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Introduction to the Montana Business Corporation Act

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INTRODUCTION TO THE MONTANA BUSINESS CORPORATION ACT

The new Montana Business Corporation Act¹ is not a revision of the prior corporation law, but is an entirely new act. Thus, when it becomes effective² it will be essential for the lawyer to refer to the new act before making any decisions as to his corporate clients. It is the intent of this paper to give some insight into the general content of the new Act, as well as to emphasize some of the particular changes that it made. Since an attempt to analyze all of the changes that were made would be impossible, a cross reference section is provided at the end of the paper. The Business Corporation Act, which will be dealt with here, is only part of the revision of Title 15 which the legislature has enacted.³ This paper is confined to a discussion of the act dealing with corporations for profit which was derived in large measure from the Model Business Corporation Act of the the American Bar Foundation, modified to meet the specific needs of this state.

A REVIEW OF THE ACT

The act begins with a definition section⁴ which is more important than such sections usually are because of the relative novelty of some of the terms. For example the assets of a corporation are divided into "stated capital," "surplus," "earned surplus," and "capital surplus." An understanding of these terms is essential to the common activities of a business corporation, such as issuance of dividends.

A business corporation may be formed for any lawful purpose except for banking and insurance, under this act.⁵ A corporation formed under this act, or continuing under this act shall have broader powers than were possible before. For example it shall have the power of perpetual existence and broader powers when dealing with real estate.⁶ Further the lack of capacity on the part of the corporation (*ultra vires*) shall not be a defense to the corporation, but rather the court will make an equit-

¹REVISED CODES OF MONTANA, 1947, §§ 15-2201 to 15-22-140. (Hereinafter REVISED CODES OF MONTANA will be cited as R.C.M.)

²The legislature inadvertently put two effective dates in the Act. The Attorney General ruled that the Act would be effective for all purposes on December 31, 1968, notwithstanding the provisions of R.C.M., 1947, § 15-22-136. (Opinion No. 4, Vol. 32, June 8, 1967.)

³Other chapters added are: 20, Securities Act of Montana; 21, Professional Service Corporations; 23, Montana Non-profit Corporation Act; 24, Montana Religious Corporation Sole Act; and 25, Business Trusts.

⁴R.C.M., 1947, § 15-2202.

⁵R.C.M., 1947, § 15-2203. In § 15-104 the permissible purposes were listed, and said to be exclusive.

⁶R.C.M., 1947, § 15-2204. The term of life of a corporation was limited to forty years under R.C.M., 1947, § 15-108. The procedure for dealing with real estate in the ordinary course of business, was more difficult. See R.C.M., 1947, §§ 15-901 to 15-913.

able settlement of the rights of the parties if the question is raised by a shareholder, or other interested party.⁷

The name of the corporation cannot conflict with its purposes nor can it be the same as or similar to that of an existing Montana corporation, that of a foreign corporation authorized to do business in the state, or a name which is reserved, or registered.⁸ The provisions for reserving a corporate name may be utilized by an existing foreign corporation, or the promoters of a future corporation.⁹ If a foreign corporation does not intend to do business here, it may register its name in the manner provided.¹⁰ This will prevent the necessity of a corporation qualifying to do business in the state just to protect its name.

INCORPORATION

A corporation may be formed by one or more persons of legal age, or a domestic or foreign corporation, by delivering to the Secretary of State the articles of incorporation for such corporation.¹¹ The articles of incorporation shall set forth the corporate name, and other information required by the statute.¹² These articles are to be filed *only* at the office of the Secretary of State.¹³ And if the articles comply with the law, the Secretary of State will issue a Certificate of Incorporation which shall be conclusive evidence of the existence of the corporation. Thereafter it will only be subject to proceedings to cancel or revoke the certificate, or to involuntary dissolution.¹⁴ These articles may be amended from time to time in the manner provided by the code.¹⁵ Within this power to amend is the power to adopt restated articles of incorporation.¹⁶ This allows the inclusion of all of the articles in a single document and the elimination of those which have been superseded.

SHARES AND SHAREHOLDERS

Each corporation has the power to issue the number of shares stated in its articles of incorporation.¹⁷ If provided for in the articles, various preferred or special classes of shares may be issued.¹⁸ Further, preferred

⁷R.C.M., 1947, § 15-2206.

