

1983 BILL 84

First Session, 20th Legislature, 32 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 84

VENCAP EQUITIES ALBERTA ACT

THE MINISTER OF ECONOMIC DEVELOPMENT

First Reading
Second Reading
Committee of the Whole
Third Reading
Royal Assent

Bill 84

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1983

VENCAP EQUITIES ALBERTA ACT

(Assented to , 1983)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Restated articles
of incorporation
prevail

1 If there is a conflict between Schedules 1, 2 and 3 of the restated articles of incorporation of Vencap Equities Alberta Ltd., described in Schedule A to this Act, and the *Business Corporations Act* or any other law, Schedules 1, 2 and 3 of the restated articles of incorporation shall prevail.

*In accordance with section 4(1) of the Interpretation Act,
this Bill comes into force on the date it receives Royal
Assent.*

SCHEDULE A

SCHEDULE 1

The Corporation is authorized to issue: an unlimited number of common shares; an unlimited number of special shares; an unlimited number of class A preferred shares; and an unlimited number of class B preferred shares.

Common shares: There shall be attached to the common shares the following rights, privileges, restrictions and conditions:

3.1 Basic rights: Each common share shall, subject to the provisions set forth in paragraphs 3.2 to 3.13 inclusive of these articles, have attached to it the right:

3.1.1 to vote at all meetings of the shareholders,

3.1.2 to receive any dividend declared by the Corporation, and

3.1.3 to receive the remaining property of the Corporation on dissolution.

3.2 Definition of associated shareholder: Each of several registered holders of common shares or of the persons treated by the Corporation under subsections (2) and (3) of section 47 of the Business Corporations Act (Alberta) as though he were a registered holder of such shares (hereafter referred to as the “constructive registered holder”) or of the beneficial owners of such shares is deemed associated with the other or others if:

3.2.1 one is a body corporate of which the other is a director or an officer;

3.2.2 one is a body corporate controlled directly or indirectly by the other;

3.2.3 each of several are bodies corporate controlled directly or indirectly by the same person;

3.2.4 each is bound to a voting trust or pooling arrangement by which common shares issued by the Corporation are required to be voted in specified ways or as directed;

3.2.5 one is a relative of the other or his spouse all or both of whom have the same residence;

3.2.6 each is a member of an unincorporated group of persons or a syndicate or a partnership controlled directly or indirectly by them or any one or several of them; or

- 3.2.7 each of several are associated within the meaning of sub-paragraphs 3.2.1 to 3.2.6 inclusive with the same registered holder or constructive registered holder or beneficial owner of common shares issued by the Corporation;

and each person so deemed associated is, for the purposes of this paragraph 3.2 and of paragraphs 3.3 and 3.4 of these articles read with section 10 in the by-laws, an Associated Shareholder.

- 3.3 Restrictions on voting and dividend rights: The rights attached to a common share by sub-paragraphs 3.1.1 and 3.1.2 of these articles, including the right to participate in any dividend declared by the Corporation, shall cease:

- 3.3.1 if the registered holder of such shares refuses or neglects or fails to provide to the Secretary of the Corporation, within the time period stipulated in the by-laws, a properly completed and signed Declaration of Ownership or Control requested from him under and in accordance with the by-laws;
- 3.3.2 if the constructive registered holder of such shares refuses or neglects or fails to provide to the Secretary of the Corporation, within the time period stipulated in the by-laws, a properly completed and signed Declaration of Ownership or Control requested from him under and in accordance with the by-laws;
- 3.3.3 if the beneficial owner of such shares refuses or neglects or fails to provide to the Secretary of the Corporation, within the time period stipulated in the by-laws, a properly completed and signed Declaration of Ownership or Control requested from him under and in accordance with the by-laws; or
- 3.3.4 if, having provided the Declaration of Ownership or Control aforesaid, the registered or constructive registered holder or the beneficial owner of such shares is given by the Secretary of the Corporation a notice that he or an Associated Shareholder as defined in the by-laws or he and an Associated Shareholder as defined is or are considered by the board of directors of the Corporation to be the beneficial owner or owners of or to control, directly or indirectly, common shares in excess of one per cent (1%) of the total number of common shares issued and outstanding at the time;

and shall not revive until the registered or constructive registered holder or the beneficial owner or each of them, as the case may be, has provided to the Secretary of the Corporation proof satisfactory to the board of directors of the Corporation that neither he nor an Associated Shareholder either alone or to-

gether owns or controls, directly or indirectly, common shares in excess of one percent (1%) of the total number of common shares issued and outstanding at the time.

