Insider Trading, Proxy Solicitation and Take-over Bids under the Canada Corporations Act*

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The recent amendments to the *Canada Corporations Act*,[1] Bill C-4,[2] received Royal Assent on October 7, 1970, and the last of its provisions were proclaimed in force on July 31, 1971.

While the regulations and forms referred to in Bill C-4 had not been formally issued as of the writing of this article, the Department of Consumer and Corporate Affairs had issued an "exposure draft" of these regulations and forms, inviting public comment thereon. These were highly detailed in setting out the requirements for compliance with the Act and corresponded very closely to the Ontario regulations and forms.

Among the amendments under Bill C-4, there are extensive changes and additions to the *Canada Corporations Act* in the areas of Insider Trading, Proxy Solicitation and Take-Over Bids, and it is this subject matter that the present article will attempt to summarize.

While the new amendments are profound insofar as the *Canada Corporations Act* is concerned, many practitioners will not be unfamiliar with either the philosophy or the rules. Indeed, many of the new provisions have been modelled very closely after the *Ontario Securities Act*,[3] which followed the Kimber Report[4] issued in 1965. The Kimber Committee, chaired by John R. Kimber, Q.C., then Chairman of the Ontario Securities Commission, had been appointed by the Attorney General of Ontario in 1963 to review

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* This article was written before the 1970 version of the Revised Statutes of Canada was published, and accordingly the references in the article are to the statutory provisions existing at the time of the writing of the article. (The substance of the changes of Bill C-4 can now be seen in R.S.C. 1970, 1st Supp., c. 10, but the numbering has been changed to relate to the Canada Corporations Act as revised in R.S.C. 1970, c. C-32.)

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[1] R.S.C. 1952, c. 53 as amended.

[2] Now Stat. Can. 1969-70, c. 70.

[3] Stat. Ont. 1966, c. 142, as amended by Stat. Ont. 1967, c. 92.

[4] (Report of the Attorney General's Committee on Securities Legislation in Ontario, Province of Ontario, March 1965).

the working of securities legislation in Ontario in the light of modern business conditions and, in particular, problems of take-over bids, insider trading and the degree of disclosure to shareholders and requirements as to proxy solicitation. The amendments to the *Ontario Securities Act* were supported by amendments to the *Corporations Act*[5] of Ontario.

It is acknowledged in the explanatory notes to Bill C-4 that the purpose of many of the new amendments is to insert into the Act provisions similar to the provisions in these matters contained in securities and corporation legislation in a number of provinces. Ontario having taken the lead in regulating certain kinds of corporate behaviour and trading in securities, it must be welcomed that some effort has been made under the *Canada Corporations Act* to synchronize for federal companies some of the rules applicable thereto. Given the size and vitality of the Ontario securities market, even those who do not welcome the changes will probably recognize a certain inevitability in them. Indeed, since federal and other non-Ontario companies whose shares have been publicly traded in Ontario have had to conform to the requirements of the *Ontario Securities Act* in any event, the new amendments are hardly new in spirit.

Disclosure of Insider Trading and Insider Liability

The Insider Trading amendments,[6] replace the old section 98 of the Act and conform very closely to the provisions of the *Ontario Securities Act.* While the old Section 98 of the *Canada Corporations Act* required a director or officer or any shareholder controlling more than ten per cent of the issued shares of a Company to report details of all purchases and sales by him of the Company's securities, the new sections involve extensive change, procedural as well as substantive. The principal differences are:—

1. The "Insiders" required to report their interests and changes in their interests in the Company's securities have been defined in detail and broadened.

2. The new definition of Insiders relates only to directors, officers and shareholders of "public companies" (defined as companies that have securities outstanding in respect of which a prospectus has been filed or any of whose shares are listed on a

[5] Stat. Ont. 1966, c. 28.
[6] Stat. Can. 1969-70, c. 70, ss. 98 to 98F.

recognized stock exchange in Canada),[7] whereas the old Section 98 required reports from directors, officers or shareholders of federal companies generally.