⁸R.C.M., 1947, § 15-2207. The provision in the prior law limited the protection of corporate names to domestic corporations, although it may have been otherwise in practice. R.C.M., 1947, § 15-111.

⁹R.C.M., 1947, § 15-2208.

¹⁰R.C.M., 1947, § 15-2209.

¹¹R.C.M., 1947, § 15-2247. The prior law required three or more persons. R.C.M., 1947, § 15-103.

¹²R.C.M., 1947, § 15-2248.

¹³R.C.M., 1947, § 15-2249. The prior law required filing both in the office of the Secretary of State and in certain counties. R.C.M., 1947, §§ 15-111, 15-112.

¹⁴R.C.M., 1947, § 15-2250. A copy of the articles of incorporation was *prima facie* evidence of the facts. R.C.M., 1947, § 15-116.

¹⁵R.C.M., 1947, §§ 15-2252 to 15-2259.

¹⁶R.C.M., 1947, § 15-2258.

¹⁷R.C.M., 1947, § 15-2214.

¹⁸*Id.*

or special classes may be issued in series if the articles so provide.¹⁹ Unless otherwise provided, a subscription for shares of a corporation to be organized is irrevocable for six months²⁰. Shares with par value, except for treasury shares, must be sold at not less than par, the sale price being set by the board of directors. Shares without par value will also be sold for an amount fixed by the board.²¹ The payment for the shares must be in money or property actually received, or labor actually performed.²² If shares with par value are issued, then stated capital shall equal the amount of such par value, while the rest of the consideration received is capital surplus.²³ However, if the shares have no par value, then the total consideration shall be stated capital unless otherwise provided.²⁴

A holder of shares or a subscriber to shares in a corporation has no liability except for the full payment of the stock.²⁵ However, unlike the holders of shares in corporations formed under the former law, stockholders of corporations formed after the effective date of this code shall have no pre-emptive rights unless expressly provided for in the articles of incorporation.²⁶ The bylaws of a corporation may provide that the meetings of shareholders may be either within or without the state.²⁷ The date of the annual meeting of shareholders will be provided in the bylaws, while the special meetings may be called by the president, the board of directors or one-fourth of the shareholders.²⁸ For special meetings notice must be given²⁹ and for purposes of determining who is entitled to notice or to vote at any of the meetings, or entitled to dividends, the transfer books may be closed for a period not exceeding 50 days before the date of the event in question.³⁰ An initial quorum of the shareholders³¹ has the power to transact business, notwithstanding the later withdrawal of enough shareholders to leave less than a quorum.³² There are provisions for the voting of fractional shares, and for the cumulative voting of shares in the election of directors.³³ It is the record holder of the shares who is entitled to vote by proxy or otherwise,³⁴ except that there is a provision for voting trusts for periods not to exceed 10 years.³⁵

¹⁹R.C.M., 1947, § 15-2215.

²⁰R.C.M., 1947, § 15-2216.

²¹R.C.M., 1947, § 15-2217.

²²R.C.M., 1947, § 15-2218. The provision for payment by promissory notes is eliminated. R.C.M., 1947, § 15-617.

²³R.C.M., 1947, § 15-2219.

²⁴*Id.*

²⁵R.C.M., 1947, § 15-2223.

²⁶R.C.M., 1947, §§ 15-2224, 15-22-136(c). The code provision under the prior law was R.C.M., 1947, § 15-801.

²⁷R.C.M., 1947, § 15-2226.

²⁸*Id.*

²⁹R.C.M., 1947, § 15-2227.

³⁰R.C.M., 1947, § 15-2228.

³¹R.C.M., 1947, § 15-2230.

³²*Id.*

³³R.C.M., 1947, § 15-2231.

³⁴*Id.*

³⁵R.C.M., 1947, § 15-2232.