- 3.4 Divestiture of shares: If, having been provided by the registered or constructive registered holder or beneficial owner of common shares (hereafter referred to as the “Declaring Shareholder”) with a Declaration of Ownership or Control properly completed and signed, the board of directors of the Corporation should be of the opinion that the Declaring Shareholder either alone or together with an Associated Shareholder owns or controls, directly or indirectly, common shares in excess of one per cent (1%) of the total number of common shares issued and outstanding at the time:

- 3.4.1 the Secretary of the Corporation shall, no later than thirty (30) days after the decision by the board of directors of the Corporation, send to the Declaring Shareholder and to the Associated Shareholder a written notice requiring that each or either of them within one (1) year from the date of the notice dispose of that number of the common shares in excess of the percentage aforesaid and advising the Declaring Shareholder and the Associated Shareholder that none of the common shares owned or controlled, directly or indirectly, by either of them shall as from the date of the decision by the board of directors of the Corporation (which date shall be given in the said notice) have the rights to be voted or to receive or to participate in any dividend declared by the Corporation until the Corporation has been given written proof by the Declaring Shareholder and by the Associated Shareholder (which proof shall include the name and address of the person by whom shares have been acquired) that the said disposition has been made to a person who is not an Associated Shareholder;
- 3.4.2 the Corporation shall, upon expiry of the period of one (1) year referred to in sub-paragraph 3.4.1 and for so long as a disposition of common shares has not been effected under the said sub-paragraph 3.4.1, have the right but not the obligation to purchase from the Declaring Shareholder and the Associated Shareholder or either of them and against payment of the weighted average price at which the common shares have traded on Canadian stock exchanges during a period of twenty (20) consecutive trading days ending not more than five (5) trading days prior to the date of a written notice by the Corporation in which the right it has to purchase common shares is exercised, all or any number of the said shares in respect of which a disposition has been required but not made; and

3.4.3 the restrictions set forth in paragraph 3.3 and in sub-paragraph 3.4.1 on the rights to vote or to receive or to participate in any dividend declared by the Corporation shall, notwithstanding that the Corporation has not exercised the right conferred on it by sub-paragraph 3.4.2 or has declined to exercise such right, continue until the Corporation has been provided with proof of the disposition referred to by the said sub-paragraph 3.4.1.

Special shares: There shall be attached to the special shares the following rights, privileges, restrictions and conditions:

3.5 Basic rights: Except as provided in paragraphs 3.6 to 3.9 inclusive of these articles, each special share shall have attached to it all the rights attached to a common share and shall in all respects rank *pari passu* with each common share on a share for share basis.

3.6 Voting rights: The total number of special shares issued and outstanding at the time shall, for so long as the registered holder thereof is Her Majesty the Queen in right of Alberta as represented by the Provincial Treasurer of Alberta from time to time or by such other person or persons as may from time to time be designated by order of the Lieutenant Governor in Council of Alberta, have attached to them a number of votes equal in the aggregate to twenty per cent (20%) of the number of votes which could be cast in a meeting of the shareholders by the holders of all classes of shares (including special shares) entitled to be voted at the meeting whether or not such holders are present at the meeting in person or by proxy or, if bodies corporate, by duly authorized representative.

3.7 Non-application of restrictions: None of the provisions set forth in paragraphs 3.3 or 3.4 of these articles apply to any special share for so long as the registered holder thereof is Her Majesty the Queen in right of Alberta as represented by the Provincial Treasurer of Alberta from time to time or by such other person or persons as may from time to time be designated by order of the Lieutenant Governor in Council of Alberta.

3.8 Conversion right: Each issued and fully paid special share may at any time, at the option of the holder, be converted into one (1) common share. The conversion right herein provided for shall be exercised by notice in writing given to the Secretary of the Corporation accompanied by the certificate or certificates representing the special shares in respect of which the holder thereof desires to exercise such right of conversion and such notice shall be signed by the person registered on the books of the Corporation as the holder of special shares in respect of which such right is being exercised or by his duly authorized delegate or representative or attorney and shall specify the num-

ber of special shares which the holder desires to have converted. The holder shall also pay any governmental or other tax imposed in respect of such transaction. Upon receipt of such notice the Corporation shall issue certificates representing fully paid common shares upon the basis above prescribed and in accordance with the provisions hereof to the holder of the special shares represented by the certificate or certificates accompanying such notice; if less than all the special shares represented by any certificate are to be converted, the holder shall be entitled to receive a new certificate for the special shares representing the shares comprised in the original certificate which are not to be converted.

