to subsection (5), or if no notice is received, not later than 21 days after learning that the resolution was adopted, send to the co-operative a written notice that contains:
- (a) the person's name and address;
 - (b) if the person is a holder of preferred shares, the number of preferred shares and the class or classes of the shares held; and
 - (c) a demand:
 - (i) in the case of a dissenting member, for withdrawal from the co-operative, for payment of all common shares at their fair value and for repayment of any other interest for the cancellation of other than a supply contract held by the member in the co-operative, fair value being determined on the day before the resolution was adopted; and
 - (ii) in the case of a dissenting holder of preferred shares for payment on the basis of a formula or price in the articles and in the absence of a formula or price, the fair market value of all preferred shares of each class held by the shareholder, fair market value being determined on the day before the resolution was adopted.
- (7) Notwithstanding the articles, the bylaws or section 209, a dissenting member who has sent a demand pursuant to subsection (6) does not have the right to vote at a meeting of the co-operative or any right under a supply contract after having sent the notice, and notwithstanding the articles, the bylaws or section 59, the member is entitled to be paid the fair value of his or her common shares, and if the member is a holder of preferred shares, the fair value of the preferred shares and the other interest of the member in the co-operative in accordance with this section or a court order pursuant to subsection 258(3).
- (8) A dissenting holder of preferred shares must, not later than 30 days after sending the notice pursuant to subsection (6), send the certificates representing the preferred shares held in the co-operative to the co-operative or to its transfer agent.
- (9) A dissenting holder of preferred shares who fails to comply with subsection (8) has no right to claim pursuant to this section.
- (10) Each certificate sent pursuant to subsection (8) must be endorsed by the co-operative or its transfer agent with a notice that the holder is a dissenting holder of preferred shares and must be returned to the holder of preferred shares.

(11) On sending a notice pursuant to subsection (6), a member's rights as a member, and a holder of preferred share's rights as a holder of preferred shares, other than the right to be paid in accordance with subsection (6), are suspended.

(12) The rights of the member or holder of preferred shares are reinstated as of the date of the notice mentioned in subsection (6) if:

(a) the dissenting member or holder of preferred shares withdraws the demand made pursuant to clause (6)(c) before the co-operative makes an offer pursuant to subsection (13);

(b) the co-operative fails to make an offer in accordance with subsection (13) and the dissenting member or holder of preferred shares withdraws his or her notice; or

(c) the directors revoke a resolution to amend the articles pursuant to subsection 243(2) or 244(2), terminate an amalgamation agreement pursuant to subsection 252(7) or abandon an application for continuance pursuant to subsection 256(5), or abandon a sale, lease or exchange pursuant to subsection 260(8).

(13) A co-operative shall, not later than seven days after the later of the day on which the resolution pursuant to subsection (1) or (2) is effective and the day the co-operative receives the notice pursuant to subsection (6), send to each dissenting member or holder of preferred shares:

(a) a written offer to pay the amount determined in accordance with subsection (6) and a statement showing how the amount was calculated; or

(b) a statement that subsection (23) or (24) applies.

(14) Every offer for common shares must be on the same terms and every offer for the same class or series of preferred shares must be on the same terms.

(15) Subject to subsection (23) or (24), a co-operative must pay to the dissenting member or holder of preferred shares the amount offered pursuant to subsection (13) not later than 10 days after acceptance, but the offer lapses if it is not accepted within 30 days after being made.

(16) If the dissenting member or holder of preferred shares fails to accept the offer, the co-operative may, not later than 50 days after the resolution is approved or any later time that the court may allow, apply to the court to fix the amount to be paid pursuant to subsection (6).

(17) If the co-operative fails to make an application pursuant to subsection (16) or fails to make an offer pursuant to subsection (13) within the time set out in subsection (16), a dissenting member or holder of preferred shares may, not later than 20 days after the end of that period, make an application for the same purpose.

(18) An application pursuant to subsection (16) or (17) may be made to the court having jurisdiction where the registered office of the co-operative is located or to a court having jurisdiction where the dissenting member or holder of preferred shares resides if the co-operative carries on business in that jurisdiction.

(19) On an application pursuant to subsection (16) or (17), all dissenting members and holders of preferred shares whose shares or other interests have not been purchased are joined as parties and the co-operative must notify them, advising each of them of the right to participate in, and the consequences of, the application, and no dissenting member or holder of preferred shares is required to give security for costs in the application.

(20) On an application pursuant to subsection (16) or (17), the court must determine who is a dissenting member or holder of preferred shares and fix the amount to be paid pursuant to subsection (6) and may make any further order that the court considers appropriate.

(21) If subsection (23) or (24) applies, the co-operative must, not later than 10 days after the determination pursuant to subsection (20), advise each dissenting member and holder of preferred shares that subsection (23) or (24) applies.

(22) If subsection (23) or (24) applies:

(a) a dissenting member or holder of preferred shares, not later than 30 days after the notice pursuant to subsection (21), may by notice to the co-operative withdraw the notice of demand, in which case the member is reinstated as a member or the holder of preferred shares is reinstated as a holder of preferred shares; or

(b) if no notice is given to the co-operative pursuant to clause (a), the dissenting member or holder of preferred shares retains the status of a claimant to be paid as soon as the co-operative may lawfully do so or, in liquidation, to be paid in priority to the remaining members and holders of preferred shares.

(23) The co-operative shall not make a payment to a dissenting member or holder of preferred shares pursuant to this section if there are reasonable grounds to believe that after that payment the co-operative would be in breach of section 60.

(24) If the directors determine that the payment to a dissenting member or holder of preferred shares would adversely affect the financial well-being of the co-operative, payment may be made at the times that the directors determine, over a period that begins on the day on which the resolution was adopted and ends not later than:

(a) five years after that day; or

(b) any other day that is not more than 10 years after the day on which the resolution was adopted and that is specified in the articles of the co-operative.

(25) In this section, “**supply contract**” means an obligation of a member to sell or deliver a good or supply a service to the co-operative pursuant to the bylaws or pursuant to an agreement mentioned in section 215.

Extraordinary disposition

260(1) A sale, lease or exchange of all or substantially all of the property of a co-operative, other than in the ordinary course of business of the co-operative, requires the separate approval of the members and holders of preferred shares in the manner provided in subsections (2) to (8).

(2) The directors shall send, in the manner provided in section 194, a notice of a general meeting to consider the sale, lease or exchange mentioned in subsection (1) to each member and holder of preferred shares.

(3) The notice mentioned in subsection (2) must include or be accompanied:

- (a) by a summary of a proposed sale, lease or exchange; or
- (b) if an agreement has been reached, by a copy or summary of the agreement of sale, lease or exchange mentioned in subsection (1).

(4) At separate general meetings held pursuant to this section, the members and holders of preferred shares may, by special resolution:

- (a) authorize the sale, lease or exchange mentioned in subsection (1); and
- (b) fix, or authorize the directors to fix, any terms and conditions to a sale, lease or exchange.

(5) Each preferred share of the co-operative carries the right to vote with respect to a sale, lease or exchange mentioned in subsection (1) whether or not it otherwise carries the right to vote.

(6) The holders of a class of preferred shares or series of preferred shares are entitled to vote separately as a class or series with respect to a sale, lease or exchange mentioned in subsection (1) only where the class or series is affected by the sale, lease or exchange in a manner different from the shares of another class or series.

(7) A sale, lease or exchange mentioned in subsection (1) is adopted when:

- (a) the members approve the sale, lease or exchange by a special resolution; and
- (b) where the co-operative has preferred shares, the holders of each class or series of preferred shares entitled to vote approve, in a separate meeting, the sale, lease or exchange by a special resolution.

(8) Where the members and holders of preferred shares authorize the directors in a special resolution mentioned in subsection (7), the directors may abandon the sale, lease or exchange without the further approval of the members or holders of preferred shares.

PART XVII
Dissolution

Application of Part

261(1) This Part does not apply to a co-operative that is bankrupt or insolvent within the meaning of the *Bankruptcy and Insolvency Act* (Canada).

(2) Where a co-operative is at any time found in a proceeding pursuant to the *Bankruptcy and Insolvency Act* (Canada) to be bankrupt within the meaning of that Act, any proceedings taken pursuant to this Part to dissolve or to liquidate and dissolve the co-operative are to be stayed.

1999, c.N-4.001, s.261.

Dissolution by members and holders of preferred shares

262(1) In this section and in section 264:

(a) **“interest”** means the interest of a member in a co-operative, and includes common shares, member loans and obligations of any kind that:

- (i) arise by virtue of this Act, the articles and bylaws of the co-operative; and
- (ii) are owed by the co-operative to the member;

but does not include an interest in preferred shares;

(b) **“remaining property of the co-operative”** means the remaining property of the co-operative to be distributed on dissolution of the co-operative after the payment of:

- (i) all debts and liabilities, including any declared and unpaid dividends;
- (ii) the amount to be paid to the holders of any preferred shares; and
- (iii) the amount to be paid on the redemption or repayment of the interest of members.

(2) Subject to the approval of the registrar, the members and holders of preferred shares of a co-operative may, by special resolution, authorize the dissolution of the co-operative.

(3) The directors shall cause a notice of a general meeting of members and of holders of preferred shares to be sent in the manner set out in section 194 to each member and holder of preferred shares for the purpose of authorizing dissolution.

(4) Each preferred share of the co-operative carries the right to vote with respect to dissolution whether or not it otherwise carries the right to vote.

(5) For the purpose of subsection (2), dissolution is authorized when:

- (a) the members approve the dissolution by a special resolution; and
- (b) where the co-operative has preferred shares, the holders of preferred shares, in a separate meeting, approve the dissolution by a special resolution in the manner mentioned in section 246.

