CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

No. : 500-11-036133-094

SUPERIOR COURT

Commercial Division
(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*)

IN THE MATTER OF THE CCAA PLAN OF COMPROMISE OR ARRANGEMENT OF:

ABITIBIBOWATER INC.

and

ABITIBI-CONSOLIDATED INC.

And

BOWATER CANADIAN HOLDINGS INC.

And

the other Petitioners listed herein

Petitioners

And

ERNST & YOUNG INC.

Monitor

APPLICANTS' MEMORANDUM OF ARGUMENT ON THE SANCTIONING OF THE PLAN OF REOGANIZATION AND COMPROMISE AND OTHER RELIEF

*The term "**Applicants**", as used herein, shall be understood to include all Petitioners, save and except for Bowater Canada Finance Corporation ("**BCFC**"). All otherwise undefined terms shall have the meaning ascribed to the them in the Petitioners' Motion for an Order Sanctioning the Petitioners' Plan of Reorganization and Compromise and Other Relief dated September 15, 2010 (the "**Sanction Motion**"), in the revised draft Sanction Order communicated in support of the Sanction Motion (the "**Sanction Order**") and in the Plan of Reorganization and Compromise and Other Relief (as amended and restated on September 17, 2010, the "**CCAA Plan**"). Any reference to the "**CCAA**" shall refer to the pre-September 2009 version of the Companies' Creditors Arrangement Act (R.S., 1985, c. C-36) applicable to the present proceedings.*

A. OVERVIEW

1. Since the issuance of the Initial Order on April 17, 2009, this Court has overseen a complex cross-border restructuring of the Applicants' businesses which has involved government authorities, suppliers, unions, employees, retirees, creditors and lenders, not to mention a host of novel and at times unforeseen complications which led the Applicants and other parties frequently and usefully seeking this Court's guidance. As of the date hereof, 740 entries were listed in the Court record, translating into this Court having issued 101 judgments and orders throughout these proceedings.

2. A detailed background of the facts underlying the present proceedings along with a detailed overview of the CCAA Plan may be found in the Sanction Motion and in the *Fifty-Seventh Report of the Monitor* dated September 7, 2010 (the "**Monitor's 57th Report**"), the *Supplemental Fifty-Seventh Report of the Monitor* dated September 13, 2010 ("**Monitor's Supplemental 57th Report**"), the *Fifty Eighth Report of the Monitor* dated September 16, 2010 (the "**Monitor's 58th Report**") and the *Fifty-Ninth Report of the Monitor* dated September 17, 2010 (the "**Monitor's 59th Report**"). Particular reference is made to the outline of restructuring initiatives undertaken by the Petitioners in the Monitor's 57th (paras. 35-39) and 59th (para. 28) Reports.

3. On September 14, 2010, the Petitioners held meetings of their creditors (the "**Creditors' Meeting**") to allow them to consider and vote on the CCAA Plan. The Creditors' Meeting was held in compliance with the creditor's meeting order issued by this Court on July 9, 2010, (as amended on July 21, 2010, the "**Creditor's Meeting Order**")

4. Consistent with the recommendation of the Monitor, the CCAA Plan was approved at the Creditors' Meeting by majorities overwhelmingly greater than the statutorily required simple majority in number and two-thirds majority in value of Affected Unsecured Claims held by the Affected Unsecured Creditors in 19 of the 20 classes in the CCAA Plan.

5. The CCAA Plan was not approved by the BCFC Affected Unsecured Creditor Class. However, given the No-Vote provisions of the CCAA Plan (s. 2.5), approval by the BCFC Affected Unsecured Creditors is not required to give effect to the CCAA Plan. Instead, as a result of their votes, the BCFC Affected Unsecured Creditors are deemed to be Unaffected Creditors and shall not receive the distribution contemplated for the BCFC Affected Unsecured Creditor Class under the CCAA Plan.

6. It is submitted that the CCAA Plan should be approved and sanctioned by this Court as it has been approved by a majority of creditors well in excess of the statutory requirements and is otherwise fair and reasonable. When one combines the results for all classes of creditors, even including the BCFC Affected Unsecured Creditor Class, the CCAA Plan received the support of over 90% of Affected Unsecured Creditors in both numbers and value.