OFFICERS AND DIRECTORS

The business and affairs of the corporation are to be managed by the board of directors.³⁶ They may be three or more in number³⁷ and need not be holders of shares of the corporation unless otherwise provided.³⁸ Initially, they will be the persons named in the articles of incorporation³⁹ to hold office until the first annual meeting.⁴⁰ If there are nine or more members, they may be divided into two or three classes, each class having a term which expires at a time different from the others.⁴¹ The purpose of such a procedure would be to maintain continuity in management. Any vacancy which occurs in the board of directors either by loss of one of the present directors or creation of a new position may be filled by a vote of a majority of the board of directors.⁴² However, a director elected to fill a newly created vacancy will hold office only until the next annual meeting, while if elected to fill the office of a prior director, he will fill the unexpired term of the director he replaced.⁴³ The board of directors may be removed as a whole by a majority of the stockholders. However, if fewer than all of the directors are to be removed, then such removal will be prevented, if, as to any director, he could be elected by cumulating the number of shares cast against his removal.⁴⁴ Meetings of the board of directors, either regular or special, may be held within or without the state, and if special may be called by such notice as is prescribed by the bylaws.⁴⁵ A quorum to transact business must be at least a majority of the directors, and more than a majority may be required by the articles or the bylaws.⁴⁶ The board of directors has the power to adopt the initial bylaws and to amend or repeal the bylaws unless this right is reserved to the shareholders by the articles of incorporation.⁴⁷ Subject to certain limitations, the board of directors may appoint executive or other committees to carry out their functions.⁴⁸

The board of directors has the power to declare dividends from time to time on the outstanding shares of the corporation out of unreserved

³⁶R.C.M., 1947, § 15-2233.

³⁷R.C.M., 1947, § 15-2234. Under the prior law the upper limit was thirteen (13).
R.C.M., 1947, § 15-108.

³⁸R.C.M., 1947, § 15-2233.

³⁹R.C.M., 1947, § 15-2234.

⁴⁰*Id.*

⁴¹R.C.M., 1947, § 15-2235.

⁴²R.C.M., 1947, § 15-2236. The number of directors may be changed by amendment to the bylaws. R.C.M., 1947, § 15-2234. Since the bylaws may be amended by the directors, they can, in effect, multiply themselves.

⁴³*Id.*

⁴⁴R.C.M., 1947, § 15-2236. This latter provision is new, and is probably required by the constitutional provisions with respect to cumulative voting for directors.

⁴⁵R.C.M., 1947, § 15-2239.

⁴⁶R.C.M., 1947, § 15-2237.

⁴⁷R.C.M., 1947, § 15-2225. The prior law provided for the adoption of the bylaws and amendment of them by the shareholders with provision for delegation of such power to the board. R.C.M., 1947, § 15-303.

⁴⁸R.C.M., 1947, § 15-2238.

and unrestricted earned surplus.⁴⁹ Under certain conditions they may also declare dividends out of the capital surplus of the corporation, and if the corporation is in the business of exploiting natural resources, then out of depletion reserve, if they so state.⁵⁰ They may also provide for stock dividends paid out of either treasury shares, or authorized but unissued shares based on the unreserved and unrestricted surplus of the corporation.⁵¹ When such shares are issued, then at least part of the issue price of the shares, not less than the aggregate par value, if any, shall be transferred to stated capital.⁵² However, the directors do not have the power, without further authority, to pay stock dividends of one class of stock to holders of another class of stock.⁵³

The directors are liable for assets distributed contrary to the provisions of the Act or any restrictions contained in the articles of incorporation.⁵⁴ However, a director is not liable for such a distribution if he properly dissents, and registers his dissent to the action, or he relies in good faith on certain corporate records.⁵⁵ No action may be brought by a shareholder in the right of the corporation unless he was a record shareholder or holder of a voting trust certificate at the time of the transaction of which he complains, or unless he received his share certificates by operation of law from one who was so situated at the time of the transaction.⁵⁶

The officers of a corporation may be selected by the board of directors at a time and in a manner provided for in the bylaws.⁵⁷ The officers shall consist of a president, one or more vice-presidents, a secretary, and a treasurer, although one person may hold one or more offices except for the offices of president and secretary.⁵⁸ These officers, along with such other officers and agents as prescribed by the bylaws, shall engage in the management of the corporation as provided by the bylaws.⁵⁹ Such officers or agents may be removed by the board of directors whenever, in their opinion, it is in the best interest of the corporation, provided such removal does not conflict with contract rights.⁶⁰

CORPORATION PROPERTY

All or substantially all of the assets of a corporation may be sold, mortgaged, pledged or otherwise disposed of in the manner provided by

⁴⁹R.C.M., 1947, § 15-2240.

⁵⁰R.C.M., 1947, §§ 15-2240, 15-2241.

⁵¹R.C.M., 1947, § 15-2240.

⁵²*Id.*

⁵³*Id.*

⁵⁴R.C.M., 1947, § 15-2242.