- (6) Where the registrar receives notice, in a form satisfactory to the registrar, of a resolution to dissolve a co-operative, the registrar may approve the dissolution.
- (7) A resolution approved pursuant to subsection (5) must set out:
- (a) the assets and liabilities of the co-operative as at the date of the special resolution authorizing dissolution;
 - (b) the claims of any creditors;
 - (c) the number of members;
 - (d) the nature and extent of the members' interest in the co-operative;
 - (e) the designation of each class and series of preferred shares and the special rights or restrictions that apply to each class and series;
 - (f) the name of the person or entity that is to receive the remaining property of the co-operative; and
 - (g) one or more trustees for the purpose of subsection (9).
- (8) If the remaining property of the co-operative is to be distributed in accordance with subsection (13), it must be paid to:
- (a) an entity established for charitable or benevolent purposes;
 - (b) a co-operative or a body corporate pursuant to *The Co-operatives Act, 1996*; or
 - (c) any other person that the registrar may designate.
- (9) Subject to subsection (11), where the remaining property of the co-operative is to be distributed in accordance with subsection (13), it is to be paid to one or more trustees who are named in the resolution approved pursuant to subsection (5).
- (10) The trustees mentioned in subsection (9) shall:
- (a) deposit the moneys in a special trust account:
 - (i) in a credit union;
 - (ii) with Credit Union Central of Saskatchewan;
 - (iii) with Co-operative Trust Company of Canada; or
 - (iv) in a chartered bank; or
 - (b) invest the moneys in a manner authorized by *The Trustee Act*.
- (11) Where a trust is created pursuant to subsection (9), the income and principal of the trust must be expended within a period of 20 years after the day that the trust was established for the purposes set out in subsection (8).
- (12) The articles of a co-operative may provide that the remaining property of the co-operative be distributed or disposed of to any person, including distribution:
- (a) among the members at the time of dissolution, in any manner, including equally among the members regardless of the number of common shares held by a member; or
 - (b) among the members at the time of dissolution on the basis of business transacted with those members during a stated period before the dissolution.

(13) If the articles of a co-operative do not provide for the distribution of the remaining property of the co-operative on dissolution, the remaining property of the co-operative is to be paid to a person or entity mentioned in subsection (8) that is specified in the resolution approved pursuant to subsection (5).

1999, c.N-4.001, s.262.

Notice of dissolution by members

263(1) When the registrar approves a special resolution passed pursuant to subsection 262(5), the registrar shall cause at the expense of the co-operative a notice of the special resolution to be published once a week for two weeks:

- (a) in the Gazette; and
- (b) in a newspaper having general circulation in the district where the registered office of the co-operative is located.

(2) Notwithstanding subsection (1), where the registrar receives a declaration from the officers of a co-operative stating that the co-operative has no assets and no liabilities and the registrar is satisfied that it is appropriate, the registrar may exempt the co-operative from section 262, dissolve the co-operative and publish a notice in the Gazette of that dissolution.

(3) The registrar may require from a co-operative, liquidator or trustee appointed by a co-operative or any other person who is required to provide information, an annual or other return showing:

- (a) the progress of dissolution;
- (b) the distribution of any unallocated surplus or reserve;
- (c) the progress of the administration of a trust established in accordance with section 262; and
- (d) any other information that the registrar may require.

1999, c.N-4.001, s.263.

Dissolution by registrar

264(1) The registrar may send to the secretary of a co-operative a letter inquiring whether the co-operative is carrying on business, is in operation or is submitting an annual return where the registrar has reasonable cause to believe that the co-operative has not:

- (a) commenced business within two years after the day shown on its certificate of incorporation;
- (b) carried on business for two consecutive years; or
- (c) had its name restored to the register within two years after the day on which it was struck off pursuant to section 346.

- (2) Where the registrar does not, within one month after the day on which a letter was sent pursuant to subsection (1), receive an answer to the letter, the registrar shall, within 14 days after the expiry of the month, send to the secretary of the co-operative a letter referring to the letter sent pursuant to subsection (1) and stating that:
- (a) no answer to that letter has been received by the registrar; and
 - (b) if an answer is not received to the letter sent pursuant to this subsection within one month after the day it is sent, a notice will be published in the Gazette to strike the name of the co-operative off the register and to dissolve the co-operative.
- (3) The registrar may publish in the Gazette and send to the co-operative a notice that, at the expiry of one month after the day of that notice, the registrar will dissolve the co-operative by issuing a certificate of dissolution where the registrar:
- (a) receives an answer from the co-operative that it is not carrying on business or is not in operation or will not be submitting an annual return; or
 - (b) does not, within one month after the day on which a letter was sent pursuant to subsection (2), receive an answer to that letter.
- (4) At the expiry of the period mentioned in a notice sent pursuant to subsection (3), the registrar may, unless cause to the contrary is previously shown by the co-operative:
- (a) issue a certificate of dissolution where the registrar is satisfied that the co-operative has no liabilities and has assets that do not exceed the prescribed amount; or
 - (b) appoint a liquidator to dissolve the co-operative.
- (5) Before the registrar issues a certificate of dissolution pursuant to subsection (4), the registrar shall require the remaining property of the co-operative to be paid to the persons entitled to it in accordance with section 262.

1999, c.N-4.001, s.264.

Dissolution for failure to account for business transacted

- 265(1)** Where a co-operative fails to provide a copy of the annual financial statements to its members at an annual or special meeting called for that purpose or within a period of 12 months after the close of its financial year, the registrar:
- (a) may require the directors to call a special meeting of the co-operative for the purposes of considering the business transacted during the preceding financial year and providing to the members and to the registrar a copy of the annual financial statement; and
 - (b) where the registrar requires a special meeting to be called pursuant to clause (a), shall determine a period within which the special meeting is to be called.

(2) Where the directors fail to call a special meeting within the period set out in subsection (1), the registrar may call the special meeting:

- (a) to review the financial position of the co-operative and the members' interests in the co-operative; and
- (b) to ascertain whether the members desire to continue the co-operative and to comply with sections 225 and 227.

(3) Where a quorum of members is not present at a special meeting called pursuant to subsection (2), or the members fail to pass a resolution to the effect that the co-operative must carry on business and comply with sections 225 and 227, the registrar may notify the directors that, unless sections 225 and 227 are complied with within one month after the day of the notice, the co-operative will be struck off the register and dissolved.

(4) Notwithstanding subsection (3), the registrar may extend the period for compliance with sections 225 and 227.

(5) Where a co-operative does not comply with sections 225 and 227 within the period mentioned in subsection (3) or set by the registrar pursuant to subsection (4), the registrar may:

- (a) where the registrar is satisfied that the co-operative has no assets or liabilities, issue a certificate of dissolution; or
- (b) appoint a liquidator to dissolve the co-operative.

1999, c.N-4.001, s.265.

Dissolution by court order

266(1) The registrar may dissolve a co-operative, or the registrar or an interested person may, after giving the co-operative three months' notice of the proposed application, apply to a court for an order dissolving a co-operative, where the co-operative:

- (a) has obtained its incorporation by fraud or mistake;
- (b) exists for an illegal purpose;
- (c) has wilfully, after notice by the registrar, contravened any of the provisions of this Act or its bylaws;
- (d) is no longer operating on a co-operative basis; or
- (e) has the number of its members reduced below the minimum number required in this Act for the incorporation of the co-operative.

(2) Where an interested person applies pursuant to this section, that person shall give the registrar notice of the application and the registrar is entitled to appear and be heard in person or by counsel.

c. N-4.001**NEW GENERATION CO-OPERATIVES**

(3) Where the court receives an application pursuant to this section, it may order that the co-operative be dissolved or liquidated and dissolved.

(4) Where a co-operative is dissolved pursuant to this section, the remaining property of the co-operative shall be paid to the persons entitled to it in accordance with section 262.

1999, c.N-4.001, s.266.

Revival of a dissolved co-operative

267(1) Where a co-operative has been dissolved pursuant to this Part, an interested person may apply to the registrar to have the co-operative revived by sending to the registrar articles of revival in the prescribed form.

(2) Where the registrar receives articles of revival pursuant to subsection (1) and the registrar is satisfied that the co-operative is in compliance with this Act, the registrar may:

(a) issue a certificate of revival and publish notice of the revival in the Gazette; and

(b) impose any conditions on the co-operative that the registrar considers reasonable with respect to the revival.

(3) A co-operative is revived on the day shown on the certificate of revival.

(4) Where a co-operative is revived pursuant to this section, it has all the rights and privileges, and is liable for the obligations, that it would have had if it had not been dissolved, subject to any terms that may be imposed by the registrar and to any rights acquired by a person after its dissolution.

1999, c.N-4.001, s.267.

Appointment of liquidator

268 Where a co-operative is to be dissolved pursuant to this Part and no liquidator is appointed by the members or the court, the registrar may:

(a) appoint any person as a liquidator to wind up the affairs of the co-operative; or

(b) where the registrar is satisfied that the co-operative has no assets and liabilities, issue a certificate of dissolution.

1999, c.N-4.001, s.268.

Commencement of liquidation

269 The liquidation of a co-operative commences when:

(a) a special resolution for dissolution of the co-operative is approved by the registrar pursuant to section 262;

(b) the registrar appoints a liquidator pursuant to section 264 or 265; or

(c) the court makes an order to liquidate and dissolve pursuant to section 266 or 291.

1999, c.N-4.001, s.269.

Cessation of business

270 From the day of the commencement of its liquidation:

- (a) a co-operative continues in existence, but shall cease to carry on its business except to the extent that may be required, in the opinion of the liquidator, for an orderly liquidation; and
- (b) any transfer of shares, other than a transfer made to or with the approval of the liquidator, and any alteration in the status of the members made after the commencement of the liquidation is void.

1999, c.N-4.001, s.270.

General provisions respecting liquidators

271(1) Where two or more liquidators are appointed, all the provisions in this section with respect to a liquidator apply to all of the liquidators.

(2) On the appointment of a liquidator pursuant to this Part, all the powers of the directors vest in the liquidator.

(3) A liquidator may delegate any of the powers vested in the liquidator pursuant to subsection (2) to the directors, members or holders of preferred shares.

(4) Where a resolution to dissolve a co-operative appoints a liquidator, that resolution or a further resolution may give directions to the liquidator with respect to the disposal of the property of the co-operative.

(5) A liquidator is subject to the directions, orders and instructions of the registrar with respect to the manner in which and the terms and conditions on which the liquidator may dispose of the whole or any part of the property of the co-operative where:

- (a) the liquidator has not been issued directions pursuant to subsection (4); or
- (b) the resolution dissolving the co-operative did not appoint a liquidator.