3. Insider reports are no longer to be filed with the Secretary of the Company nor maintained for inspection of shareholders at the Company's offices. Reports are now to be filed directly with the Department of Consumer and Corporate Affairs who may then make the information and copies available not only to the shareholders but any other person.

4. The directors are no longer obliged, specifically, to disclose to shareholders at each annual meeting the particulars of purchases and sales by Insiders in the preceding period.

5. Insiders, their associates and affiliates as well as any person employed or retained by the Company and the Company's auditors are liable both to shareholders and other persons as well as to the Company where they use confidential information for their own benefit.

The "Insiders" required under Section 98(1)(b) to report their trading are: —

(i) Any director or officer of a public Company,

(ii) Any person who beneficially owns, directly or indirectly, equity shares of a public company carrying more than ten per cent of the voting rights attached to all equity shares for the time being outstanding (excluding those acquired by him as an underwriter for public distribution), or

(iii) Any person who exercises control or direction over equity shares of a public company carrying more than ten per cent of the voting rights attached to all equity shares for the time being outstanding.

"Insiders" are also deemed to include directors or officers of any company that is in itself an Insider, as well as corporations that are controlled by or affiliated with any of the foregoing persons.[8]

"Equity Shares" would include not only common shares and other shares carrying voting rights under all circumstances, but also any share carrying voting rights by reason of the occurrence of any contingency that has occurred and is continuing.[9] Thus, for example, the commonly seen preferred share that is non-voting except where dividends have not been declared for two years would

[7] See Section 98(1)(c).
[8] Section 98(2).
[9] Section 3(1)(ga).

come within the definition of "Equity Shares" if this contingency occurred and, they would continue to be "Equity Shares" as long as such contingency continued.

It should be noted that for purposes of Section 98 to 98F, "Insiders" relates only to directors, officers and shareholders of a "Public Company" and further, that the definition of a "Public Company" in Section 98(1)(c) is not simply "a Company that is not a Private Company" as defined in the present definition section[10] but is limited to a Public Company that has outstanding any of its securities in respect of which a prospectus or document of a similar nature has been filed with and accepted by the Minister under Section 74 or by a public authority under Section 76A, or a public company whose shares are listed for trading on any recognized stock exchange in Canada.[11] The Insider Trading sections of the Act are therefore directed, as a practical matter, to corporations that offer their shares to the public.

A person who was an "Insider" when the Section came into force or who thereafter became an "Insider" must, within ten days following the end of the month when either event occurred, file with the Department of Consumer and Corporate Affairs, a report of his "Insider interests in the securities of the Company", comprising: —

(a) his direct or indirect beneficial ownership of securities of the company, and

(b) the control or direction that he exercises over the "Equity Shares" of the Company.[12]

He is further required to report any changes in his Insider interest within ten days following the end of the month when they occur.[13] Where a company acquires an insider interest in another company, each of the directors and officers of the acquiring company are deemed to have been "Insiders" of the acquired company for six months and are required to file reports.[14] Reports by individuals and companies that include securities owned beneficially by companies they control, subsidiaries or affiliates, will suffice so that the subsidiaries or affiliates need not file separate reports.[15]

The Minister may, if satisfied that in the circumstances of a particular case, there is adequate justification for so doing, grant

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[10] Section 3(1)(k).
[11] See *supra*, n. 7.
[12] Sections 98A(1) and 98A(2).
[13] Section 98A(4).
[14] Section 98A(5).
[15] Sections 98A(6), (7), (8) and (9).

an order of exemption from these provisions and, if the Minister so decides, such order may have retrospective effect.[16]

All reports filed with the Department under Section 98A are to be open to public inspection during ordinary business hours,[17] and the Minister may, upon payment of the fee prescribed by the regulations, provide any person with a copy of such documents.[18] The Minister may further summarize in a monthly periodical the information contained in the reports filed as well as any exemptions granted by him.[19]

In addition to penal prosecution for failure to file a report or filing a false or misleading report [20], the Minister may apply to the Chief Justice or Acting Chief Justice of the Court of the Province where a company has its head office for an Order requiring compliance,[21] however, the Order so made is subject to appeal by any interested person.[22]