⁵⁵*Id.*

⁵⁶R.C.M., 1947, § 15-2243.

⁵⁷R.C.M., 1947, § 15-2244.

⁵⁸*Id.*

⁵⁹*Id.*

⁶⁰R.C.M., 1947, § 15-2245.

the board of directors, without further authority, if done in the regular course of business of the corporation.⁶¹ However, if not the regular course of business, the board shall adopt a resolution recommending the action, notice shall be given to each shareholder of record and a meeting shall be held to authorize the sale or other disposition of the assets.⁶² Shareholders have the right to dissent with respect to such sale or disposition of assets if not in the usual course of business, or with respect to any merger or consolidation, with respect to all or part of his shares.⁶³ If such a shareholder after dissent makes a proper demand on the corporation within ten days, he is entitled to have his dissenting shares purchased from him in a manner provided by the code.⁶⁴ If he does not so make a demand then he will be bound by the terms of the corporate action.⁶⁵

Two or more corporations, whether domestic or foreign, may merge into one corporation, or consolidate into a new corporation under this Act.⁶⁶ With the exception of a subsidiary corporation, owned at least 95% by the parent, approval of the stockholder must be obtained for such merger or consolidation.⁶⁷ Upon approval of the shareholders, articles of merger or articles of consolidation will be filed with the Secretary of State, and if the secretary finds that such articles conform to law and the requisite fees are paid he shall issue a certificate of merger or consolidation, as the case may be, to the corporation.⁶⁸ The new, or surviving corporation will have all of the rights and privileges as well as the duties and liabilities of both of the prior corporations, provided that it shall not have more powers than a domestic corporation if it merges into or consolidates with a foreign corporation.⁶⁹

FOREIGN CORPORATIONS

No foreign corporation shall have the right to transact business in this state until it shall have procured a certificate of authority from the Secretary of State.⁷⁰ A foreign corporation may engage in certain listed activities without doing business in the state within the meaning of the Act.⁷¹ If a foreign corporation wishes to transact business, however, it must apply for a certificate of authority or it will be subject to suit

⁶¹R.C.M., 1947, § 15-2271. Compare with R.C.M., 1947, §§ 15-901 to 15-913.

⁶²R.C.M., 1947, § 15-2272.

⁶³R.C.M., 1947, § 15-2273.

⁶⁴R.C.M., 1947, § 15-2274.

⁶⁵*Id.*

⁶⁶R.C.M., 1947, §§ 15-2265, 15-2266, 15-2268, 15-2270. The exception would be a foreign corporation which could not join under its own statute. Under the prior law there was a need for two or more domestic mining corporations to merge with a foreign corporation. R.C.M., 1947, § 15-1603.

⁶⁷R.C.M., 1947, §§ 15-2268, 15-2267.

⁶⁸R.C.M., 1947, § 15-2268.

⁶⁹R.C.M., 1947, §§ 15-2269, 15-2270.

⁷⁰R.C.M., 1947, § 15-2299.

⁷¹*Id.*

by the attorney general for all fees due during the time it transacted such business, and it may not bring an action to enforce contracts formed pursuant to such business until such certificate is obtained.⁷² Upon the filing of the application for the certificate of authority, if the Secretary of State finds that such application conforms to law and the fees are paid, such certificate shall be issued, and the corporation will thereby be authorized to transact business in this state for those purposes set forth in its application.⁷³ The name of a foreign corporation seeking to qualify to transact business in this state is subject to the same restrictions as domestic corporate names outlined above.⁷⁴ A registered office of the corporation, and a registered agent must be proposed in the application for the certificate.⁷⁵ The registered agent may be either an individual or a domestic corporation, or a foreign corporation authorized to do business in the state.⁷⁶ Service of process upon a foreign corporation is made in the manner provided by the Montana Rules of Civil Procedure.⁷⁷ A foreign corporation which merges with another corporation, or amends its articles, or changes its name or purposes, must file such change with the Secretary of State as provided by the Act.⁷⁸

The certificate of authority of a foreign corporation to transact business in the state may be revoked by the Secretary of State under certain conditions.⁷⁹ Examples of such conditions are: failure to file its annual report, or to pay any fees prescribed by the act, or failure to maintain a registered agent.⁸⁰ A foreign corporation may also voluntarily withdraw from transacting business in the state by obtaining a certificate of withdrawal from the Secretary of State.⁸¹

REPORTS AND DISSOLUTION

Both domestic and foreign corporations authorized to transact business in the state are required to file an annual report.⁸² It must be filed between the first day of January and the first day of March of each year, except for the first annual report of such corporation which shall be in the next succeeding calendar year after the certificate of incorporation or authority was issued.⁸³ A domestic or foreign corporation

⁷²R.C.M., 1947, § 15-22-117. In *Hutterian Brethren of Wolf Creek v. Haas*, 116 F. Supp. 37 (1953), was held that under the prior statutory provision, later compliance would not create a right of action.

