

BUSINESS LAW FUNDAMENTALS

CHAPTER LISTING

Chapter 1: Forms of Business Organizations

Chapter 2: Incorporation

Chapter 3: Shares, Share Capitalization, and Equity Financing

Chapter 4: Directors, Officers, and Shareholders

Chapter 5: Shareholder Agreements

Chapter 6: Shareholder Approval and Dissent Rights

Chapter 7: Buying and Selling a Business

Chapter 8: Franchises

Chapter 9: Extra-Provincial Registrations

Chapter 10: Business Practice Concerns

Chapter 11: Secured Financing

Chapter 12: *Fair Trading Act*

Chapter 13: The Taxation of Corporations

Chapter 14: Securities Regulation

Chapter 15: Intellectual Property Law

CHAPTER 1

FORMS OF BUSINESS ORGANIZATIONS

1	Introduction.....	1-2
2	Sole proprietorships	1-2
3	Corporations.....	1-3
	3.1 Registration requirements.....	1-4
4	Unlimited liability corporations	1-5
5	Partnerships.....	1-6
6	Limited partnerships	1-9
7	Limited liability partnerships.....	1-12
8	Joint ventures.....	1-13
9	Drafting considerations in establishing a partnership or joint venture.....	1-14
	9.1 Partnership.....	1-14
	9.2 Joint ventures	1-15
10	Cooperatives	1-16
11	Not-for-profit organizations	1-17
	11.1 Societies	1-17
	11.2 Not-for-profit companies.....	1-19
12	Summary of considerations in choosing the form of business organization.....	1-19

CHAPTER 2
INCORPORATION

1	Incorporation procedure (for-profit corporation).....	2-2
1.1	Introduction	2-2
1.2	Incorporation precedents	2-2
1.3	Who may incorporate.....	2-3
1.4	Kinds of corporations.....	2-3
1.5	Corporate names	2-8
1.6	Articles of incorporation.....	2-10
1.7	Notice of address	2-12
1.8	Notice of directors.....	2-12
2	Practice-oriented discussion of the incorporation procedure.....	2-12
2.1	Introduction	2-12
2.2	Matters preliminary to incorporation	2-12
2.3	Incorporation procedure	2-15
2.4	Matters subsequent to incorporation	2-15
3	Report to client	2-21
4	Notice to and service on a shareholder, a director, or a corporation.....	2-21
5	Maintenance of corporate records	2-22
5.1	Records office	2-22
5.2	Minute book	2-23
5.3	Access to records.....	2-24
5.4	Annual returns.....	2-24
6	Liquidation, dissolution, revival	2-25
6.1	Introduction	2-25
6.2	Methods of dissolution	2-26
6.3	Revival	2-30
7	Appendix list.....	2-31

CHAPTER 3

SHARES, SHARE CAPITALIZATION, AND EQUITY FINANCING

1	Capitalization	3-2
1.1	Introduction	3-2
1.2	What is capital?.....	3-2
2	Shares and their classification	3-3
2.1	Common shares	3-3
2.2	Preferred shares	3-5
2.3	Class versus series	3-8
2.4	Par value and no par value shares	3-9
3	Corporate distributions.....	3-9
3.1	Dividends.....	3-9
3.2	Reduction of capital.....	3-11
3.3	Redemption of preferred shares.....	3-11
3.4	Purchase for cancellation.....	3-13
3.5	Retraction	3-13
3.6	Conversion.....	3-14
4	Loans to shareholders and directors.....	3-16
5	Rights and warrants	3-16
5.1	Rights offerings	3-16
5.2	Warrants	3-16
6	Appendix list.....	3-17