7. It is further submitted that the projected corporate reorganization of the Applicant's businesses under Section 191 of the CBCA which is contemplated by the CCAA Plan meets the criteria set forth in the legislation and case law and should be approved by this Court.

8. Assuming it is sanctioned and implemented, the CCAA Plan will represent a truly successful compromise and restructuring fully in line with the objectives of the CCAA. The implementation of the CCAA Plan will preserve significant social and economic benefits to the Canadian economy, including enabling about 11,900 employees (as of March 31, 2010) to retain their employment, and allowing hundreds of municipalities, suppliers and contractors in several regions of Ontario and Quebec to continue deriving benefits from a stronger and more competitive forest products industry. In addition, the businesses of the Applicants will continue to operate, pension plans will not be terminated, and the Affected Unsecured Creditors of the Petitioners will receive distributions (including payment in full to small creditors).

9. Should it not be sanctioned, the CCAA Plan will fail in Canada, as would the coordinated U.S. Plan, where sanction by this Court is a direct or indirect condition precedent. As outlined in the Monitor's 57th Report, the alternative scenario, a liquidation of the Petitioners' businesses, will not prove to be as advantageous for the Petitioners' creditors, let alone their stakeholders as a whole.

B. APPROVAL OF THE CCAA PLAN

10. Section 6 of the CCAA provides that a compromise or arrangement shall bind the Applicants and the Affected Unsecured Creditors upon two conditions: (i) approval by the necessary classes of creditors, in the requisite majorities; and (ii) approval and sanction by the Court.

   - CCAA, Section 6 (reproduced in **Appendix A** hereto).

11. In this case, the required majorities in 19 out of 20 classes of Affected Unsecured Creditors have voted in favour of the implementation of the CCAA Plan. On a combined basis for all Affected Unsecured Creditors classes (including the BCFC Affected Unsecured Creditor class), 97.07% in number and 93.47% in value of the Affected Unsecured Creditors voted in favour of approving the CCAA Plan.

   - Monitor 58th Report, paras. 37 and 38.

12. Accordingly, the sole issue submitted to this Court for determination is whether this Court should approve and sanction the CCAA Plan.

   - *Northland Properties Ltd., Re* (1988), 73 C.B.R. (N.S.) 175 (B.C.S.C.), affirmed (1989), 73 C.B.R. (N.S.) 195 (B.C.C.A.). ("***Northland Properties***") **[Tab 1]** at para. 23

13. The exercise of the court's statutory authority to sanction a compromise or arrangement under the CCAA is a matter of discretion. The general requirements to be satisfied in seeking approval of a plan of compromise or arrangement are well established:

(a) there must be strict compliance with all statutory requirements;

(b) all materials filed and procedures carried out must be authorized by the CCAA; and

(c) the CCAA Plan must be fair and reasonable.

> *Northland Properties*, supra, at para. 23 **[Tab 1].**
> *Cable Satisfaction International Inc. (Arrangement relative à)*, J.E. 2004-907 (Qué S.C.) **[Tab 2]**, at paras. 24-25.
> *Re PSINet Ltd.*, [2002] O.J. No. 1156 (Ont. S.C.J.) (QL) ("***Re PSINet***") **[Tab 3]**, at para. 7.

1. <u>Strict Compliance with Statutory Requirements and CCAA Orders</u>

14. Both the first and the second general requirements set-out above dealing respectively with statutory requirements and the absence of unauthorized conduct refer to compliance with the various procedural imperatives of the CCAA itself or to compliance with the various orders granted by the court during the course of the CCAA process.

> *Olympia & York Developments Ltd. v. Royal Trust Co.* (1993), 12 O.R. (3d) 500 (Gen. Div.) ("***Olympia & York***") at para. 19. **[Tab 4]**

15. When considering if the Applicants have acted in compliance with statutory requirements, the Court may consider whether:

(a) the applicant comes within the definition of "debtor company" in section 2 of the CCAA;

(b) the applicant or affiliated debtor companies have total claims within the meaning of section 12 of the CCAA in excess of $5 million;

(c) the notice calling the meeting was sent in accordance with the order of the Court;

(d) the creditors were properly classified;

(e) the meetings of creditors were properly constituted;

(f) the voting was properly carried out under the supervision of the Monitor; and

(g) the CCAA Plan was approved by the requisite double majority or majorities.