The liability of "Insiders" for using confidential information to their own advantage is, again, very closely modelled after the *Ontario Securities Act*. The liability attaches not only to the "Insider" himself but also to every person employed or retained by the Company, its auditor as well as every "associate or affiliate" of the "Insider".[23] "Associates" are defined to include spouses, sons and daughters of the "Insider"; partnerships in which the "Insider" is a partner; trusts or estates in which he has a substantial interest or serves as trustee; any relative of the "Insider" or relative or his spouse if that relative has the same home; and any Company of which the "Insider" beneficially owns, directly or indirectly, equity shares carrying more than ten per cent of the voting rights.[24] This casts a very broad net and would encompass not only directors and officers but all other employees of the company as well as all consultants, attorneys, auditors and agents retained by the company. It is of interest to note that a spouse, son or daughter of an "Insider" is automatically classed as an "Insider", while any other relative must share the same home to be so.

Liability is engaged by any of such persons who, in connection with a transaction relating to the securities of the company, makes

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[16] Section 98A(10).
[17] Section 98B(1).
[18] Section 98B(2).
[19] Section 98B(3).
[20] Sections 98C(1), (2) and (3).
[21] Section 98C(5).
[22] Section 98C(6).
[23] Section 98D.
[24] Section 98(1)(a).

use of any specific confidential information for his own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of the securities of the company. He 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 ought reasonably to have been known to such person. In addition, he is accountable to the company for any direct benefit received or receivable by him as a result of the transaction.[25]

For purposes of Section 98D, every director or officer of any other company that becomes an "Insider" of a company shall be deemed to have been an "Insider" for six months.[26] Action to enforce the liability is limited to two years after the date of completion of the transaction, or if the transaction is one which is required to be reported under Section 98A, two years from the time of reporting in compliance with that Section.[27]

Where any owner of securities of the company or the Minister has reasonable grounds for believing that the company has a cause of action under Section 98D and where the company refuses or fails to commence an action within sixty days after receipt of a written request from such owner of securities or fails to prosecute an action diligently, application may be made to the Chief Justice or Acting Chief Justice of the Court of the province in which the Head Office is situated for an Order directing that an action be commenced or continued by the director of the Corporations Branch in the name and on behalf of the Company to enforce the liability under Section 98D.[28]

Finally, Section 98F prohibits an "Insider" of a company from knowingly selling securities he does not own, or, if he owns them, from failing to deliver them witnin twenty days of the sale or failing to deposit them in the mails or other usual channels of transportation within five days, unless the "Insider" proves he was unable in good faith to make such delivery or deposit or that to have done so would have caused undue inconvenience or expense. This Section is penal only and does not affect title to the securities.[29] Under Section 98F(2), moreover, an "Insider" is prohibited from knowingly buying, directly or indirectly, any "Put Option" or "Call Option",[30] but this prohibition does not apply to prevent an "Insider" from selling securities in respect of which he holds an option to

[25] Section 98D(1).
[26] Section 98D(3).
[27] Section 98D(2).
[28] Section 98E(1).
[29] Section 98F(5).
[30] As defined in Section 98F(6).

purchase if, immediately after selling short, he exercises his option and carries out the necessary steps to deliver the securities he has sold, and it does not prevent such "Insider" from selling convertible securities if, immediately after selling short, he takes the necessary steps to convert and deliver the securities he has sold.[31]

Proxies and Proxy Solicitation

Prior to the new amendments under Bill C-4, the *Canada Corporations Act* under Section 103(2), contained the simple requirement that at all meetings of shareholders, every shareholder was entitled to give one vote for each share then held by him and such vote could be given in person or by proxy, whether or not such proxy was himself a shareholder. A proxy, of course, is simply an instrument whereby a shareholder entitled to vote at a meeting grants to another person the right to vote on his behalf, and it has long been recognized as an important method by which shareholders can make their views known at shareholders' meetings. A considerable body of case law has accumulated over the years as to the form, use and abuse of proxies, but until recently, there have been few statutory ground rules governing the form and contents of proxies, their duration and revocation, who may solicit them and under what circumstances. Given the ever increasing size of corporations, the number of their shareholders and the increasing gulf, both of distance and information, that separates the management of many large companies from their shareholders, to say nothing of the confusion that can result and sometimes does in a major proxy battle, the necessity for a set of rules and the new amendments contained in Sections 106A to 106I, are more than evident.