CHAPTER 4

DIRECTORS, OFFICERS, AND SHAREHOLDERS

1	Directors.....	4-3
1.1	Number of directors.....	4-3
1.2	Directors' qualifications.....	4-3
1.3	Election and appointment of directors.....	4-3
1.4	Cumulative voting for the election of directors.....	4-4
1.5	Court review of an election.....	4-5
1.6	Officers.....	4-5
1.7	Appointment of additional directors.....	4-5
1.8	Consent to act as a director.....	4-5
1.9	Ceasing to hold office.....	4-6
1.10	Removing a director from office.....	4-6
1.11	Meeting attendance.....	4-6
1.12	Filling vacancies.....	4-6
1.13	Change in the number of directors.....	4-7
1.14	Notice of change of directors.....	4-7
1.15	Meetings.....	4-7
1.16	Delegation to a managing director or committee.....	4-8
1.17	Canadian resident majority.....	4-8
1.18	Quorum.....	4-9
1.19	Validity of a director's acts.....	4-9
1.20	Written resolutions.....	4-9
1.21	Telephone attendance at meetings.....	4-9
1.22	Remuneration.....	4-9
2	Directors' duties and liabilities.....	4-10
2.1	Duties.....	4-10
2.2	Good faith, care, and skill.....	4-10
2.3	Disclosure of interest in a contract.....	4-10
2.4	Liability for contraventions of the BCA.....	4-11
2.5	Liability for wages.....	4-12
2.6	Other liabilities.....	4-13
2.7	Avoiding liability.....	4-14

BUSINESS LAW FUNDAMENTALS

2.8 Indemnity and insurance 4-15

2.9 Insider trading 4-15

3 Shareholders’ meetings 4-17

3.1 Location 4-17

3.2 Calling meetings..... 4-17

3.3 Meeting requisition 4-17

3.4 Court-ordered meetings..... 4-18

3.5 Record dates 4-18

3.6 Notice..... 4-19

3.7 Waiver of notice 4-20

3.8 Shareholders lists 4-20

3.9 Quorum 4-20

3.10 Right to vote 4-21

3.11 Voting..... 4-21

3.12 Resolution in lieu of meetings..... 4-21

3.13 Telephone participation in meetings 4-21

4 Proxies..... 4-21

4.1 Appointing a proxy holder 4-22

4.2 Mandatory solicitation 4-22

4.3 Proxy solicitation 4-22

4.4 Exemption orders 4-22

4.5 Rights and duties of a proxy holder 4-22

4.6 Court orders..... 4-23

5 Shareholders’ rights and remedies 4-23

5.1 Shareholder dissent and appraisal remedy 4-23

5.2 Oppression..... 4-25

5.3 Derivative action 4-26

5.4 Shareholder proposals 4-26

5.5 Shareholder indemnity 4-27

CHAPTER 5

SHAREHOLDER AGREEMENTS

1	Introduction.....	5-3
2	The essence of a unanimous shareholder agreement.....	5-4
	2.1 Fettering directors' discretions	5-4
	2.2 Deemed parties.....	5-5
	2.3 Unanimity.....	5-6
3	Shotguns and other common buy-sells.....	5-7
	3.1 The purposes of a buy-sell.....	5-7
	3.2 Common examples of buy-sells.....	5-8
	3.3 Special considerations.....	5-10
	3.4 Income tax	5-17
	3.5 Role of insurance	5-23
	3.6 Standard share purchase considerations	5-25
4	Other uses for a unanimous shareholder agreement.....	5-26
	4.1 Minority protection	5-26
	4.2 Majority protection	5-27
	4.3 Directors' votes	5-29
5	Common problems with shareholder agreements	5-30
	5.1 Failing to provide for restrictive covenants and confidentiality	5-30
	5.2 Failing to engage in damage control.....	5-30
	5.3 Failing to allow access to information	5-30
	5.4 Failing to deal with employment status.....	5-31
	5.5 Failing to protect intellectual property.....	5-31
	5.6 Directors' approval.....	5-31
	5.7 The open-ended right of first refusal	5-32
	5.8 The open-ended shotgun.....	5-32
	5.9 Leaving shares behind.....	5-32
	5.10 Failing to recognize shareholder's liabilities	5-32
	5.11 Valuation vacuums.....	5-33
	5.12 Killing the deal.....	5-33
	5.13 Failing to provide for terminations, amendments, or waivers.....	5-33
	5.14 Failing to exclude departed shareholders	5-34

BUSINESS LAW FUNDAMENTALS

5.15 Lack of independent advice 5-34

5.16 Failing to deal with “personal” covenants..... 5-34

5.17 Failing to go behind corporate shareholders 5-35

6 Conclusion..... 5-35

7 Appendix list..... 5-35

CHAPTER 6

SHAREHOLDER APPROVAL AND DISSENT RIGHTS

1	Introduction.....	6-2
2	What is a “fundamental change”?.....	6-4
3	Detailed examination of fundamental changes.....	6-5
3.1	Change of name.....	6-5
3.2	Change in business restriction.....	6-5
3.3	Change in share capital.....	6-5
3.4	Change in number of directors.....	6-6
3.5	Changes in restrictions and constraints on share transfers.....	6-7
3.6	Addition or removal of unlimited liability statement.....	6-7
3.7	Other changes.....	6-7
3.8	Amalgamation.....	6-8
3.9	Continuance of an existing corporation into Alberta.....	6-9
3.10	Continuance of an Alberta corporation into another jurisdiction.....	6-10
3.11	Extraordinary sale, lease, or exchange of a corporation’s property.....	6-11
3.12	Reorganizations and arrangements.....	6-12
4	Class votes.....	6-13
5	Appraisal and dissent rights.....	6-14
6	Procedure for dissenting shareholders.....	6-16
7	Fair value.....	6-17