> ➢ *Canadian Airlines Corp. (Re),* (2000), 20 C.B.R. (4th) 1 (Alta. Q.B.) ("***Canadian Airlines***") **[Tab 5]** at para. 62.

16. In the present case, the Applicants have met all such requirements. In particular, as appears from the Court record and as will be further demonstrated at the hearing:

(a) at the time of granting the Initial Order, the Court found that the Applicants were insolvent and met the criteria for protection under the CCAA;

(b) the notice of the Creditors' Meeting and other Creditors' Meeting Materials (said term as defined in the information circular dated August 2, 2010) were sent in accordance with the Creditors' Meeting Order. At the Creditors' Meeting, a quorum (being one voting creditor in each class of Affected Unsecured Creditors present in person or by proxy) was present and the chair of the Creditors' Meeting confirmed that the Creditors' Meeting was properly constituted;

(c) the Affected Unsecured Creditors were properly classified as such classification was not opposed at the hearing to approve the Creditor's Meeting Order, the Creditors' Meeting or subsequently;

(d) the voting was properly carried out; and

(e) a majority in number representing more than two thirds in value of each of the classes other than the BCFC Affected Unsecured Creditor Class have overwhelmingly approved the CCAA Plan. The CCAA Plan provides in effect that the BCFC Affected Unsecured Creditors are deemed to be Unaffected Creditors holding Excluded Claims as a result of the failure to approve the CCAA Plan by the affirmative vote of the Required Majority.

> ➢ Monitor 58th Report, at paras. 37, 38 and 48.

17. The Monitor has reached the conclusion that the Petitioners are and have been in strict compliance with all statutory requirements.

> ➢ Monitor 58th Report, at para. 80(i).

2. <u>All Materials Filed and Procedures Carried Out Were Authorized by the CCAA</u>

18. In determining whether anything has been done or purported to be done which is not authorized by the CCAA, the Court must rely on the reports of the Monitor

as well as the parties in ensuring that nothing contrary to the CCAA has occurred or is contemplated by the CCAA Plan.

- *Canadian Airlines*, supra **[Tab 5]**, at para. 64.

19. All materials filed and procedures taken by the Petitioners were authorized by the CCAA, and the orders of this Court. The reports filed by the Monitor make no reference to any act or conduct by the Petitioners which is not authorized by the CCAA; rather, the Monitor is of the view that the Petitioners have not done or purported to do anything that is not authorized by the CCAA.

- Monitor's 58th Report, at para. 80(ii).

20. Similarly, in connection with each request for an extension of the stay of proceedings, the Monitor has reported that the Petitioners were and still are acting in good faith with due diligence, and this Court has not made any contrary finding during the course of these proceedings.

- *Fifth Report of the Monitor*, dated May 13, 2009, at para. 56; *Fifteenth Report of the Monitor*, dated September 2, 2009, at para. 61; *Twenty-Seventh Report of the Monitor*, dated December 9, 2009, at para. 43; *Thirty-Fifth Report of the Monitor*, dated March 9, 2010, at para. 56; *Forty-Fourth Report of the Monitor*, dated June 7, 2010, at para. 115; *Forty-Seventh Report of the Monitor*, dated July 6, 2010, at para. 115; and Monitor's 59th Report, at para. 39.

3. The CCAA Plan is Fair and Reasonable

21. In reviewing the fairness and reasonableness of a CCAA plan, a court must consider the relative degrees of prejudice that would flow from granting or refusing the relief sought. However, the court must not require perfection nor second-guess the business decisions reached by the stakeholders as a body.

- *Re T. Eaton Co. (1999)*, 15 C.B.R. (4th) 311 (Ont. S.C.J. [Commercial List]) ("**T. Eaton**") **[Tab 6]**, at para. 4.
- *Re PSINet Ltd.*, supra **[Tab 3]**, at para. 8.
- *Re Sammi Atlas Inc. (1998)*, 3 C.B.R. (4th) 171 (Ont.S.C.J. [Commercial List]) ("***Re Sammi***") **[Tab 7]**, at para. 4.