⁷³R.C.M., 1947, §§ 15-22-103, 15-22-104, 15-22-105.

⁷⁴R.C.M., 1947, § 15-22-101. See *supra*, notes 8 through 10.

⁷⁵R.C.M., 1947, § 15-22-103.

⁷⁶R.C.M., 1947, § 15-22-106.

⁷⁷R.C.M., 1947, § 15-22-108.

⁷⁸R.C.M., 1947, §§ 15-22-109, 15-22-110, 15-22-111.

⁷⁹R.C.M., 1947, §§ 15-22-114, 15-22-115.

⁸⁰*Id.*

⁸¹R.C.M., 1947, §§ 15-22-112, 15-22-113.

⁸²R.C.M., 1947, §§ 15-22-118, 15-22-119.

⁸³R.C.M., 1947, § 15-22-119.

which has failed to file its annual report within the time required by the Act, and refuses to file it within 30 days after the Secretary of State has mailed a demand that it be filed, will be guilty of a misdemeanor and will be subject to fine of up to \$500.00.⁸⁴ Further, upon certification by the Secretary of State to the Attorney General of such failure to file, the latter shall fine an action in the name of the state against the corporation for its dissolution.⁸⁵ The corporation may avoid such dissolution by filing the annual report and paying such penalty and costs as have accrued and the action shall then abate.⁸⁶

Other causes of involuntary dissolution are such things as the failure to maintain a registered agent or office for a period of thirty days, that the corporation has exceeded or abused its authority or that the corporation procured its certificate through fraud.⁸⁷ The same procedure for dissolution shall apply for these causes as for the failure to file an annual report.⁸⁸ If process cannot be personally had on the agent of the corporation then there is a provision for service by publication.⁸⁹

A corporation may also be voluntarily dissolved by the incorporators, if done before the corporation has commenced business, or by the written consent of all of the shareholders, or by an act of the corporation when so authorized by a vote of the shareholders.⁹⁰ The incorporators may accomplish this within two years of the filing of the articles of incorporation by filing articles of dissolution executed by a majority of the incorporators.⁹¹ Upon the issuance of a certificate of dissolution by the Secretary of State, the existence of the corporation shall cease.⁹² If the dissolution is by consent of the shareholders, or by act of the corporation, then there shall be a filing of a statement of intent to dissolve.⁹³ Upon this filing the corporation shall cease to carry on business except for winding up. However, its existence shall continue until the certificate of dissolution is issued by the Secretary of State or a decree dissolving the corporation has been entered by a court of competent jurisdiction.⁹⁴ After the filing of this statement of intent a corporation shall mail notice to all known creditors. It shall then proceed to discharge its liabilities and to distribute assets and perform other acts of liquidation.⁹⁵ At any time during the liquidation the corporation may apply to a court of competent jurisdiction to place the liquidation under

⁸⁴R.C.M., 1947, § 15-22-125.

⁸⁵R.C.M., 1947, §§ 15-2288, 15-2287.

⁸⁶R.C.M., 1947, § 15-2288.

⁸⁷R.C.M., 1947, § 15-2287.

⁸⁸R.C.M., 1947, § 15-2288.

⁸⁹R.C.M., 1947, § 15-2289.

⁹⁰R.C.M., 1947, §§ 15-2275, 15-2276, 15-2277.

⁹¹R.C.M., 1947, § 15-2275.

⁹²*Id.*

⁹³R.C.M., 1947, § 15-2278.

⁹⁴R.C.M., 1947, § 15-2279.