CHAPTER 7

BUYING AND SELLING A BUSINESS

1	Professional advisors	7-2
1.1	Your role as legal counsel.....	7-2
1.2	The role of other advisors.....	7-3
1.3	Introduction to assets and shares	7-3
2	Acquisition of a business – purchase of shares.....	7-6
2.1	Introduction	7-6
2.2	Initial steps, due diligence, and searches	7-8
2.3	Privacy legislation.....	7-10
2.4	Other legal considerations.....	7-10
2.5	Drafting the agreement	7-11
2.6	Closing	7-14
2.7	Post-closing	7-14
3	Acquisition of a business – purchase of assets	7-15
3.1	Introduction	7-15
3.2	Initial steps, due diligence, and searches	7-16
3.3	Privacy legislation.....	7-16
3.4	Other legal considerations.....	7-16
3.5	Drafting the agreement	7-17
3.6	Closing	7-19
3.7	Post-closing	7-19
4	Tax issues.....	7-20
4.1	Tax issues on the purchase and sale of assets	7-20
4.2	Tax issues on the purchase and sale of shares.....	7-23
5	Appendix list.....	7-24

CHAPTER 8
FRANCHISES

1	Introduction.....	8-2
2	Benefits of the franchise relationship	8-2
3	Risks of the franchise relationship.....	8-3
4	Legislation	8-4
5	Disclosure document.....	8-5
	5.1 <i>Hi Hotel Limited Partnership v Holiday Hospitality Franchising Inc</i>	8-5
6	Misrepresentation	8-6
7	Fair dealing and good faith	8-6
8	Common provisions of franchise agreements	8-7
	8.1 Fees	8-7
	8.2 Term and renewal	8-7
	8.3 Location and relocation	8-8
	8.4 Territory.....	8-8
	8.5 Inputs to the franchised business	8-9
	8.6 Operating standards and operating manuals	8-9
	8.7 Construction and updates	8-9
	8.8 Training.....	8-10
	8.9 Default and termination	8-10
	8.10 Obligations of confidence and non-competition	8-10
	8.11 Sale of the franchised business.....	8-11
	8.12 Personal guarantees.....	8-11
9	Summary	8-11

CHAPTER 9

EXTRA-PROVINCIAL REGISTRATIONS

1	Definition	9-2
2	Registration requirements in Alberta	9-2
3	Federal corporations	9-3
4	Naming an extra-provincial corporation	9-4
5	Authorized service providers.....	9-4
6	Application for registration.....	9-5
7	Certificate of registration.....	9-5
8	Attorney for service of extra-provincial corporation.....	9-5
9	Filing amendments to charter, changing head offices, and changing directors	9-6
10	Filing of instrument of amalgamation	9-7
11	Annual and other returns	9-7
12	Validity of acts.....	9-7
13	Capacity to commence and maintain legal proceedings	9-8
14	General penalty.....	9-8
15	Cancellation of registration.....	9-8

BUSINESS LAW FUNDAMENTALS

CHAPTER 10

BUSINESS PRACTICE CONCERNS

1	Introduction.....	10-2
2	Conflicts.....	10-2
3	Guarantees.....	10-5
4	Independent legal advice.....	10-6
5	Appendix list.....	10-6