(6) Where a vacancy in the office of liquidator occurs, the registrar may appoint another person to fill the vacancy.

(7) In all proceedings connected with the co-operative, the liquidator is to be described as the liquidator of the (*name of co-operative*), and not by the individual name of the liquidator only.

1999, c.N-4.001, s.271.

Duties of liquidator

272(1) On his or her appointment, a liquidator shall:

- (a) immediately give notice of the appointment:
 - (i) in the case of a liquidator not appointed by the registrar, to the registrar; and
 - (ii) to each claimant and creditor known to the liquidator;

- (b) unless otherwise directed by the registrar, immediately publish notice of the appointment in the Gazette and once a week for two consecutive weeks in a newspaper published or distributed in the place where the co-operative has its registered office and take reasonable steps to give notice of the liquidation in every jurisdiction where the co-operative carries on business;
 - (c) place in the notices mentioned in clauses (a) and (b) a provision requiring:
 - (i) any person who is indebted to the co-operative to render an account and pay to the liquidator at the time and place specified any amount owing;
 - (ii) any person who possesses property of the co-operative to deliver it to the liquidator at the time and place specified; and
 - (iii) any person who has a claim against the co-operative, whether liquidated, unliquidated, future or contingent, to present particulars of the claim in writing to the liquidator not later than two months after the first publication of the notice;
 - (d) take into his or her custody and control the property of the co-operative; and
 - (e) open and maintain a trust account for the moneys of the co-operative.
- (2) The liquidator shall:
- (a) keep accounts of the moneys of the co-operative that are received and paid out by the liquidator; and
 - (b) maintain separate lists of the members, holders of preferred shares, creditors and other persons who have claims against the co-operative.
- (3) Where at any time the liquidator determines that the co-operative is unable to pay or adequately provide for the discharge of its obligations, the liquidator shall apply to the registrar for directions.
- (4) The liquidator shall deliver to the registrar, at least once in every 12-month period after his or her appointment or more often as the registrar may require, financial statements of the co-operative in the form required by section 225 or in any other form that the liquidator considers proper or that the registrar may require.

1999, c.N-4.001, s.272.

Powers of liquidator

273(1) The liquidator may:

- (a) retain lawyers, accountants, engineers, appraisers and other professional advisers;
- (b) bring, defend or take part in any civil, criminal or administrative action or proceeding in the name and on behalf of the co-operative;
- (c) carry on the business of the co-operative as required for an orderly liquidation;
- (d) sell by public auction or private sale any property of the co-operative;

- (e) do all acts and execute any documents in the name and on behalf of the co-operative;
 - (f) borrow moneys on the security of the property of the co-operative;
 - (g) settle or compromise any claims by or against the co-operative; and
 - (h) do all other things that the liquidator considers necessary for the liquidation of the co-operative and distribution of its property.
- (2) Where a liquidator has reason to believe that any person has in his or her possession or under his or her control or has concealed, withheld or misappropriated any property of the co-operative, the liquidator may apply to the court for an order requiring that person to appear before the court at the time and place designated in the order and to be examined.
- (3) Where the examination mentioned in subsection (2) discloses that a person has concealed, withheld or misappropriated property of the co-operative, the court may order that person to restore the property or pay compensation to the liquidator on behalf of the co-operative.
- (4) Subject to the approval of the registrar, no liquidator shall purchase, directly or indirectly, any part of the stock-in-trade, debts or assets of the co-operative.

1999, c.N-4.001, s.273.

Limitation on liability of liquidator

274 A liquidator is not liable where the liquidator relies in good faith on:

- (a) financial statements of the co-operative represented to the liquidator:
 - (i) by an officer of the co-operative; or
 - (ii) by the auditor of the co-operative in a written report that states that the financial statements reflect fairly the financial condition of the co-operative; or
- (b) an opinion, a report or a statement of a lawyer, an accountant, an engineer, an appraiser or other professional adviser retained by the liquidator.

1999, c.N-4.001, s.274.

Costs of liquidation

275(1) A liquidator shall:

- (a) pay the costs of liquidation out of the property of the co-operative; and
 - (b) pay or make adequate provision for all claims against the co-operative.
- (2) After the day specified by the liquidator pursuant to subclause 272(1)(c)(iii), the liquidator may distribute all or any part of the assets of the co-operative among the parties entitled to the assets having regard to the claims of which the liquidator has notice.
- (3) The liquidator is not liable for any part of the assets of the co-operative distributed pursuant to subsection (2) to a person if the liquidator did not have notice of the person's claim at the time of distribution.

1999, c.N-4.001, s.275.

Final account

276(1) After paying or making adequate provision for all claims against the co-operative, the liquidator shall apply to the registrar for approval of the final accounts.

(2) Where the liquidator has not paid or made adequate provision for all claims against the co-operative within one year after his or her appointment, the liquidator shall apply to the registrar for an extension of time to complete his or her responsibilities, setting out the reasons for the extension of time.

(3) Where the registrar approves the final accounts rendered by a liquidator pursuant to subsection (1), the registrar shall:

(a) issue directions with respect to the custody or disposal of the documents and records of the co-operative; and

(b) discharge the liquidator.

(4) Where the registrar discharges a liquidator pursuant to subsection (3), the registrar shall issue a certificate of dissolution.

(5) The co-operative ceases to exist on the day shown in the certificate of dissolution.

1999, c.N-4.001, s.276.

Custody of records

277(1) A person who has been granted custody of the documents and records of a dissolved co-operative remains liable to produce those documents and records for six years following the day of its dissolution or until the expiry of any other shorter period that the registrar may set pursuant to clause 276(3)(a).

(2) The liquidator shall immediately notify the registrar of the name and address of the person granted custody of the documents and records of a dissolved co-operative.

1999, c.N-4.001, s.277.

Remuneration of liquidator

278(1) Where there is no agreement or provision fixing the remuneration of a liquidator, the liquidator is entitled to a commission based on the net proceeds of the estate of the co-operative realized after deducting expenses and disbursements.

(2) The amount of the commission mentioned in subsection (1) is equal to:

(a) 5% on the first \$1,000 realized;

(b) 2.5% on the next \$4,000 realized; and

(c) 1.25% on any sum in excess of \$5,000 realized.

(3) Where a liquidator applies to the registrar, the registrar may increase the amount of commissions set out in subsection (2).

(4) No liquidator is entitled to any fee or charge for his or her services in addition to the commission allowed pursuant to this section.

1999, c.N-4.001, s.278.

Continuation of actions

279(1) Notwithstanding the dissolution of a co-operative pursuant to this Act:

- (a) a civil, criminal or administrative action or proceeding commenced by or against the co-operative before its dissolution may be continued as if the co-operative had not been dissolved;
 - (b) subject to *The Limitations Act*, a civil, criminal or administrative action or proceeding may be brought against the co-operative within two years after its dissolution as if the co-operative had not been dissolved; and
 - (c) any property that would have been available to satisfy any judgment or order if the co-operative had not been dissolved remains available for that purpose.
- (2) Service of a document on a co-operative after its dissolution may be effected by serving the document on a person shown on the records of the registrar as one of the last directors of the co-operative.
- (3) Notwithstanding the dissolution of a co-operative:
- (a) a person to whom any of the property of the co-operative has been distributed is liable to any person claiming pursuant to subsection (1) to the extent of the amount received by that person on the distribution with respect to any share of the co-operative held by that person; and
 - (b) subject to *The Limitations Act*, an action to enforce the liability described in clause (a) may be brought within two years after the day of dissolution of the co-operative.
- (4) A court may, in any action pursuant to subsection (1), join any party mentioned in clause (3)(a) and determine the liability of any such party to a claimant.

1999, c.N-4.001, s.279; 2004, c.L-16.1, s.61.

Creditors, etc., not located

280(1) Where the liquidator is unable to locate any creditors, holders of preferred shares or members who have claims against the co-operative, the liquidator may pay into court the amount of those claims.

(2) Payment into court of an amount pursuant to subsection (1) absolves the co-operative and the liquidator of any liability with respect to the claims of those creditors, holders of preferred shares or members to the extent of the payment.

(3) A creditor, holder of preferred shares or member who has a claim against the moneys paid into court may, within three years after the day on which the moneys are paid into court, apply to the court for payment out of the amount of that claim on any terms and conditions that the court may set.

(4) A person named as an eligible claimant in the resolution to dissolve the co-operative may, within three years after the expiry of the period set out in subsection (3), apply to the court for payment out of any moneys remaining in court after the payment out of moneys with respect to any applications properly made pursuant to subsection (3).

1999, c.N-4.001, s.280.

PART XVIII
Investigations

Special audit

281(1) On the registrar's own initiative, or on the application of 10% of the members or 10% of the holders of preferred shares, the registrar may appoint a person as auditor who shall make a special audit of the books of the co-operative and examine the affairs of the co-operative and shall make available a report of the special audit to the registrar.

(2) Subject to subsection (3), the registrar may direct that the expenses incidental to a special audit undertaken pursuant to this section are to be defrayed:

- (a) by the members applying for the special audit;
- (b) by the co-operative or its officers; or
- (c) by any combination of the members, the holders of preferred shares, the co-operative or its officers.

(3) Where a special audit undertaken pursuant to this section reveals substantial irregularities in the business of the co-operative, the registrar shall not direct any members on whose motion the audit was commenced to defray the expenses.

(4) Where the registrar appoints an auditor pursuant to subsection (1), the co-operative and its officers, members, agents or employees shall provide the auditor with any books, accounts, securities or other documents the auditor requires to perform the special audit.

1999, c.N-4.001, s.281.

Investigations

282(1) A member, the registrar or any interested person may apply *ex parte*, or on any notice that the court may require, to the court for an order directing an investigation to be made of the co-operative or any of its subsidiaries or affiliates.