22. Indeed, since creditors voting on a plan of reorganization and compromise do so on a business basis, the Court should be reluctant to interfere with the business decisions of creditors reached as a body.

- *Olympia & York*, supra **[Tab 4]**, at para. 37, as per Blair J. (as he then was):

> *"[37] As other courts have done, I observe that it is not my function to second guess the business people with*

> *respect to the "business" aspects of the CCAA Plan, descending into the negotiating arena and substituting my own view of what is a fair and reasonable compromise or arrangement for that of the business judgment of the participants. The parties themselves know best what is in their interests in those areas."*

- *Re Sammi,* supra **[Tab 7]**, at para. 5.
- *Boutiques San Francisco inc. (Arrangement Relatif à),* J.E. 2004-907 (Qué. S.C.) ("***Boutiques San Francisco***") **[Tab 8]**, at para. 12.

23. In fact, courts have held that since a plan of reorganization and compromise is a contract between the debtor and its creditors, which is sanctioned by the court, the parties should be entitled to put anything into such plan of reorganization and compromise that could be lawfully incorporated into any contract.

- *Olympia & York,* supra **[Tab 4]**, at para. 74.

24. Moreover, courts have consistently held that the level of approval by the creditors is a significant factor in determining whether a CCAA Plan is fair and reasonable.

- *Olympia & York,* supra **[Tab 4]**, at para. 36.
- *Boutiques San Francisco,* supra **[Tab 8]**, at para. 11(2).

25. In the present case, as stated above, an overwhelming majority, in number and in value, of Affected Unsecured Creditors have voted in favour of the CCAA Plan. Such significant support of the CCAA Plan by the Affected Unsecured Creditors sets a heavy onus on parties seeking to upset the CCAA Plan.

- *T. Eaton,* supra **[Tab 6]**, at paras. 6 and 7.
- *TQS inc. (Arrangement relative à),* 2008 QCCS 2448, B.E. 2008BE-834 (Qué. S.C.) **[Tab 9]**, at para. 10.

26. In the Monitor's 57th Report, the Monitor advised that the approval of the CCAA Plan was a reasonable decision by the Affected Unsecured Creditors and recommended approval of the CCAA Plan. In the Monitor's 58th Report, the Monitor reaffirmed its view that the CCAA Plan was fair and reasonable and recommended that the Court sanction the CCAA Plan.

- Monitor's 57th Report at para. 104, Monitor's 58th Report at paras. 80(iii) and 83.

27. No alternative to the CCAA Plan has been prepared nor offered to the creditors of the Applicants. If the CCAA Plan is not sanctioned by the Court, the considerable advantages thereof (including the assumption of pension and collective bargaining obligations) may be lost and the Petitioners may be placed into bankruptcy. Furthermore, a failure to sanction the CCAA Plan may preclude

the consummation of the CCAA Plan for purposes of the U.S. Proceedings. Such factors require strong consideration of the courts in determining if a CCAA Plan should be sanctioned.

- *T. Eaton,* supra **[Tab 6]**, at para. 8.
- *Boutiques San Francisco,* supra **[Tab 8]**, at paras. 11(3) & (4).

28. In light of the foregoing, the Court should not override the express wishes of the Petitioners and their creditors.

4. Objections to the CCAA Plan Approval

(a) The BCFC Noteholders' Objection

29. As noted previously, as a result of the No-Vote Occurrence in respect of the Affected Unsecured Creditors of BCFC, said creditors are deemed to be Unaffected Creditors and shall not receive the distributions contemplated for the BCFC Affected Unsecured Creditor Class under the CCAA Plan.

30. In addition, the CCAA Plan releases any claims that BCFC may have against the Applicants and provides that BCFC's equity interests in any of the Applicant or Partnerships may be changed, exchanged, cancelled, redeemed, reorganized, transferred or otherwise dealt with for NIL consideration.

31. Aurelius Capital Management LP ("**Aurelius**") and Contrarian Capital Management L.L.C. ("**Contrarian**") oppose to the sanction of the CCAA Plan on the following grounds:

(a) BCFC did not have an opportunity to vote on the CCAA Plan;

(b) No process has been established to provide that BCFC will receive distributions as a creditor of the other Petitioners-Debtors;

(c) The requested release provisions are overly broad and inappropriate; and

(d) The NAFTA settlement funds have not been appropriately allocated.