⁹⁵R.C.M., 1947, § 15-2280.

the supervision of the court. Upon completion of liquidation, articles of dissolution shall be filed with the Secretary of State with a certificate from the State Board of Equalization that all taxes have been paid, and if the Secretary finds that they conform to law and that all fees have been paid, then he shall issue a certificate of dissolution.⁹⁶ Upon the issuance of this certificate, the corporation shall cease to exist except for authorized suits and other proceedings.⁹⁷ At any time preceeding the issuance of the certificate of dissolution, the proceedings may be revoked by consent of the shareholders or by an act of the corporation authorized in a meeting of the shareholders.⁹⁸ A statement of revocation shall then be filed, and upon its filing the corporation may again carry on business.⁹⁹

District courts are given the authority to liquidate the assets and business of a corporation under certain circumstances in an action brought by a shareholder, by a creditor, by the corporation itself, or by the Attorney General as an incident to an action for involuntary dissolution.¹⁰⁰ Examples of sufficient cause for an action by a shareholder are: when the directors are deadlocked, the shareholders are unable to break the deadlock and there is irreparable injury to the corporation, or when the directors or others in control of the corporation are acting illegally, or where the shareholders are deadlocked.¹⁰¹ As mentioned above the corporation may apply to the court for liquidation after it has filed its statement of intent to dissolve.¹⁰²

In an action to liquidate, the court has the power to appoint a receiver or receivers with the authority to collect the assets.¹⁰³ Such receivers and the attorneys in the action of liquidation may be compensated out of the assets of the corporation.¹⁰⁴ The court may require all of the creditors of the corporation to file with the clerk of court or the receiver, proof under oath of the validity of their respective claims, allowing them not less than four months to do so.¹⁰⁵ Claims after the period set may be barred by the court.¹⁰⁶ Upon completion of the liquidation, when payment to the creditors and the shareholders to the extent of the assets has been made the court shall enter a decree dissolving the corporation, such decree being filed with the Secretary of State by the clerk of court.¹⁰⁷ Upon the issuance of the decree by the court the existence of the corporation shall cease, subject, however, to the survival

⁹⁶R.C.M., 1947, §§ 15-2286, 15-2285.

⁹⁷R.C.M., 1947, §§ 15-2286, 15-2298.

⁹⁸R.C.M., 1947, §§ 15-2281, 15-2282.

⁹⁹R.C.M., 1947, §§ 15-2283, 15-2284.

¹⁰⁰R.C.M., 1947, § 15-2290.

¹⁰¹*Id.*

¹⁰²R.C.M., 1947, §§ 15-2290, 15-2280.

¹⁰³R.C.M., 1947, § 15-2291.

¹⁰⁴*Id.*

¹⁰⁵R.C.M., 1947, § 15-2293.

¹⁰⁶*Id.*

¹⁰⁷R.C.M., 1947, §§ 15-2295, 15-2296.

of certain remedies after dissolution.¹⁰⁸ The share of the assets of any creditor or shareholder who was unknown, or under disability shall be deposited with the state treasurer.¹⁰⁹ The action to liquidate the assets of the corporation may be discontinued at any time when it is shown that the cause for the liquidation no longer exists.¹¹⁰

MISCELLANEOUS PROVISIONS

Other aspects of the Act, not heretofore discussed deserve mention. There are special provisions with respect to the reacquisition of redeemable shares, and other shares of the corporation.¹¹¹ There are also provisions for reducing the stated capital of a corporation without the cancellation of shares, and for setting up reserves out of earned surplus for certain purposes.¹¹² Inspection of the books of the corporation is much more limited than allowed by the prior law.¹¹³ There is also a provision for assessment of shareholders in certain instances.¹¹⁴

When this Act goes into effect, it will apply to all existing domestic corporations, and foreign corporations qualified to do business in the state.¹¹⁵ With certain exceptions relating to rights acquired under the prior law, the corporations become subject to the provisions of the new Act.¹¹⁶

The Secretary of State is given the power reasonably necessary for him to administer the Act.¹¹⁷ The form of all reports required to be filed in his office shall be prescribed by him.¹¹⁸ A schedule of fees is established for the filing of documents and the issuing of certificates.¹¹⁹ If the Secretary of State does not approve any of the documents delivered to him for filing, he is to give notice of this fact in writing within ten days.¹²⁰ His decision may be appealed to the district court in the County of Lewis and Clark, or the court in the county of the registered office of the corporation for a trial de novo.¹²¹ The court will either sustain the action of the Secretary of State, or direct him to take such action as is proper.¹²²

¹⁰⁸R.C.M., 1947, §§ 15-2295, 15-2298.