(2) On an application pursuant to subsection (1), the court may order an investigation of a co-operative or of any of its subsidiaries or affiliates where it appears to the court that:

- (a) the co-operative is not fulfilling the objects or purposes stated in its articles;
- (b) the co-operative is not carrying on business in accordance with:
 - (i) the restrictions contained in its articles; or
 - (ii) this Act, the regulations or the bylaws;
- (c) the co-operative is not organized or being operated on a co-operative basis;
- (d) the business of the co-operative or any of its subsidiaries or affiliates is or has been carried on with intent to defraud any person;

- (e) the business or affairs of the co-operative or any of its subsidiaries or affiliates are or have been carried on or conducted, or the powers of the directors are or have been exercised, in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interest of a member or security holder;
 - (f) the co-operative or any of its subsidiaries or affiliates was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose; or
 - (g) persons concerned with the formation, business or affairs of the co-operative or any of its subsidiaries or affiliates have acted fraudulently or dishonestly in connection with the co-operative.
- (3) An applicant for an order pursuant to this section is not required to give security for costs.
- (4) An *ex parte* application pursuant to this section shall be heard with the public excluded.
- (5) No person shall publish anything relating to *ex parte* proceedings conducted pursuant to this section other than with the authorization of the court or the written consent of the co-operative being investigated.

1999, c.N-4.001, s.282.

Court order

283(1) In connection with an investigation pursuant to section 282, the court may make any order it considers appropriate, including an order:

- (a) directing an investigation;
- (b) appointing an inspector, who may be the registrar, fixing the remuneration of an inspector and replacing an inspector;
- (c) determining the notice to be given to any interested person or dispensing with notice to that person;
- (d) authorizing an inspector to enter any premises in which the court is satisfied there might be relevant information, and to examine anything and make copies of any document or record found on the premises;
- (e) requiring any person to produce documents or records to the inspector;
- (f) authorizing an inspector to conduct a hearing, administer oaths and examine any person on oath, and setting out rules for the conduct of the hearing;
- (g) requiring any person to attend a hearing conducted by an inspector and to give evidence on oath;

c. N-4.001**NEW GENERATION CO-OPERATIVES**

- (h) giving directives to an inspector or any interested person on any matter arising in the investigation;
 - (i) requiring an inspector to make an interim or final report to the court;
 - (j) determining whether a report of an inspector made pursuant to clause (i) should be published and, where published, ordering the registrar to publish the report in whole or in part or to send copies to any person the court designates;
 - (k) requiring an inspector to discontinue an investigation;
 - (l) requiring the co-operative or a person who applied pursuant to section 282 for an order to pay the costs of the investigation.
- (2) An inspector shall send to the registrar a copy of every report prepared by the inspector pursuant to this Part.

1999, c.N-4.001, s.283.

Powers of inspector

- 284(1)** An inspector appointed pursuant to section 283 has the powers set out in the order appointing the inspector.
- (2) In addition to the powers set out in the order appointing an inspector, an inspector may provide to, or exchange information and otherwise co-operate with, any public official in Canada or elsewhere who:
- (a) is authorized to exercise investigatory powers; and
 - (b) is investigating, with respect to the co-operative, an allegation of improper conduct that is the same as or similar to the conduct described in subsection 282(2).

1999, c.N-4.001, s.284.

Hearing with public excluded

- 285(1)** Any interested person may apply to the court for an order that a hearing conducted by an inspector appointed pursuant to section 283 be heard with the public excluded and for directions on any matter arising in the investigation.
- (2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector appointed pursuant to section 283 has a right to be represented by counsel.

1999, c.N-4.001, s.285.

Incriminating statements

- 286(1)** No person is excused from attending and giving evidence and producing documents and records to an inspector appointed pursuant to section 283 by reason only that the evidence tends to incriminate that person or subject that person to any proceedings or penalty.

(2) No evidence described in subsection (1) is to be used or is receivable against the person mentioned in that subsection in any proceeding instituted against that person after he or she gives the evidence, other than a prosecution:

- (a) for perjury in giving the evidence; or
- (b) pursuant to section 134 or 136 of the *Criminal Code* with respect to the evidence.

1999, c.N-4.001, s.286.

Absolute privilege, defamation

287(1) Any oral or written statement or report made by an inspector or any other person in an investigation undertaken pursuant to this Part has absolute privilege.

(2) This Part is deemed not to affect the privilege that exists with respect to a solicitor and the solicitor's client.

1999, c.N-4.001, s.287.

Inquiries

288 The registrar may make inquiries of any person relating to compliance with this Act.

1999, c.N-4.001, s.288.

**PART XIX
Remedies**

Interpretation of Part

289 In this Part:

- (a) **“action”** includes an application made to a court pursuant to this Act;
- (b) **“complainant”** means:
 - (i) a member of a co-operative;
 - (ii) a registered holder or beneficial owner, or a former registered holder or beneficial owner, of a security of a co-operative;
 - (iii) a director or an officer, or a former director or officer, of a co-operative or of any of its subsidiaries;
 - (iv) the registrar; or
 - (v) any other person who, in the opinion of the court, is a proper person to make an application pursuant to this Part.

1999, c.N-4.001, s.289.

Derivative action

290(1) Subject to subsection (2), a complainant may apply to the court for leave to bring an action in the name and on behalf of a co-operative or any of its subsidiaries, or to intervene in an action to which the co-operative or any of its subsidiaries is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the co-operative or subsidiary.

(2) No person may bring an action and no person may intervene in an action brought pursuant to subsection (1) unless the court is satisfied that:

(a) where the directors of the co-operative or its subsidiary do not bring, diligently prosecute, defend or discontinue the action, the complainant has given reasonable notice to the directors of the co-operative or its subsidiary of the complainant's intention to apply to the court pursuant to subsection (1);

(b) the complainant is acting in good faith; and

(c) the interests of the co-operative or its subsidiary are served by the bringing, prosecuting, defending or discontinuing of the action.

(3) In an action brought or intervened in pursuant to this section, the court may make any order it considers appropriate, including an order:

(a) authorizing the complainant or any other person to control the conduct of the action;

(b) giving directions for the conduct of the action.

1999, c.N-4.001, s.290.

Oppression

291(1) A complainant may apply to the court for an order pursuant to this section on any of the following grounds:

(a) that an act or omission of the co-operative effects a result that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of a member or other security holder, creditor, director or officer of the co-operative;

(b) that the business or affairs of the co-operative are or have been carried on or conducted in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of a member or other security holder, creditor, director or officer of the co-operative;

(c) that the powers of the directors of the co-operative are or have been exercised in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of a member or other security holder, creditor, director or officer of the co-operative.

(2) Where the court is satisfied that any of the grounds set out in clauses (1)(a) to (c) is established, the court may make any order to rectify the matters complained of that it considers appropriate, including an order:

- (a) restraining the conduct complained of;
- (b) appointing a receiver or receiver-manager;
- (c) regulating the affairs of a co-operative by amending its articles or bylaws;
- (d) directing an issue or exchange of securities;
- (e) directing changes in the directors;
- (f) subject to subsection (4), directing a co-operative or any other person to purchase securities of a security holder;
- (g) subject to subsection (4), directing a co-operative or any other person to pay to a security holder any part of the moneys paid by the security holder for securities;
- (h) subject to subsection (4), directing a co-operative to repay member loans;
- (i) varying or setting aside a transaction or contract to which a co-operative is a party and compensating the co-operative or any other party to the transaction or contract;
- (j) compensating an aggrieved person;
- (k) directing rectification of the registers or other records of a co-operative pursuant to section 293;
- (l) liquidating and dissolving the co-operative under the supervision of the registrar;
- (m) directing a special audit pursuant to section 281 or an investigation pursuant to section 282;
- (n) requiring the trial of an issue;
- (o) requiring the co-operative to amend an agreement with members generally or with a member;
- (p) determining any matter in regard to the relations between the co-operative, a holder of preferred shares or a member; or
- (q) directing the production or delivery within a specified time of financial statements of the co-operative.

(3) Where an order made pursuant to this section directs amendment of the articles or bylaws of a co-operative, the directors shall reorganize their articles or bylaws in the prescribed form and send them to the registrar.

(4) No co-operative may make a payment to a member or to the holder of preferred shares under an order of the court if there are reasonable grounds to believe that:

(a) the co-operative is, or would after that payment be unable to pay its liabilities as they become due; or

(b) the realizable value of the co-operative's assets after the payment would be less than the total of:

(i) its liabilities; and

(ii) the amount that would be required to pay the holders of securities who have a right to be paid, on a redemption or liquidation, rateably with or in priority to the holders of the securities to be purchased or redeemed.

1999, c.N-4.001, s.291.

Evidence of member approval not decisive

292(1) No application made and no action brought or intervened in pursuant to this Part is to be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the co-operative or any of its subsidiaries has been or may be approved by the members, but evidence of approval by the members shall be taken into account by the court in making an order pursuant to this Part.

(2) No application made and no action brought or intervened in pursuant to this Part is to be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the court given on any terms that the court considers appropriate.

(3) Where the court determines that the interests of any complainant may be substantially affected by a stay, discontinuance, settlement or dismissal mentioned in subsection (2), the court may order any party to the application or action to give notice of the application or action to the complainant.

(4) No complainant is required to be given security for costs in an application made or action brought or intervened in pursuant to this Part.

(5) In an application made or an action brought or intervened in pursuant to this Part, the court may, at any time, order the co-operative or its subsidiary to pay to the complainant interim costs, including legal fees and disbursements, but the complainant may be held accountable for any interim costs so paid on final disposition of the application or action.

1999, c.N-4.001, s.292.

Application to court to rectify records

293(1) Where the name of a person is alleged to be or to have been wrongly entered or retained in or wrongly deleted or omitted from the registers or other records of a co-operative, the co-operative, a member or other security holder of the co-operative or any aggrieved person may apply to the court for an order that the registers or records be rectified.

(2) An applicant pursuant to this section shall give the registrar notice of the application, and the registrar is entitled to appear and be heard in person or by counsel.

(3) On an application made pursuant to this section, the court may make any order it considers appropriate, including an order:

- (a) requiring the registers or records of the co-operative to be rectified;
- (b) restraining the co-operative from calling or holding a meeting of members or allocating or paying a dividend or interest on shares or a patronage dividend before rectification of the registers or records;
- (c) determining the right of a party to the proceedings to have the party's name entered or retained in or deleted or omitted from the registers or records of the co-operative, whether the issue arises between two or more members or security holders, or between the co-operative and any members or security holders or alleged members or security holders;
- (d) compensating a party who has incurred a loss by reason of the wrongful entry, retention, deletion or omission.