Under Section 106B(1), every shareholder who is entitled to vote in person or by proxy at a meeting of shareholders may, by means of a proxy, appoint a person, who need not be a shareholder, as his nominee to attend and act at the meeting in the manner, to the extent and with the power conferred by the proxy, A proxy is defined as, "a completed and executed form of proxy by means of which a shareholder has appointed a person as his nominee to attend and act for him and on his behalf at a meeting of shareholders", and a "form of proxy" is defined as "a written or printed form that, upon completion and execution by or on behalf of a shareholder, becomes a proxy".[32]

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[31] Section 98F(3).
[32] Section 106A(a) and (c).

Section 106B contains a number of rules as to the execution and validity of a proxy. It shall be executed by a shareholder or his attorney authorized in writing or, if the shareholder is a corporation, under its corporate seal or by an officer or attorney thereof duly authorized.[33] It ceases to be valid one year from its date, but in any event, does not confer authority to vote at any meeting other than the meeting in respect of which it is given or any adjournment thereof.[34] It may be revoked in any manner permitted by law and may, in addition, be revoked by instrument, in writing, executed by the shareholder or by his attorney authorized in writing or, if the shareholder is a corporation, under its corporate seal or by an officer or attorney thereof duly authorized, and deposited either at the Head Office of the company at any time up to and including the last business day preceding the date of the meeting or, any adjournment thereof, at which the proxy is to be used, or with the chairman of such meeting on the day of the meeting or adjournment thereof and, upon either of such deposits, the proxy is revoked.[35] The directors may, by resolution, fix a time, not exceeding forty-eight hours (excluding Saturdays and holidays) preceding any meeting or adjourned meeting of shareholders, before which time proxies to be used at that meeting must be deposited with the company or an agent thereof, and this shall be specified in the notice calling the meeting or in the information circular or explanatory memorandum relating thereto.

The requirements as to the necessity for sending forms of proxy to shareholders and contents of the proxy will depend upon the nature of the company.

If the company is a "Private Company" or a "Public Company" that has fewer than fifteen shareholders, the requirements of Sections 106C and 106D(1) regarding the sending and solicitation of proxies and the provisions of Section 106F regarding the form of proxy, will not apply.[36] In such case, it is only required that the proxy, if sent, shall contain the date thereof and state the appointment and name of the nominee. It may contain a revocation of a former proxy and restrictions, limitations or instructions as to the manner in which the shares in respect of which the proxy is given are to be voted or that may be necessary to comply with the law of any jurisdiction in which the shares of the company are held or listed on a stock exchange or with a restriction or

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[33] Section 106B(2).
[34] Section 106B(3).
[35] Section 106B(5).
[36] Section 106E.

limitation as to the number of shares in respect of which the proxy is given.[37]

Where the company is a "Public Company" that has fifteen shareholders or more, there are additional requirements. In the case of a solicitation by and on behalf of management, an "information circular" as prescribed by regulation must accompany the Notice of the meeting, either as an appendix to or as a separate document and must be sent by prepaid mail to each shareholder whose proxy is solicited.[38] In the case of any other solicitation, the person making the solicitation, concurrently with or prior thereto, must deliver or send to each shareholder whose proxy is solicited, a written explanation of the purposes of the solicitation in such form and containing such information as may be prescribed by regulation and known as an "explanatory memorandum".[39] Whether the proxy is solicited by management or otherwise, Section 106F contains detailed requirements as to the contents of the form of proxy including, whether the proxy is solicited on behalf of management, a blank space for dating the form of proxy, an indication that the shareholder has the right to appoint a person to attend and act at the meeting other than the person, if any, designated in the form of proxy, and instructions as to the manner in which such right may be exercised, means whereby the person whose proxy is solicited can specify how his shares shall be voted with respect to each matter or group of related matters identified therein or in the information circular or explanatory memorandum. The proxy may also confer discretionary authority with respect to amendments or variations to matters that may properly come before the meeting if the person soliciting the proxy is not made aware of such variations or amendments within a reasonable time prior to the time of solicitation and if a specific statement is made in the information circular, explanatory memorandum or form of proxy that the proxy confers of such discretionary authority. The information circular, explanatory memorandum or form of proxy must also state that the shares represented by the proxy will be voted or withheld from voting in accordance with any choice that may be specified by the shareholder in the proxy.