32. The first ground of contestation is moot given the vote by the creditors of BCFC. Nothing is added nor gained which is not already known as a result thereof. In effect, all three first grounds of contestation were argued before this Court on September 16 and 17, in the context of the hearing on the *Motion for Advice and Directions* dated September 7, 2010 (the "**A+D Motion**") and are *sub judice* with the Honourable D. Mayrand J.S.C. In ruling on the A+D Motion, Justice Mayrand will determine, *inter alia*: (i) whether the alleged Intercompany Claims (as defined in the A+D Motion) have any merit; (ii) whether there is a need for an additional process to deal with the Intercompany Claims; and (iii) whether, having regard to the unique facts of this case, it is fair and reasonable that the

CCAA Plan release any claims that BCFC may have against the Applicants. There is no reason to reargue these issues at this stage.

33. In addition, the issue of the breadth and appropriateness of the releases provided under the CCAA Plan does not concern Aurelius and Contrarian since the CCAA Plan does not releases BCFC nor its directors or officers, acting as such.

34. The contestation of the allocation of the NAFTA Settlement Funds (as such term is defined in the CCAA Plan) constitutes a collateral attack on the order granted by the Honourable C. Gascon J.S.C. on September 1, 2010 (the "**NAFTA Settlement Order**"), which approved the settlement of the Petitioners' NAFTA claim against the Government of Canada as well as the related payments to be made to the reorganized successor Canadian operating entity upon emergence. Aurelius and Contrarian have not appealed the NAFTA Settlement Order nor have they sought to set the order aside. In any event, none of the *Bowater* Petitioners had any relation whatsoever with the subject matter of the NAFTA claims, all of which relate to operations held by the Abitibi Petitioners.

(b) Contestations of the Provinces of Ontario and British Columbia

35. On September 10, 2010, this Court issued five approval and vesting orders (the "**Vesting Orders**") in connection with the transfer to one of the inactive subsidiaries of the Petitioners, of several properties which present known environmental problems (the "**Properties**"), namely the Margach, Mud Lake and Dryden Mercury Landfills in the Province of Ontario ("**Ontario**"), the Highway 28 Property in the Province of British Columbia ("**British Columbia**") and the Baker Brook Property in the Province of New Brunswick ("**New Brunswick**" and collectively with Ontario and New Brunswick, the "**Provinces**").

36. The issuance of the Vesting Orders was contested by Ontario, British Columbia and New Brunswick. In its reasons, this Court saw fit to authorize the transfer of the Properties to 4513541 Canada Inc. and to issue the orders requested, although it also amended the Vesting Orders by adding paragraph [6.1] to make it clear that the Vesting Orders did not exempt, in and of themselves, the vendors of the Properties from their potential environmental liabilities. In so doing, this Court noted that the issue as to whether there are claims or compromised claims under the CCAA exist by reason of the environmental obligations of the Petitioners with respect to the Properties at stake was one which would be addressed during the sanction hearing, or if not, at a later stage (paras. 29 and 30 of the reasons).

37. In view of the apparent lack of materiality of claims relating to the Properties, the Applicants sought to effect a compromise by including paragraph [33] in the proposed draft Sanction Order. This paragraph seeks to reserve "*the rights of the public authorities of Ontario, New Brunswick or British Columbia*" to adopt their position in "a*ny future proceedings under environmental legislation*" in relation to properties transferred during these CCAA proceedings by the Petitioners or Partnerships.

38. Despite the reservation of rights which answers virtually all of the objections raised on September 10, 2010, Ontario now seeks to dilute the release voted upon by the Affected Unsecured Creditors still further in a way that fundamentally alters the restructuring.

39. The Applicants note that neither New Brunswick nor Quebec have objected to the Sanction Order.

40. The Applicants further note that the carve-out proposed by British Columbia contains language stating the grounds as to why such a carve out should be made ("*on the grounds ... extinguish, release or enjoin*"). It is respectfully submitted that such language is inappropriate and should not be included in an order of this Court.

41. The Applicants submit that given the provisions of paragraph [33] of the proposed draft Sanction Order, the Provinces have no valid and reasonable grounds of contestation.