1999, c.N-4.001, s.293.

Compliance or restraining order

294 Where a co-operative or any director, officer, employee, agent, auditor, trustee, receiver, receiver-manager or liquidator of a co-operative does not comply with or is acting contrary to a provision of this Act or the regulations or the articles or bylaws of the co-operative, a complainant or creditor of the co-operative may, in addition to any other remedy, apply to the court for an order to restrain any contravention of the provision, and, on the application, the court may make the order and any further order it considers appropriate.

1999, c.N-4.001, s.294.

Summary application to court

295(1) Where this Part provides for an application to the court, the application may be made in a summary manner by petition or originating notice of motion or in any other manner that the rules of the court may provide.

(2) An application made pursuant to this Part is subject to any order of the court respecting:

- (a) notice to interested parties;
- (b) costs; or
- (c) any matter in addition to those described in clauses (a) and (b) that the court considers appropriate.

1999, c.N-4.001, s.295.

Appeal

296 An appeal lies to the Court of Appeal from any order made by the court pursuant to this Part.

1999, c.N-4.001, s.296.

PART XX
Offences

Offences with respect to reports

297(1) No person shall make or assist in making a report, return, notice or other document required in this Act or the regulations to be sent to the registrar or to any other person that:

- (a) contains an untrue statement of a material fact; or
- (b) omits to state a material fact that is required in the report, return, notice or other document or that is necessary to prevent a statement contained in the report, return, notice or other document from being misleading in light of the circumstances in which it was made.

(2) Every person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction:

- (a) in the case of an individual, to a fine not greater than \$5,000 or to imprisonment for a term not greater than six months or to both;
- (b) in the case of a person other than an individual, to a fine not greater than \$50,000.

(3) Where a person guilty of an offence pursuant to subsection (2) is a body corporate and whether or not the body corporate has been prosecuted or convicted, any director or officer of the body corporate who knowingly authorizes, permits or acquiesces in the offence is also guilty of an offence and is liable on summary conviction to a fine of not more than \$5,000 or to imprisonment for a term not greater than six months or to both.

(4) No person is guilty of an offence pursuant to subsection (2) or (3) where the untrue statement or omission:

- (a) was unknown to the person; and
- (b) in the exercise of reasonable diligence, could not have been known to the person.

1999, c.N-4.001, s.297.

Contravention of Act

298(1) No person shall:

- (a) without reasonable cause, contravene a provision of this Act or the regulations for which no penalty is otherwise provided; or
- (b) fail to give any notice or send any return or document that is required for the purposes of this Act.

(2) Every person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of not more than \$5,000.

1999, c.N-4.001, s.298.

Use of word “co-operative”

299(1) No person doing business in Saskatchewan shall use the word “co-operative” or «coopérative» or any abbreviation or derivation of that word as part of its name, or with respect to its goods, wares, merchandise or services or its method of conducting its business, or hold itself out to be a co-operative association unless it is:

(a) incorporated by or pursuant to the authority of an Act of the Parliament of Canada; or

(b) incorporated or registered pursuant to an Act or an Act of another province or territory of Canada that expressly authorizes the use of the word “co-operative” or «coopérative».

(2) A person who contravenes this section is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000.

1999, c.N-4.001, s.299.

Order to comply

300 Where a person is convicted of an offence pursuant to this Act or the regulations, the court may, in addition to any punishment imposed, order the person to comply with the provisions of this Act or the regulations for the contravention of which the person has been convicted.

1999, c.N-4.001, s.300.

Time limited for proceedings

301 No prosecution for an offence pursuant to this Act shall be commenced after two years after the time when the subject-matter of the complaint arose.

1999, c.N-4.001, s.301.

Civil remedy not affected

302 No civil remedy for an act or omission pursuant to this Act is suspended or affected by reason that the act or omission is an offence pursuant to this Act.

1999, c.N-4.001, s.302.

PART XXI**Extra-provincial Co-operatives****Registration of extra-provincial co-operatives**

303 Every extra-provincial co-operative carrying on business in Saskatchewan must be registered pursuant to this Part.

1999, c.N-4.001, s.303.

Prohibition

304 No extra-provincial co-operative shall carry on business in Saskatchewan unless it is registered pursuant to this Act.

1999, c.N-4.001, s.304.

Effect of registration

305(1) Subject to this Act, its articles and its certificate of registration, an extra-provincial co-operative while registered pursuant to this Act may carry on business in Saskatchewan.

(2) Other than for the purpose of a prosecution of an offence against this Act, registration or renewal of registration of an extra-provincial co-operative pursuant to this Act is deemed to authorize all previous acts of the co-operative as if the co-operative had been registered at the time of those acts.

1999, c.N-4.001, s.305.

Application for registration

306(1) An extra-provincial co-operative that is required to be registered pursuant to this Act shall:

- (a) complete and file with the registrar a statement in the form provided by the registrar;
 - (b) provide the registrar with evidence, satisfactory to the registrar, that the co-operative is organized and operates on a co-operative basis or on a basis that is substantially similar to a co-operative basis; and
 - (c) file with the registrar any other information that the registrar may require.
- (2) An extra-provincial co-operative shall file with the statement to be filed pursuant to subsection (1):
- (a) an affidavit of two of its directors or officers:
 - (i) stating:
 - (A) that none of the directors is a person who would be disqualified pursuant to section 34 or 165 from being a director of a co-operative incorporated pursuant to this Act; and
 - (B) whether or not the co-operative has within the preceding five years been convicted of an offence involving fraud and, if so, particulars of the offence; and
 - (ii) verifying the information set out in the statement;
 - (b) a copy of the articles of the co-operative verified in a manner satisfactory to the registrar; and
 - (c) evidence, satisfactory to the registrar, that the business of the co-operative is restricted to the business mentioned in subsection 4(3).

1999, c.N-4.001, s.306.

Certificate of registration

307 The registrar may register an extra-provincial co-operative and issue a certificate of registration in accordance with section 338 where:

- (a) the extra-provincial co-operative files an application pursuant to section 306 and pays the prescribed fee; and
- (b) the registrar is satisfied that the extra-provincial co-operative operates on a co-operative basis or on a basis that is substantially similar to a co-operative basis.

1999, c.N-4.001, s.307.

Notice of registration

308 When the registrar registers an extra-provincial co-operative pursuant to this Act, the registrar shall publish in the Gazette notice of its registration showing:

- (a) the jurisdiction of incorporation;
- (b) where the co-operative is incorporated for a limited time, the time of its existence;
- (c) the business to be carried on in Saskatchewan by the co-operative; and
- (d) the address of the head office or chief place of business of the co-operative outside Saskatchewan.

1999, c.N-4.001, s.308.

Restriction

309(1) When the registrar issues a certificate of registration to an extra-provincial co-operative pursuant to section 307, the registrar shall, in the certificate of registration, restrict the business of the extra-provincial co-operative to the business mentioned in subsection 4(3).

(2) An extra-provincial co-operative that engages, without the prior written approval of the registrar, in a business in Saskatchewan that it is restricted from engaging in by virtue of a restriction in its certificate of registration is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000.

(3) No act of an extra-provincial co-operative, including a transfer of property to or by an extra-provincial co-operative, is invalid by reason only that the act contravenes subsection (2).

1999, c.N-4.001, s.309.

Power of attorney

310(1) Every extra-provincial co-operative shall, before registration, file with the registrar a duly executed power of attorney in the prescribed form appointing the person named in the power of attorney to act as its attorney:

- (a) for the purpose of receiving service of process in all suits and proceedings by or against the co-operative within Saskatchewan and for the purpose of receiving all lawful notices; and
- (b) declaring that service of process with respect to the suits and proceedings and of the notices mentioned in clause (a) on the attorney are legal and binding.

- (2) An extra provincial co-operative may, by a new or other power of attorney executed and deposited in the manner mentioned in subsection (1), appoint another attorney within Saskatchewan to replace the attorney formerly appointed.
- (3) No extra-provincial co-operative shall appoint a person as its attorney pursuant to this section who is not a resident of Saskatchewan.
- (4) A co-operative shall file another power of attorney with the registrar within 15 days after the day on which:
- (a) the attorney named in a power of attorney filed pursuant to this section ceases to reside in Saskatchewan, dies or resigns; or
 - (b) the power of attorney filed becomes invalid or ineffectual for any reason.
- (5) A resignation of an attorney is effective at the later of:
- (a) the time a written resignation is sent to the co-operative; and
 - (b) the time specified in the written resignation.
- (6) The attorney shall send to the registrar a copy of a written resignation sent pursuant to subsection (5).
- (7) Every attorney shall sign, in the presence of a witness, the power of attorney form in which the attorney is appointed declaring that he or she has consented to act as attorney.

1999, c.N-4.001, s.310.

Notice of change

- 311(1)** Every extra-provincial co-operative registered pursuant to this Act shall send to the registrar notice of any change:
- (a) in the address of its head office, whether within or outside Saskatchewan;
 - (b) in the address of its attorney; and
 - (c) of its directors.
- (2) Every extra-provincial co-operative registered pursuant to this Act shall send every notice of change mentioned in subsection (1) in duplicate to the registrar who shall return one copy endorsed by the registrar to show that notice has been filed.
- (3) Every extra-provincial co-operative registered pursuant to this Act shall send a notice of change pursuant to subsection (1) to the registrar not later than 15 days after the change is made.

1999, c.N-4.001, s.311.

Change in articles

312(1) Every extra-provincial co-operative registered pursuant to this Act shall send to the registrar, together with the prescribed fee, a copy of any amendment to its articles within 30 days after the day of the amendment.

(2) The registrar may:

(a) issue a certificate with respect to an amendment mentioned in subsection (1) in any form the registrar considers appropriate; and

(b) publish a notice of the amendment in the Gazette.

(3) No extra-provincial co-operative shall amend its articles to permit the co-operative to carry on a business other than the business mentioned in subsection 4(3).

1999, c.N-4.001, s.312.