Even in the case of a company having fifteen shareholders or more, it is possible, under Section 106E, in particular circumstances, to apply to the Minister for an exemption order from Sections 106C and 106D.

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[37] Section 106B(4).
[38] Section 106D(1)(a).
[39] Section 106D(1)(b).

Finally, any person who has accepted designation as a nominee and fails to comply with the directions of the shareholder granting the proxy is guilty of an offence and liable on summary conviction to a fine not exceeding One Thousand Dollars or to imprisonment not exceeding six months, or both.[40] A person who has been designated as a nominee in a proxy as a result of his solicitation of proxies shall be deemed to have accepted such designation for purposes of such penal sanction.[41]

Section 106G prescribes the procedure to be followed by brokers and other traders in securities with respect to the voting of shares registered in their names but which are not beneficially owned by them. These provisions would apply to "street certificates" or other certificates registered in the names of brokers but beneficially owned by their clients.

Section 106A(d) defines a "registrant" as a person registered or required to be registered to trade in corporate securities under the laws of any jurisdiction.

Section 106G requires that, in the absence of written instructions to the contrary from the beneficial owner, shares of a company that are registered in the name of a registrant or in the name of his nominee that are not beneficially owned by the registrant shall not be voted at any meeting of shareholders of the company unless the registrant forthwith upon the receipt of a copy of the notice of the meeting, financial statements, information circular, explanatory memorandum and any other material sent to shareholders for use in connection with the meeting, sends to the beneficial owner of the shares copies of all such material together with a written request for voting instructions from the beneficial owner stating that if voting instructions are not received at least twenty-four hours prior to the expiry of time within which proxies may be deposited or twenty-four hours prior to the time fixed for the holding of the meeting, as the case may be, a proxy in respect of those shares may be given or the shares otherwise voted at the meeting at the discretion of the registrant.

The registrant who receives written instructions from the beneficial owner is required to vote such shares in accordance with such instructions, or, if requested by the beneficial owner, must give to the beneficial owner or his nominee a proxy enabling the beneficial owner or his nominee to vote any of the shares. There are the usual penal sanctions applicable to any registrant who fails to comply with these rules.

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[40] Section 106F(4).
[41] Section 106F(5).

Section 106H appears to strike a blow for increased corporate democracy and shareholder participation. It enables any ordinary shareholder of the company who is entitled to vote at a meeting of shareholders to submit to the company a notice of any matter that he proposes to raise at a shareholders' meeting, called "a proposal", as well as a statement of such shareholder in not more than two hundred words in support of such proposal. The proposal must be submitted at least ninety days before the last day on which notice of the meeting must be given and, in such event, the company must set forth the proposal in its information circular, identify it in the form of proxy and provide means by which shareholders can make their choice known as to the proposal. The proposal may include nominations for a director or directors of the company if the proposal is submitted by at least ten shareholders holding not less than one-fifth of the issued shares of the company carrying the right to vote.

The company may, however, omit to include the proposal in its information circular and form of proxy, except in the case of a nomination of directors, where it clearly appears that the proposal is primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the company or its directors, or primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes, or where the proposal is not a proper subject for action by shareholders, or relates to the conduct of the ordinary business operations of the company, or where the same proposal has, at the same shareholder's request, been included in the information circular relating to either of the last two annual meetings and the shareholder has failed, without cause, to present the proposal in person or by proxy.

While Section 106H does provide some machinery for increased shareholder participation, its authors have not been fanatic in their quest for shareholder democracy. In excepting matters which, "are not a proper subject for action by shareholders"[42] and those which relate to, "the conduct of the ordinary business operations of the company",[43] there can be a very limited number of matters for shareholders to propose. Most matters of interest to shareholders appear to come within the exceptions.