CHAPTER 11

SECURED FINANCING

1	<i>Personal Property Security Act</i>	11-3
	1.1 Basic characteristics of the PPSA	11-3
	1.2 Application of the PPSA	11-4
	1.3 Structure of the PPSA	11-5
2	General	11-6
	2.1 Definitions	11-6
	2.2 Applicable laws.....	11-9
3	Attachment and enforceability.....	11-12
	3.1 Basic requirements for attachment.....	11-12
	3.2 Value	11-12
	3.3 Debtor has rights in the collateral.....	11-13
	3.4 Enforceable security interest.....	11-13
	3.5 Delivery of copy of security agreement.....	11-15
4	Perfection and priorities.....	11-15
	4.1 Methods of perfection	11-15
	4.2 Perfection by possession.....	11-17
	4.3 Perfection by delivery (for certificated securities).....	11-17
	4.4 Perfection by control (for investment property)	11-18
	4.5 Perfection by registration	11-19
	4.6 Length of registration period	11-20
	4.7 Temporary perfection.....	11-20
	4.8 Perfection and priority	11-20
	4.9 Residual priority rules	11-21
	4.10 Perfected versus unperfected	11-21
	4.11 Determining priority	11-21
	4.12 Purchase money security interests.....	11-22
5	Registration.....	11-24
	5.1 Registration of security interest	11-24
6	Rights and remedies on default	11-25
7	The role of solicitors in secured transactions.....	11-26
	7.1 Basic considerations.....	11-26

BUSINESS LAW FUNDAMENTALS

7.2 Creation of the security interest.....11-26

7.3 Drafting the security agreement11-27

7.4 Steps for solicitors acting on secured transactions.....11-29

8 Other forms of security11-32

8.1 Introduction11-32

8.2 Promissory note11-33

8.3 Guarantee.....11-34

8.4 Real property mortgage11-34

8.5 Chattel mortgage.....11-34

8.6 Conditional sales agreement11-35

8.7 Direct sales cancellation11-35

8.8 Assignment of book debts.....11-35

8.9 Debentures – fixed and floating.....11-35

8.10 Section 426 security11-36

8.11 Section 427 security.....11-36

8.12 Prior taken unperfected PPSA security v *Bank Act*.....11-36

9 Appendix list.....11-38

CHAPTER 12

FAIR TRADING ACT

1	Overview	12-2
2	Interpretation	12-3
3	Trade practices	12-4
4	Disclosure of information	12-5
5	Cost of credit disclosure.....	12-6
6	Business practices.....	12-6
7	Collection agencies.....	12-7
8	Remedies	12-7

CHAPTER 13

THE TAXATION OF CORPORATIONS

1	Introduction.....	13-2
	1.1 The corporate taxpayer.....	13-2
2	The taxation of corporations – general principles.....	13-2
	2.1 Federal and provincial taxation.....	13-2
	2.2 Basis for Alberta provincial taxation	13-3
	2.3 Basis for federal taxation	13-3
	2.4 Calculation of income	13-5
	2.5 Calculation of taxable income.....	13-6
	2.6 Calculation of tax	13-6
3	Other income.....	13-10
	3.1 Personal services business.....	13-10
	3.2 Investment income – dividends and other sources	13-11
4	The decision to incorporate	13-13
	4.1 Introduction	13-13
	4.2 Advantages to incorporation	13-13
	4.3 Disadvantages to incorporation.....	13-18
5	Corporate reorganizations.....	13-19
	5.1 General background	13-19
	5.2 Non-dispositions.....	13-20
	5.3 “Rollover” provisions.....	13-21
	5.4 Transfer of property to a corporation.....	13-21
	5.5 Share-for-share exchange	13-25
	5.6 Share capital reorganization	13-26
6	Corporate distributions.....	13-26
	6.1 Dividends and paid-up capital.....	13-26
	6.2 Deemed dividends	13-27
	6.3 Shareholder benefits	13-28

CHAPTER 14

SECURITIES REGULATION

1	Introduction.....	14-2
2	Application of the <i>Securities Act</i>	14-3
3	Prohibitions related to securities dealings.....	14-4
4	Reporting issuer.....	14-6
5	Insider trading.....	14-8
6	Harmonization projects	14-10

CHAPTER 15

INTELLECTUAL PROPERTY LAW

1	Introduction.....	15-2
2	Patents	15-2
	2.1 Public disclosure	15-3
	2.2 Jurisdiction.....	15-5
	2.3 Patent documentation	15-5
3	Trade-marks	15-7
	3.1 Types of trade-marks	15-7
	3.2 Trade-mark registration	15-8
4	Copyright	15-10
5	Industrial design	15-12
	5.1 Industrial design registration.....	15-12
	5.2 Ownership.....	15-12
	5.3 Disclosure.....	15-13
	5.4 Industrial design application	15-13
6	Trade secrets	15-14
7	Trade-names and corporate names	15-15
8	Domain names.....	15-16