Notice to registrar of amalgamation agreement

313(1) Every extra-provincial co-operative registered pursuant to this Act shall file with the registrar a copy, certified by an officer of the co-operative, of any amalgamation agreement to which it is a party, within one month after the day the agreement takes effect.

(2) The registrar shall:

(a) issue a supplementary certificate of registration with respect to an amalgamation of the extra-provincial co-operative; and

(b) publish a notice of the issuance in the Gazette.

(3) From the day of a supplementary certificate mentioned in subsection (2), the amalgamated extra-provincial co-operative is deemed to hold and possess all the property situated within Saskatchewan of the amalgamating extra-provincial co-operative, to the extent expressed in the amalgamation agreement.

1999, c.N-4.001, s.313.

Restriction on name change

314(1) Except as provided in subsection (2), no extra-provincial co-operative registered pursuant to this Act shall change its name:

(a) to a name that is identical to the name by which another body corporate is incorporated by or pursuant to an Act or is registered in Saskatchewan; or

(b) to a name that, in the opinion of the registrar, resembles a name by which another body corporate is incorporated by or pursuant to an Act or is registered in Saskatchewan.

(2) An extra-provincial co-operative may change its name to a name described in clause (1)(a) or (b) where:

(a) the other body corporate is in the course of being dissolved and signifies its consent in any manner that the registrar requires; or

(b) the other body corporate is an extra-provincial co-operative that has ceased to carry on business in Saskatchewan.

(3) No extra-provincial co-operative registered pursuant to this Act shall change its name to a name that the registrar, for any reason, disapproves.

(4) Where an extra-provincial co-operative registered pursuant to this Act changes its name to a name that is prohibited pursuant to subsection (1), the registrar may order the extra-provincial co-operative to change its name to one that the registrar approves.

(5) This section does not apply to a federal cooperative.

(6) The name of an extra-provincial co-operative must comply with clause 12(1)(b).

1999, c.N-4.001, s.314.

Withdrawal of registration

315 An extra-provincial co-operative registered pursuant to this Act may withdraw its registration by advising the registrar of its intent on the form provided by the registrar.

1999, c.N-4.001, s.315.

PART XXII Security Issues

Interpretation of Part

316(1) In this Part:

(a) **“board”** means the Co-operative Securities Board as defined in *The Co-operatives Act, 1996*;

(b) **“misrepresentation”** means a misrepresentation as defined in *The Securities Act, 1988*;

(c) **“receipt”** means a receipt issued pursuant to *The Securities Act, 1988* confirming the filing by the co-operative of a prospectus in relation to a proposed trade in a security;

(d) **“security”** means a security as defined in *The Securities Act, 1988*;

(e) **“trade”** means a trade as defined in *The Securities Act, 1988*.

(2) Notwithstanding any other provision of this Part or the regulations or of any other Act or law, where, pursuant to *The Saskatchewan Financial Services Commission Act*, the Saskatchewan Financial Services Commission is assigned the performance of all or any of the responsibilities imposed on the board and the exercise of all or any of the powers given to the board by this Part or the regulations:

(a) any reference with respect to those responsibilities or powers in this Part or the regulations to the board is to be interpreted as a reference to the Saskatchewan Financial Services Commission; and

(b) this Part and the regulations are to be interpreted subject to the provisions of *The Saskatchewan Financial Services Commission Act*.

1999, c.N-4.001, s.316; 2002, c.S-17.2, s.29.

Non-application of certain Acts

317(1) Subject to subsections (2) and (3), *The Securities Act, 1988* does not apply to a trade by a co-operative in a security.

(2) Where the board considers it to be in the public interest, the board may direct that all trades respecting an offering of a security by a co-operative be subject to *The Securities Act, 1988*.

(3) A co-operative may, by notice to the board, advise the board that all trades by the co-operative in a proposed offering of the securities specified in the notice will comply with *The Securities Act, 1988*.

(4) Where the board makes a direction pursuant to subsection (2) or a co-operative provides a notice pursuant to subsection (3), this Part, except sections 316, 323, 324 and 328 and this section, does not apply to a trade by the co-operative in a security that is the subject of that direction or that notice.

(5) Where a co-operative has complied with the provisions of this Part with respect to the issuance of securities, the co-operative is exempted from the application of *The Trust and Loan Corporations Act, 1997* with respect to securities approved by the board.

(6) If the board provides a direction pursuant to subsection (2) or the co-operative provides a notice pursuant to subsection (3), the co-operative shall:

(a) not trade in the securities specified in the designation or the notice until the co-operative has filed with the board a copy of the receipt and a copy of the prospectus related to those securities; and

(b) file with the board any amendment to or renewal of the prospectus filed with the board pursuant to clause (a) that is filed pursuant to *The Securities Act, 1988*.

(7) Where the board makes a direction pursuant to subsection (2) or the co-operative provides a notice pursuant to subsection (3), the co-operative shall comply with the requirements of *The Securities Act, 1988* for any trade in that security.

1999, c.N-4.001, s.317; 2001, c.8, s.13.

Invitation to purchase securities

318(1) Subject to this Part, unless a co-operative is required to comply with the requirements of *The Securities Act, 1988* pursuant to subsection 317(7), the co-operative shall not trade in or invite its members or any other person to subscribe for or purchase any security of the co-operative until:

- (a) the co-operative has filed with the secretary of the board any information that the board may require with respect to the issuance of the security; and
 - (b) the board grants the co-operative written notice of its approval to issue the security.
- (2) For the purposes of clause (1)(a), the board may require any information to be filed that it considers necessary, including information dealing with:
- (a) the dollar amount to be offered for the subscription or purchase;
 - (b) the purposes for which the amount subscribed or purchased will be used;
 - (c) the collateral security to be offered;
 - (d) the most recent annual financial statement required pursuant to this Act.

1999, c.N-4.001, s.318.

Duties of board

319(1) The board shall:

- (a) review the information filed with the secretary of the board pursuant to section 318;
 - (b) review the financial position and the operations of the co-operative in order to determine the capacity of the co-operative to pay any interest on the security and the principal secured by the security when the interest and principal respectively become due;
 - (c) when the board considers it necessary, regulate the manner of creating and setting aside by the co-operative of a redemption fund or establish a plan, other than setting aside a redemption fund, to be put into effect by the co-operative for the purpose of ensuring the repayment of the interest on securities sold and the principal secured by those securities when the interest and principal respectively become due;
 - (d) review the financial position and the operations of the co-operative in order to determine the capacity of the co-operative to meet the obligations inherent in the security; and
 - (e) consider any other matter or thing it considers necessary or relevant.
- (2) The board may set any terms and conditions that it considers necessary to be met by a co-operative before it grants approval to trade in or invite its members or any person to subscribe for or purchase its security.

- (3) Where a co-operative has filed information with the board pursuant to section 318 and has met any terms and conditions that may be set pursuant to subsection (2), and the board considers it suitable, the board may:
- (a) grant approval to the co-operative to trade in or invite the co-operative's members or any person to subscribe for or purchase its security; and
 - (b) place any conditions on the approval granted pursuant to clause (a) that it considers appropriate.
- (4) Where a co-operative has been granted approval by the board pursuant to clause (3)(a) or section 321 to trade in or to invite its members or any person to subscribe for or purchase its securities, the co-operative shall issue its prospectus and its securities in the form required by the board.
- (5) The board may withdraw its approval to a co-operative granted pursuant to subsection (3) where the board is satisfied that:
- (a) any information filed by the co-operative pursuant to section 318 is false;
 - (b) the co-operative did not provide it with information in the co-operative's possession that, in the opinion of the board, would have affected its decision to grant approval; or
 - (c) the co-operative is not complying with any conditions imposed pursuant to subsection (3).
- (6) Where the approval of the board is withdrawn pursuant to subsection (5), a co-operative shall:
- (a) cease trading in or inviting its members or any person to subscribe for or purchase its securities; and
 - (b) take any additional measures that the board may direct to protect the interests of persons who purchase the securities.

1999, c.N-4.001, s.319.

Exemption

320(1) Notwithstanding any other provision of this Part, a co-operative is not required to have the board review or approve securities that are:

- (a) bonds, debentures or other evidences of indebtedness of, or guarantees by, a trust corporation or a loan corporation licensed pursuant to *The Trust and Loan Corporations Act, 1997* or an insurance company licensed pursuant to *The Saskatchewan Insurance Act*;
- (b) certificates or receipts of a trust corporation or a loan corporation licensed pursuant to *The Trust and Loan Corporations Act, 1997*;
- (c) bonds, debentures or other evidences of indebtedness guaranteed by the government of Canada or of any province or territory of Canada;

c. N-4.001

NEW GENERATION CO-OPERATIVES

- (d) securities exempted in the regulations;
 - (e) subject to the regulations, a trade in common shares or member loans; or
 - (f) securities issued in accordance with section 54.
- (2) Where the board is satisfied that it is not prejudicial to the public interest, it may exempt a trade in securities from this Part and impose any conditions it considers appropriate on that exemption.

1999, c.N-4.001, s.320; 2001, c.8, s.13.

Review procedure

321(1) A co-operative may send a written notice to the secretary of the board within 30 days after the day of a decision of the board requesting a review of the decision where the board has decided:

- (a) to grant or not to grant approval to a co-operative or to impose terms and conditions on an approval pursuant to section 319; or
 - (b) to grant or not to grant an exemption pursuant to section 320.
- (2) Where the board receives a written notice pursuant to subsection (1), it shall hold the review as soon as possible.
- (3) A co-operative is entitled to appear before the board and to be heard by the board in a review pursuant to this section.
- (4) On a review pursuant to this section, the board may confirm its decision or amend or vary its decision in any manner that it considers appropriate.
- (5) A decision of the board on review pursuant to this section is final.

1999, c.N-4.001, s.321.

Form for prospectus

322 Where a co-operative has received the approval of the board pursuant to section 319 or 321 to trade in or to invite its members or the public or both to subscribe for or purchase its securities, the co-operative shall issue its prospectus or offering memorandum in the form required by the board and deliver a copy of the same to each purchaser of securities either before or not later than midnight on the second business day after the purchaser enters into an agreement to purchase the securities.

1999, c.N-4.001, s.322.