Where the company asserts that the proposal and any statement in support thereof may be omitted, it must notify the shareholder submitting the proposal of its intentions to omit same within fourteen days after receipt of the proposal and must further

[42] Section 106H(6)(b).
[43] Section 106H(6)(c).

forward a statement of the reasons why the company deems the omission to be proper.

Although the scope of shareholder "proposals" is narrowed by the exceptions which the company can invoke to omit proposals, this must still be considered a step in the right direction. A shareholder is given the right, at the company's expense, and without incurring the personal expense and effort of a proxy solicitation of his own, of sumbitting matters which are the proper subject for action by shareholders to his fellow shareholders.

Take-Over Bids

A company or individual desiring to acquire effective control of a Public Company may proceed in several ways. It can, of course, proceed to purchase such shares as may be obtainable on the market if these shares are listed on a stock exchange or traded over the counter. If any individual or group of shareholders holds any substantial block of shares, it can attempt to come to a private agreement for the purchase of such shares. Finally, and especially in cases where acquisition on the open market or by private agreement is not possible or is uneconomical, it may consider making a general offer to all of the shareholders to purchase all or a given proportion of the issued and outstanding shares of the company at a given price. Such offers or "Take-Over Bids" have become increasingly common with the growth and diversification of business. The spectacular rise of conglomerates and acquisitions generally during the 1960's made Take-Over Bids a very commonplace occurrence. Considering the confusion, disruption and inequity that can result from unregulated Take-Over Bids, it is appropriate that some effort has been made in the new amendments to rationalize the process.

Section 127A (g) defines a Take-Over Bids as, "an offer, or offers, (other than an exempt offer) directly or indirectly, made at approximately the same time to shareholders to purchase such number of equity shares of a company as, together with the offeror's presently own shares, will in the aggregate exceed ten per cent of the outstanding equity shares of the company". Section 127A (b) in defining an "exempt offer", exempts an offer to purchase shares by way of private agreement with individual shareholders and not made to shareholders generally, an offer to purchase shares through the facilities of a recognized stock exchange or over the counter market, and an offer to purchase shares in a Private Company or in a Public Company that has fewer than fifteen shareholders.

Section 127C requires that the Take-Over Bid be sent by prepaid mail to each of the directors and to all of the shareholders of the offeree company resident in Canada and a copy of the Take-Over Bid and all supporting or supplemental material, if any, must forthwith be sent to the Department of Consumer and Corporate Affairs. Section 127F requires that a Take-Over Bid circular shall form part of or accompany the Take-Over Bid and shall contain such information as may be prescribed by the regulations.

Section 127B lays down a series of rules applicable to every Take-Over Bid:—

(a) The period of time within which shares may be deposited pursuant to a Take-Over Bid must be not less than twenty-one days from the date thereof.[44]

(b) Any shares deposited pursuant to the Take-Over Bid must not be taken up and paid for by the offerer until the expiration of ten days from its date.

(c) Any shares deposited pursuant to a Take-Over Bid may be withdrawn by or on behalf of an offeree at any time until the expiration of ten days from its date.

(d) Where a Take-Over Bid is made for less than all of the equity shares of a class owned by offerees, shares deposited pursuant thereto must not be taken up and paid for by an offeror until the expiration of twenty-one days from its date.

(e) Where a Take-Over Bid is made for less than all the equity shares of a class owned by offerees, the period of time within which shares may be deposited pursuant to the Take-Over Bid or any extension thereof must not exceed thirty-five days from the date of the Take-Over Bid.

(f) Where a Take-Over Bid is made for less than all the equity shares of a class owned by the offerees, the shares deposited pursuant to the Take-Over Bid must be taken up and paid for if all the terms and conditions stipulated by the offeror or waived by him have been complied with, within fourteen days after the last day within which such shares may be deposited pursuant thereto.

(g) Where a Take-Over Bid is made for less than all the equity shares and where a greater number of shares is deposited pursuant thereto than the offeror is bound or willing to take up and pay for, the shares taken up by the offeror must be taken up as nearly as may be pro rated, disregarding fractions, according to the number of shares deposited by each offeree.