¹⁰⁹R.C.M., 1947, § 15-2297.

¹¹⁰R.C.M., 1947, § 15-2294.

¹¹¹R.C.M., 1947, §§ 15-2261, 15-2262.

¹¹²R.C.M., 1947, § 15-2263.

¹¹³R.C.M., 1947, § 15-2246.

¹¹⁴R.C.M., 1947, § 15-22-136.

¹¹⁵R.C.M., 1947, §§ 15-22-136, 15-22-116. Cf. R.C.M., 1947, § 15-22-136 and Attorney General's opinion *supra* note 2.

¹¹⁶*Id.*

¹¹⁷R.C.M., 1947, § 15-22-127.

¹¹⁸R.C.M., 1947, § 15-22-131.

¹¹⁹R.C.M., 1947, §§ 15-22-121, 15-22-122, 15-22-123, 15-22-124.

¹²⁰R.C.M., 1947, § 15-22-129.

¹²¹*Id.*

¹²²*Id.*

THE MAJOR CHANGES

Taken as a whole, the new Act creates a more favorable climate for Montana corporations, and corporations doing business in Montana than did the prior law. Procedures have been clarified and simplified and the law has been made more comprehensive. In general the lines of legal demarcation are more clearly drawn. Although problem areas remain, in general they are of constitutional origin, and thus were beyond the power of the authors of the code to remedy.¹²³

Perhaps the most important change from a procedural standpoint is the elimination of the dual filing requirements of the prior law.¹²⁴ Under the new Act, all of the filing, of whatever kind, will be with the Secretary of State.

Due to increased power in the board of directors, the organization and operation of the internal affairs of the corporation should be simplified. In contrast to the provisions of the prior law, the directors of the corporation will now be endowed with the initial authority to create bylaws, and amend them as needed, without a meeting of the shareholders, and without a special delegation of that authority.¹²⁵ So long as the corporation is engaged in the ordinary course of its business the directors will have the authority to dispose of its property, or to make provisions for its disposal.¹²⁶ Meetings of the shareholders will not be necessary for this purpose. Power is given to provide for meetings of the shareholders to be either within the state, or out of the state if provided for in the bylaws or articles.¹²⁷ Under the prior law the meeting had to be held within the state at the principal place of business of the corporation.¹²⁸ This requirement would tend to discourage public issue corporations from incorporating within the state. There is now statutory authorization for the conduct of certain of the business of the board of directors by committee, while there was none before.¹²⁹

It is important to note that in the formation of corporations under the new Act there are no pre-emptive rights unless granted in the articles of incorporation.¹³⁰ This differs from the prior law.¹³¹

¹²³For example those sections relating to the voting rights of the shares, and provisions for cumulative voting may be of questionable validity in certain respects because of Article XV, Section 4 of the Montana Constitution.

¹²⁴R.C.M., 1947, § 15-112 provided for filing of the articles in counties where real estate was held as well as with the Secretary of State and in the county where the principal office of the corporation was to be located, as provided in R.C.M., 1947, § 15-111.

¹²⁵R.C.M., 1947, § 15-2225 is to be contrasted with R.C.M., 1947, §§ 15-301 to 15-303 of the prior law.

¹²⁶R.C.M., 1947, § 15-2271 is to be contrasted with R.C.M., 1947, §§ 15-901 to 15-913 of the prior law.

¹²⁷R.C.M., 1947, § 15-2226.

¹²⁸R.C.M., 1947, § 15-501 of the prior law.

¹²⁹R.C.M., 1947, § 15-2238.

¹³⁰R.C.M., 1947, § 15-2224.

¹³¹R.C.M., 1947, § 15-801 of the prior law.

CONCLUSION

The new Act is a considerable improvement over what existed before. Its main virtue is its completeness. It provides a basis for many of the practices which were used in the past without any authority in the prior code. This means that the lawyer will be able to advise his clients with greater certainty, to the benefit of both the lawyer and his client.

JAMES A. POORE III.

TABLE OF CORRESPONDING CODE SECTIONS

EXPLANATION

The table provides references from Chapters 1 to 19 (the present law) to Chapter 22 (the new law) of Title 15. The chapter and section headings of the present law are used to indicate the subject matter involved, but the cross-references relate to the subject matter of the respective sections. The omission of a cross reference to Chapter 22 does not indicate a lack of any provision on the subject. It may mean a lack of a section that is directly comparable.

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