Order to investigate

323(1) The board may, by order, appoint a person as an investigator to make any investigation that the board considers appropriate where the board has reasonable grounds to believe that any person or co-operative has:

- (a) contravened any of the provisions of a requirement or direction of the board, this Part or the regulations made for the purposes of this Part;

- (b) committed an act that may be unfair, oppressive, injurious, inequitable, improper or discriminatory against:
 - (i) any holder, prospective holder, purchaser or prospective purchaser of any securities of that person or co-operative; or
 - (ii) a creditor, prospective creditor of that person or co-operative or another person or co-operative otherwise beneficially interested in that person or co-operative; or
 - (c) committed an act that secured an unfair advantage for that person or co-operative over another person or co-operative.
- (2) In an order made pursuant to subsection (1), the board shall:
- (a) determine the scope of the investigation; and
 - (b) subject to this Act, set out the powers of the investigator.
- (3) An investigator appointed pursuant to subsection (1) may seize and take possession of any book, record or other document, any securities or any other property of the person or co-operative whose affairs are being investigated.
- (4) Where any book, record or other document has been seized, examined or produced pursuant to this section, the board, an investigator, an officer appointed by the board or any other person authorized by the board may make, or cause to be made, copies of the book, record or other document, and a document certified as a copy made pursuant to this section by the board, an investigator, an appointed officer or any other person authorized by the board is admissible in evidence as proof, in the absence of evidence to the contrary, of the facts set out in the document, without proof of the office or signature of the person appearing to have certified the document.
- (5) An investigator appointed pursuant to subsection (1) shall submit a report in writing of the result of the investigation to the board.
- (6) Subsections 12(5) to (12.1) of *The Securities Act, 1988* apply, with any necessary modification, to an investigation carried out pursuant to this section.
- (7) Where an investigation is ordered pursuant to this section, the board may appoint an expert to examine the documents, records, properties and matters of the person or co-operative whose affairs are being investigated.
- (8) On receipt of a report pursuant to subsection (5), the board shall forward a copy of the report together with the board's recommendation to the registrar.

Offences

324(1) No person shall:

(a) make a false or misleading statement of a material fact in any document, evidence or information submitted or given pursuant to this Part or the regulations made for the purposes of this Part to the board, its representative, the secretary of the board or any person appointed to make an investigation pursuant to this Part;

(b) make a false or misleading statement of a material fact in any application, report, prospectus, return, financial statement or other document required to be filed or provided pursuant to this Part or the regulations made for the purposes of this Part;

(c) contravene this Part or the regulations made for the purposes of this Part; or

(d) fail to observe or comply with any order, direction or other requirement made pursuant to this Part or the regulations made for the purposes of this Part.

(2) Every person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of:

(a) not more than \$25,000 in the case of a body corporate; and

(b) not more than \$5,000 in the case of a person other than a body corporate.

(3) No person is guilty of an offence for contravening clause (1)(a) or (b) where the person did not know that the statement was false or misleading and in the exercise of reasonable diligence could not have known that the statement was false or misleading.

(4) Where a co-operative is guilty of an offence pursuant to subsection (2), every director or officer of the co-operative who authorized, permitted or acquiesced in the offence is guilty of an offence and is liable on summary conviction to a fine of not more than \$5,000.

1999, c.N-4.001, s.324.

When agreement not binding

325(1) An agreement for purchase of securities from a co-operative is not binding on the purchaser if the co-operative or its agent receives notice in writing indicating the intention of the purchaser not to be bound by the agreement of purchase at any time up to two business days after receipt by the purchaser of the offering document that the purchaser is entitled to receive pursuant to section 322.

(2) A purchaser of a security to whom an offering document was required to be delivered pursuant to section 322 has a right of action for rescission or damages against a co-operative that fails to deliver the offering document in compliance with section 322.

1999, c.N-4.001, s.325.

Misrepresentation in offering document

326(1) Where an offering document delivered pursuant to section 322 contains a misrepresentation, a purchaser who purchases a security covered by the offering document is deemed to have relied on that misrepresentation, if it was a misrepresentation at the time of purchase, and has a right of action for damages against:

- (a) the co-operative; and
 - (b) every director of the co-operative at the time the offering document was filed with the board.
- (2) No director or co-operative is liable pursuant to subsection (1) if the director or co-operative proves that the purchaser purchased the securities with knowledge of the misrepresentation.
- (3) No director or co-operative is liable pursuant to subsection (1) if the director or co-operative proves that:
- (a) the offering document was filed without the director's or co-operative's knowledge or consent and that, on becoming aware of the offering document being filed, the director or co-operative immediately gave reasonable general notice that it was so filed; or
 - (b) after the offering document was approved and before the purchase of the securities by the purchaser, on becoming aware of any misrepresentation in the offering document, the director or co-operative withdrew the director's or co-operative's consent to it and gave reasonable general notice of the director's or co-operative's withdrawal and the reason for it.
- (4) In an action for damages pursuant to subsection (1), the defendant is not liable for all or any portion of the damages that the defendant proves do not represent the depreciation in value of the security resulting from the misrepresentation relied on.
- (5) All or any one of the co-operatives or directors mentioned in subsection (1) are jointly and severally liable, and every co-operative or director that becomes liable to make any payment pursuant to this section may recover a contribution from any co-operative or director that, if sued separately, would have been liable to make the same payment.
- (6) Notwithstanding subsection (5), the court may deny the right to recover a contribution where, in all the circumstances of the case, it is satisfied that to permit recovery of a contribution would not be just and equitable.
- (7) In no case shall the amount recoverable pursuant to this section exceed the price at which the securities were offered.
- (8) The right of action for rescission or damages conferred by this section is in addition to and does not derogate from any other right the purchaser may have at law.

Time limitations

327 Notwithstanding *The Limitations Act*, no action shall be commenced to enforce a right created by this Part:

- (a) in the case of an action for rescission, more than 180 days after the date of the transaction that gave rise to the cause of action; and
- (b) in the case of any action, other than an action for rescission, the earlier of:
 - (i) one year after the plaintiff first had knowledge of the facts giving rise to the cause of action; and
 - (ii) six years after the date of the transaction that gave rise to the cause of the action.

1999, c.N-4.001, s.327; 2004, c.L-16.1, s.61.

Non-liability of board, etc.

328 No action or proceeding lies against the board, any member of the board or any person acting under the board's instructions, under the instructions of a member of the board or pursuant to the authority of this Act or the regulations for any matter or thing done or omitted to be done in good faith in exercising their powers or carrying out their duties pursuant to this Act or the regulations.

1999, c.N-4.001, s.328.

PART XXIII Administration

Seal

329 The registrar may adopt a seal for use in the performance of the duties of the registrar.

1999, c.N-4.001, s.329.

Service

330 A document may be served on the registrar by leaving it at the office of the registrar in Regina or by mailing it to the registrar at that office.

1999, c.N-4.001, s.330.

Register

331(1) The registrar shall maintain a register of co-operatives in which is to be kept the name of every co-operative that:

- (a) is incorporated pursuant to this Act;
- (b) is registered pursuant to this Act, in the case of extra-provincial co-operatives;
- (c) is amalgamated pursuant to section 250;
- (d) is continued as a co-operative pursuant to section 255;

- (e) is subject to an arrangement pursuant to section 258; or
 - (f) is revived pursuant to section 267.
- (2) A co-operative whose name appears on the register mentioned in subsection (1) is deemed to be registered pursuant to this Act, and any co-operative whose name does not appear on the register is deemed not to be registered pursuant to this Act.

1999, c.N-4.001, s.331.

Right to inspect and obtain copies

332 On payment of the prescribed fee, a person may:

- (a) examine any document required by this Act or the regulations to be sent to the registrar, except a report sent to the registrar pursuant to subsection 283(2);
- (b) examine any document issued by the registrar pursuant to section 338;
- (c) require a copy or extract of any document mentioned in clause (a) or (b) to be made; or
- (d) require the copy or extract made pursuant to clause (c) to be certified by the registrar as a true copy.

1999, c.N-4.001, s.332.

Form of copies

333(1) Where records maintained by the registrar are prepared and maintained in a form mentioned in subsection 30(1), the registrar may provide, in written or photographic film form, any copy required to be provided pursuant to section 332.

(2) The registrar is not required to produce any document, other than a certificate and attached articles or statement filed pursuant to section 338, after six years after the day the registrar received it.

(3) In the case of an extra-provincial co-operative, the registrar is not required to produce any document filed pursuant to this Act after six years after the day on which the name of the co-operative was last on the register.

1999, c.N-4.001, s.333.

Certificate of registrar

334(1) The registrar may provide a person with a certificate stating that:

- (a) a document required to be sent to the registrar pursuant to this Act has or has not been received by the registrar;
- (b) a name, whether that of a co-operative or not, is or is not on the register;
- (c) a name, whether that of a co-operative or not, was or was not on the register on a stated day.

(2) Where this Act requires or authorizes the registrar to issue a certificate or to certify any fact, the registrar or a deputy registrar shall sign the certificate or the certification.

(3) The signature required in subsection (2) may be printed or mechanically reproduced on the certificate or certification.

(4) A certificate or certification mentioned in subsection (2) is admissible as proof, in the absence of evidence to the contrary, of the facts stated in the certificate or certification without proof of the office or signature of the person purporting to have signed the certificate or certification.

1999, c.N-4.001, s.334.

Power to refuse documents

335(1) The registrar may refuse to receive, file or register a document submitted to the registrar where, in the opinion of the registrar, the document:

- (a) contains any matter contrary to law;
 - (b) by reason of any omission or error in description has not been properly completed;
 - (c) does not comply with the requirements of this Act;
 - (d) contains any error, alteration or erasure;
 - (e) is not sufficiently legible; or
 - (f) is not sufficiently permanent for the registrar's records.
- (2) The registrar may request that:
- (a) a document refused pursuant to subsection (1) be amended or completed and resubmitted; or
 - (b) a new document be submitted in place of a document refused pursuant to subsection (1).

1999, c.N-4.001, s.335.

Form of documents filed

336(1) Every document sent to the registrar must be in typed or printed form.

(2) Where any document required pursuant to this Act is not in the English language, the registrar may require a translation of the document that must be notarially certified.