(c) Contestation of NPower Cogen Limited

42. NPower Cogen Limited ("**Npower**") seeks to preserve its rights with respect to what it calls the "Cogen Motion", namely a "*motion to be brought by Cogen before this Honourable Court to have them* [various claims] *heard*" (para. 24(b) and 43 of the NPower submissions). The Cogen Motion has been announced by NPower since August 2009 and then repeated in July, 2010, however it has yet to be served on the Applicants.

43. The Applicants submit that it would be inappropriate in the circumstances to grant Npower such a "blank cheque". Before even making such a request, Npower should, at a minimum, state the specific relief it intends to seek and detail the grounds supporting such demand.

C. APPROVAL OF THE APPLICANTS' REORGANIZATION

44. The test to be applied by the Court in determining whether to approve a reorganization under section 191 of the CBCA is similar to the test applied in deciding whether to sanction a plan of arrangement under the CCAA, namely: (a) there must be compliance with all statutory requirements; (b) the debtor company must be acting in good faith; and (c) the capital restructuring must be fair and reasonable.

- *Re Doman Industries Ltd.*, 2003 BCSC 375 (CanLII) **[Tab 10]**, at para. 8.
- *Re MEI Computer Technology Group Inc.*, 2005 CanLII 54083 (QC C.S.) **[Tab 11]** at para. 9.
- *Re Laidlaw Inc.*, [2003] O.J. No. 865 **[Tab 12]**.
- *Re Raymor Industries Inc., 2010 QCCS 376 (CanLII)* ***[Tab 13]***.

45. As appears from the above, these requirements have been fulfilled.

D. ORDER REQUESTED

46. The Petitioners respectfully request that an order be granted substantially in the form of the proposed draft Sanction Order.

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ALL OF WHICH IS RESPECTFULLY SUBMITTED

September 19, 2010

Stikeman Elliott

STIKEMAN ELLIOTT LLP

SCHEDULE A
RELEVANT LEGISLATIVE PROVISIONS

Companies' Creditors Arrangement Act, **R.S.C., 1985, c. C-36 ("CCAA")**

6. Compromises to be sanctioned by court

Where a majority in number representing two-thirds in value of the creditors, or class of creditors, as the case may be, present and voting either in person or by proxy at the meeting or meetings thereof respectively held pursuant to sections 4 and 5, or either of those sections, agree to any compromise or arrangement either as proposed or as altered or modified at the meeting or meetings, the compromised or arrangement may be sanctioned by the court, and if so sanctioned is binding

a) on all the creditors or the class of creditors, as the case may be, and on any trustee for any such class of creditors, whether secured or unsecured, as the case may be, and on the company; and
b) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act* or is in the course of being wound up under the *Winding-up and Restructuring Act*, on the trustee in bankruptcy or liquidator and contributories of the company.

Canada Business Corporations Act, **R.S.C., 1985, c. C-44 ("CBCA")**

173. (1) Amendment of articles - Subject to sections 176 and 177, the articles of a corporation may by special resolution be amended to

(a) change its name;

(b) change the province in which its registered office is situated;

(c) add, change or remove any restriction on the business or businesses that the corporation may carry on;

(d) change any maximum number of shares that the corporation is authorized to issue;

(e) create new classes of shares;

(f) reduce or increase its stated capital, if its stated capital is set out in the articles;

(g) change the designation of all or any of its shares, and add, change or remove any rights, privileges, restrictions and conditions, including rights to accrued dividends, in respect of all or any of its shares, whether issued or unissued;

(h) change the shares of any class or series, whether issued or unissued, into a different number of shares of the same class or series or into the same or a different number of shares of other classes or series;

(i) divide a class of shares, whether issued or unissued, into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions thereof;

(j) authorize the directors to divide any class of unissued shares into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions thereof;

(k) authorize the directors to change the rights, privileges, restrictions and conditions attached to unissued shares of any series;

(l) revoke, diminish or enlarge any authority conferred under paragraphs (j) and (k);

(m) increase or decrease the number of directors or the minimum or maximum number of directors, subject to sections 107 and 112;

(n) add, change or remove restrictions on the issue, transfer or ownership of shares; or

(o) add, change or remove any other provision that is permitted by this Act to be set out in the articles.