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[44] Section 127C creates presumption that the Take-Over Bid shall be deemed to have been dated as of the date on which it was sent by prepaid mail.

Where the offeror increases the amount of his bid before its expiration, he is obliged to pay the increased amount to each shareholder whose shares are taken up and paid for pursuant to the Take-Over Bid, whether or not such shares had been taken up prior to increasing his offer.[45] Where an offeror who has made a Take-Over Bid for all the equity shares amends his offer to a bid for less than all the equity shares, the Take-Over Bid is deemed to be for less than all the equity shares.[46] If a greater number of shares is deposited, he would then have to take them up pro rata.

Section 127E requires that where the Take-Over Bid is made for cash, in whole or in part, the offeror must make adequate arrangements to insure that the required funds are available to effect payment in full for all shares that the offeror has offered to purchase.

The Take-Over Bid must contain or be accompanied by a "Take-Over Bid Circular", containing such information as may be prescribed by the regulations.[47]

Where the Board of Directors of the offeree company recommends the acceptance or rejection of the Take-Over Bid by the shareholders, the Directors must send a "Directors' Circular", containing such information as may be prescribed by the regulations, to each of the Directors and to all of the shareholders of the offeree company resident in Canada, with a copy of such Directors' Circular and all supporting and supplementary material to be sent to the Department of Consumer and Corporate Affairs.[48]

Neither the offeror nor the Directors shall make use of any opinion or statement of a solicitor, auditor, accountant, engineer, appraiser or any other person whose profession lends credibility to such statement, in any Take-Over Bid or Directorss' Circular, unless such person has consented in writing to the use of such report, opinion or statement.[49]

Any Take-Over Bid made on behalf of the company must be approved and the delivery thereof authorized by its Directors. Similarly, the contents and delivery of any Directors' Circular must be approved by the Directors of the offeree company.[50]

Any person may at any time apply to the Chief Justice, Acting Chief Justice or Judge designated by either of them, of the Court

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[45] Section 127D(1).
[46] Section 127D(2).
[47] Section 127F.
[48] Section 127G.
[49] Section 127H.
[50] Section 127I.

of the Province in which the Head Office of the offeree company is situated for an Order declaring a Take-Over Bid to be or to have been an exempt offer, and the Judge may, upon such terms and conditions as he may impose, grant such an exemption, if, in the opinion of the Judge, the exemption would not be oppressive to any shareholder or class of shareholders of the company.[51] Ten day's notice of such application must be given to the Minister, and the Minister is thereupon entitled to appear by Counsel and be heard thereon. Any interested person may appeal from any Order grating or refusing an exemption. Applications for exemption and the Orders made thereon are to be published by the Department in a monthly periodical.

Where the Take-Over Bid provides that the consideration for the shares of the offeree company is to be, in whole or in part, securities of any other company, the Take-Over Bid Circular must contain the information prescribed by Section 77 of the *Canada Corporations Act*, namely, the particulars that would be required in a prospectus, modified, as the circumstances require, or as required under the prospectus provisions of the Province or foreign country in which a Take-Over Bid Circular or a document of a similar nature is required for such a Take-Over, as may be described by the regulations. The Take-Over Bid must also contain the particulars of any information known to the offeror that indicates any material change in the financial position or prospects of the company whose securities are offered in exchange for the shares of the offeree company since the date of the latest published interim or annual financial statement of such company.[52]

Section 127L provides fines or imprisonment, or both, for any person that authorizes, permits or acquiesces in any Take-Over Bid that fails to comply with the provisions of the Act or does not contain the information, statements or consents prescribed by regulations or contains any information that is false or misleading with respect to any material fact or omits to state any material fact, the omission of which makes the statements contained therein false or misleading, except in certain cases where the untruth of the statement or the fact of the omission was not known to the person who authorized, permitted or acquiesced in the mailing of the Take-Over Bid Circular or the Directors' Circular and, in the exercise of reasonable diligence, could not have been known to such person.

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[51] Section 127J.
[52] Section 127K.