(3) Where the registrar considers it appropriate, the registrar may exempt a co-operative from subsection (1).

1999, c.N-4.001, s.336.

Proof required by registrar

337 The registrar may require that a document or information contained in a document required by this Act or the regulations to be sent to the registrar be verified by affidavit or otherwise.

1999, c.N-4.001, s.337.

PART XXIV
General

Execution and filing

338(1) In this section:

- (a) **“duplicate originals”** means the two copies of the articles or statements required in subsection (2);
- (b) **“statement”** means a special resolution stating an intent to dissolve mentioned in section 262.

(2) Where this Act requires that articles, bylaws or a statement relating to a co-operative be sent to the registrar, unless otherwise specifically provided, the co-operative shall send two copies of the articles, bylaws or statement signed by a director or an officer of the co-operative or, in the case of articles of incorporation, by all of the incorporators.

(3) Subject to the other provisions of this Act, where the registrar receives duplicate originals of any articles, any bylaws or a statement pursuant to subsection (2), and they are in the prescribed form and are accompanied by any other required documents and the prescribed fees, the registrar may:

- (a) endorse on each of the duplicate originals the word “Registered” and the day of the registration;
- (b) issue in duplicate the appropriate certificate and attach to each certificate one of the duplicate originals of the articles, bylaws or statement;
- (c) file a copy of the certificate and attached articles, bylaws or statement;
- (d) send to the co-operative or its representative the original certificate and attached articles, bylaws or statement; and
- (e) publish in the Gazette notice of the issuance of the certificate.

(4) The registrar may date a certificate mentioned in subsection (3) as of the day on which the registrar receives the articles, bylaws, statement or court order pursuant to which the certificate is issued or as of any later day specified by the court or person who signed the articles or statement.

(5) A signature required on a certificate mentioned in subsection (3) may be printed or otherwise mechanically produced on the certificate.

1999, c.N-4.001, s.338.

Service

339(1) In this section, **“last known address”** means:

- (a) in the case of a member or the holder of preferred shares, that person’s latest address as shown in the records of the co-operative; and
- (b) in the case of a director, the director’s latest address as shown in:
 - (i) the records of the co-operative;
 - (ii) the articles of incorporation;
 - (iii) the last notice filed pursuant to section 173; or
 - (iv) the last annual return filed pursuant to section 242.

- (2) Any notice or document required by this Act or the regulations to be given or served is, unless otherwise provided for, to be served personally or mailed by registered mail or certified mail to the last known address of the person being served.
- (3) A document served by registered mail or certified mail is deemed to have been received on the seventh day following the day of its mailing, unless the person to whom it was mailed establishes that, through no fault of his or her own, the person did not receive the document or that the person received it at a later day.
- (4) A notice or document may be served on a co-operative:
- (a) by leaving it at or mailing it by registered mail or certified mail addressed to the registered office of the co-operative;
 - (b) by personally serving any director, officer, receiver-manager or liquidator of the co-operative; or
 - (c) by leaving it at the office of or mailing it by registered mail or certified mail addressed to any attorney of the co-operative appointed pursuant to section 310.
- (5) A director named in the later of the articles of incorporation and the latest notice sent by a co-operative and filed by the registrar is deemed for the purposes of this Act to be a director of the co-operative.
- (6) Where a co-operative sends a notice or document to a member or holder of preferred shares in accordance with this section and the notice or document is returned on two consecutive occasions because the member or shareholder cannot be found, the co-operative is not required to send any further notices or documents to the member or shareholder until the member or shareholder informs the co-operative in writing of his or her new address.

1999, c.N-4.001, s.339.

Waiver of notice

340 Where a notice or document is required by this Act or the regulations to be sent, the sending of the notice or document may be waived or the time for the notice or document may be waived or abridged at any time with the consent in writing of the person entitled to the notice or document.

1999, c.N-4.001, s.340.

Certificate of co-operative

341(1) A director or officer of a co-operative may:

- (a) sign a certificate stating any fact set out in the articles, the bylaws, the securities register, a trust indenture or any other contract to which the co-operative is party or the minutes of a meeting of the directors, a committee of directors or the members or holders of preferred shares; or

(b) certify a copy of the whole or any part of the articles, the bylaws, the securities register, a trust indenture or any other contract to which the co-operative is party or the minutes of a meeting of the directors, a committee of directors or the members or holders of preferred shares.

(2) A certificate or certified copy described in subsection (1) is admissible in evidence as proof, in the absence of evidence to the contrary, of the facts contained in the certificate or certified copy without proof of the signature or official character of the person appearing to have signed the certificate or the certification.

1999, c.N-4.001, s.341.

Proof of ownership

342 An entry in a securities register of, or a security certificate issued by, a co-operative is proof, in the absence of evidence to the contrary, that the person in whose name the security is registered is owner of the securities described in the register or in the certificate.

1999, c.N-4.001, s.342.

Copies of documents

343 Where a notice or document is required to be sent to the registrar pursuant to this Act, the registrar may accept a photostatic or photographic copy of the notice or document.

1999, c.N-4.001, s.343.

Alteration

344 Where the registrar is authorized by the person who sent a notice or document or by the representative of that person, the registrar may alter the notice or document, but the registrar shall not alter an affidavit or statutory declaration.

1999, c.N-4.001, s.344.

Corrections

345(1) Where a certificate containing an error is issued to a co-operative by the registrar:

(a) the directors, members or holders of preferred shares of the co-operative shall, on the request of the registrar, pass the resolutions and send to the registrar the documents required to comply with this Act and take any other steps that the registrar may require; and

(b) the registrar may demand the surrender of the certificate and issue a corrected certificate.

(2) A certificate corrected pursuant to subsection (1) must bear the day of the certificate it replaces.

(3) Where, in the opinion of the registrar, a corrected certificate issued pursuant to subsection (1) materially amends the terms of the original certificate, the registrar shall give notice of the correction in the Gazette.

1999, c.N-4.001, s.345.

Striking name off register

346(1) The registrar may strike the name of a co-operative off the register where:

- (a) the registrar does not receive any return, notice or other document or fee required by this Act or the regulations to be sent to the registrar;
 - (b) the co-operative gives notice to the registrar that it has ceased to carry on business in Saskatchewan;
 - (c) the co-operative is not entitled to carry on business pursuant to the act of incorporation of the jurisdiction in which it is incorporated;
 - (d) the registrar has issued the co-operative a certificate of discontinuance pursuant to section 256;
 - (e) the co-operative is dissolved;
 - (f) the co-operative is amalgamated with one or more other co-operatives or bodies corporate;
 - (g) the co-operative is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada); or
 - (h) after reasonable notice from the registrar, the co-operative does not comply with the provisions of this Act.
- (2) Where, in the opinion of the registrar, a co-operative is in default pursuant to clause (1)(a), the registrar shall send to the co-operative a notice advising it of the default and stating that, unless the default is remedied within 30 days after the day of the notice, the name of the co-operative will be struck off the register.
- (3) After the expiry of the time mentioned in the notice sent pursuant to subsection (2), the registrar may strike the name of the co-operative off the register and the registrar shall publish notice of the striking off in the Gazette.
- (4) Where the name of a co-operative is struck off the register pursuant to this Act, the registrar may, on receipt of an application in the prescribed form and on payment of the prescribed fee:
- (a) restore the name of the co-operative to the register; and
 - (b) issue a certificate noting the day of restoration to the co-operative.

1999, c.N-4.001, s.346.

Actions of unregistered co-operatives

347(1) In this section, “**court**” means any court.

- (2) A co-operative that is not registered pursuant to an Act is not capable of commencing or maintaining any action or other proceeding in a court with respect to a contract made in whole or in part in Saskatchewan in the course of, or in connection with, its business.
- (3) Where a co-operative is not registered pursuant to this Act but becomes registered, any action or proceeding mentioned in subsection (2) may be maintained as if the co-operative had been registered before the institution of the action or proceeding.

(4) Where an action or other proceeding has been dismissed or otherwise decided against a co-operative on the grounds that an act or transaction of the co-operative was invalid or prohibited by reason of the co-operative not having been registered pursuant to this Act, the co-operative may, on becoming registered pursuant to this Act and on obtaining leave of the court, maintain a new action or other proceeding as if no judgment had been rendered or entered.

1999, c.N-4.001, s.347.

Acts of unregistered co-operatives

348 No act of a co-operative, including the holding of title to land or of any interest in land by the co-operative, is invalid by reason only that the co-operative was not registered pursuant to this Act.

1999, c.N-4.001, s.348.

Non-application of certain Acts

349 *The Business Corporations Act, The Co-operatives Act, 1996 and The Companies Winding Up Act* do not apply to a co-operative that is incorporated, continued or registered pursuant to this Act.

1999, c.N-4.001, s.349.

Regulations

350 For the purpose of carrying out this Act according to its intent, the Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used but not defined in this Act;
- (b) requiring the payment of and prescribing the amount of any fee with respect to:
 - (i) the filing, examination or copying of any document;
 - (ii) any action that the registrar is required or authorized to take pursuant to this Act; or
 - (iii) any services provided by the registrar pursuant to this Act;
- (c) prescribing the procedure for appeals to the registrar pursuant to section 212;
- (d) prescribing businesses in which co-operatives or any class of co-operatives may not engage without the prior approval of the registrar;
- (e) exempting any person, entity, trade or security from all or any provision of Part XXII or the regulations, and, for that purpose, may prescribe any terms or limitations on an exemption and require compliance with those terms or limitations;

- (f) removing any exemption on trades or securities granted by Part XXII or the regulations, and for that purpose, may prescribe any conditions or restrictions on removal of the exemption and require that those trades or trades in those securities be subject to review by the Co-operative Securities Board;
- (g) exempting any co-operatives or any class of co-operatives from any provision of this Act;
- (h) prescribing any other matter or thing required or authorized to be prescribed in the regulations;
- (i) respecting any other matter or thing the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

1999, c.N-4.001, s.350.

PART XXV

Consequential Amendments and Coming into Force

351 to 355 **Dispensed.** These sections make consequential amendments to other Acts. The amendments have been incorporated into the corresponding Acts.

Coming into force

356 This Act comes into force on proclamation.

1999, c.N-4.001, s.356.