(2) Termination - The directors of a corporation may, if authorized by the shareholders in the special resolution effecting an amendment under this section, revoke the resolution before it is acted on without further approval of the shareholders.

(3) Amendment of number name - Notwithstanding subsection (1), where a corporation has a designating number as a name, the directors may amend its articles to change that name to a verbal name.

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176. (1) Class Vote - The holders of shares of a class or, subject to subsection (4), of a series are, unless the articles otherwise provide in the case of an amendment referred to in paragraphs (a), (b) and (e), entitled to vote separately as a class or series on a proposal to amend the articles to

(a) increase or decrease any maximum number of authorized shares of such class, or increase any maximum number of authorized shares of a class having rights or privileges equal or superior to the shares of such class;

(b) effect an exchange, reclassification or cancellation of all or part of the shares of such class;

(c) add, change or remove the rights, privileges, restrictions or conditions attached to the shares of such class and, without limiting the generality of the foregoing,

(i) remove or change prejudicially rights to accrued dividends or rights to cumulative dividends,

(ii) add, remove or change prejudicially redemption rights,

(iii) reduce or remove a dividend preference or a liquidation preference, or

(iv) add, remove or change prejudicially conversion privileges, options, voting, transfer or pre-emptive rights, or rights to acquire securities of a corporation, or sinking fund provisions;

(d) increase the rights or privileges of any class of shares having rights or privileges equal or superior to the shares of such class;

(e) create a new class of shares equal or superior to the shares of such class;

(f) make any class of shares having rights or privileges inferior to the shares of such class equal or superior to the shares of such class;

(g) effect an exchange or create a right of exchange of all or part of the shares of another class into the shares of such class; or

(h) constrain the issue, transfer or ownership of the shares of such class or change or remove such constraint.

(2) Exception - Subsection (1) does not apply in respect of a proposal to amend the articles to add a right or privilege for a holder to convert shares of a class or series into shares of another class or series that is subject to a constraint permitted under paragraph 174(1)(c) but is otherwise equal to the class or series first mentioned.

(3) Deeming provision - For the purpose of paragraph (1)(e), a new class of shares, the issue, transfer or ownership of which is to be constrained by an amendment to the articles pursuant to paragraph 174(1)(c), that is otherwise equal to an existing class of shares shall be deemed not to be equal or superior to the existing class of shares.

(4) Limitation - The holders of a series of shares of a class are entitled to vote separately as a series under subsection (1) only if such series is affected by an amendment in a manner different from other shares of the same class.

(5) Right to vote - Subsection (1) applies whether or not shares of a class or series otherwise carry the right to vote.

(6) Separate resolutions - A proposed amendment to the articles referred to in subsection (1) is adopted when the holders of the shares of each class or series entitled to vote separately thereon as a class or series have approved such amendment by a special resolution.

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191. (1) Definition of "reorganization" - In this section, "**reorganization**" means a court order made under

(a) section 241;

(b) the Bankruptcy and Insolvency Act approving a proposal; or

(c) any other Act of Parliament that affects the rights among the corporation, its shareholders and creditors.

(2) Powers of court - If a corporation is subject to an order referred to in subsection (1), its articles may be amended by such order to effect any change that might lawfully be made by an amendment under section 173.

(3) Further powers - If a court makes an order referred to in subsection (1), the court may also

(a) authorize the issue of debt obligations of the corporation, whether or not convertible into shares of any class or having attached any rights or options to acquire shares of any class, and fix the terms thereof; and

(b) appoint directors in place of or in addition to all or any of the directors then in office.

(4) Articles of reorganization - After an order referred to in subsection (1) has been made, articles of reorganization in the form that the Director fixes shall be sent to the Director together with the documents required by sections 19 and 113, if applicable.

(5) Certificate of reorganization - On receipt of articles of reorganization, the Director shall issue a certificate of amendment in accordance with section 262.

(6) Effect of certificate - A reorganization becomes effective on the date shown in the certificate of amendment and the articles of incorporation are amended accordingly.

(7) No dissent - A shareholder is not entitled to dissent under section 190 if an amendment to the articles of incorporation is effected under this section.