- 3.9 Protection of conversion right: In the event the common shares are at any time subdivided or consolidated or exchanged (except when special shares are converted into common shares) for a greater or lesser number of shares of the same or another class, or in the event that the common shares are reclassified, appropriate adjustment shall be made in the number of and to the rights and conditions attached to the special shares so as to maintain and preserve the relative numbers and rights of the holders of the shares of each of the said classes. In the event the Corporation is discontinued as a corporation to which the Business Corporations Act (Alberta) applies and is continued under some other law or is amalgamated or merged with another body corporate, or in the event of a sale or lease or exchange of all or substantially all the property of the Corporation other than in the ordinary course of business, each special share shall thereupon or immediately thereafter unless the holders of such shares unanimously waive all the rights hereafter conferred on them be convertible at the option of a holder thereof either into a security of or offered by the continued or amalgamated or merged or successor body corporate, as the case may be, having rights equal or superior to the rights attached to a special share by these articles or into a number of common shares of or offered by the said body corporate equal to the number of common shares of the Corporation to which a holder of special shares would have been entitled had such shares been converted under these articles immediately prior to the continuance or amalgamation or merger or sale or lease or exchange of all or substantially all the property of the Corporation. No subdivision or consolidation or exchange or reclassification or discontinuance and continuance or amalgamation or merger or sale or lease or exchange of all or substantially all the property of the Corporation shall be proposed or approved unless in the reasonable opinion of the board of directors of the Corporation all the necessary steps required to give effect to the provisions of this paragraph 3.9, so as to ensure that the rights thereby conferred on a holder of special shares are protected, have first been taken; provided that a decision by the board of directors of the

Corporation, made in good faith in reliance on a certificate by the auditor of the Corporation or by any independent firm of chartered accountants (either of whom may be designated by the holders of special shares in a written notice given by the said holders to the Corporation within a reasonable period of time having regard to all the circumstances which then prevail) setting forth the number of shares into which special shares may be converted under the provisions of this paragraph 3.9, shall in the absence of fundamental error be conclusive and binding on the Corporation and on all the holders of special shares.

Class A preferred shares: There shall be attached to the class A preferred shares the following rights, privileges, restrictions and conditions:

3.10 Class A preferred shares shall not have the right to vote except when non-voting shares are expressly given by the Business Corporations Act (Alberta) the right to vote at a meeting of all the shareholders or of the class voting in separate meeting but shall have the right to receive in priority to all other classes of shares:

3.10.1 any dividend declared by the Corporation, and

3.10.2 in the event of dissolution of the Corporation, the amount or amounts fixed by the board of directors of the Corporation under the authority conferred on it by sub-paragraph 3.11.3 of these articles.

3.11 Provided that no priority in respect of dividends or return of capital shall be conferred on a series of class A preferred shares over any other series of shares within the class then outstanding, the class A preferred shares may be issued:

3.11.1 in one or more series designated,

3.11.2 in such unlimited or maximum numbers in each series fixed, and

3.11.3 with such rights, privileges, restrictions and conditions determined,

by the board of directors of the Corporation.

Class B preferred shares: There shall be attached to the class B preferred shares the following rights, privileges, restrictions and conditions:

3.12 Class B preferred shares shall not have the right to vote except when non-voting shares are expressly given by the Business Corporations Act (Alberta) the right to vote at a meeting of all the shareholders or of the class voting in separate meeting; nor, prior to dissolution of the Corporation, shall such shares have the right to receive in priority to any other class of shares any

dividend declared by the Corporation. In the event of dissolution of the Corporation each class B preferred share:

3.12.1 shall be entitled to receive in priority to the common shares and special shares, but not to the class A preferred shares, any unpaid dividends declared in the year of dissolution on the class B preferred shares, and

3.12.2 without prior right thereto shall be restricted to receiving from the remaining property of the Corporation the stated value for a class B preferred share.

3.13 Provided that no priority in respect of dividends or return of capital shall be conferred on a series of class B shares over any other series of shares within the class then outstanding, the class B preferred shares may be issued:

3.13.1 in one or more series designated,

3.13.2 in such unlimited or maximum numbers in each series fixed, and

3.13.3 with such rights, privileges, restrictions and conditions determined,

by the board of directors of the Corporation.

SCHEDULE 2

- 4.1 Restriction on the right to transfer common shares: No common share shall be transferred to or registered in the name of:
- 4.1.1 an individual who, unless ordinarily resident in Canada, is not a Canadian citizen,
 - 4.1.2 a body corporate or a partnership or an association or an organization incorporated or formed or otherwise organized elsewhere than in Canada,
 - 4.1.3 the government of a foreign state or a political subdivision of a foreign state or an agent of either,
 - 4.1.4 a trust established by a person within the prohibitions described in sub-paragraphs 4.1.1 to 4.1.3 inclusive of this paragraph 4.1 other than a trust for the administration of a pension fund for the benefit of individuals a majority of whom are either Canadian citizens or ordinarily resident in Canada,
 - 4.1.5 a body corporate or a partnership or an association or an organization or a trust the directors or partners or management or trustees or membership or beneficiaries of which are or is comprised of a majority of the persons within the prohibitions described in sub-paragraphs 4.1.1 to 4.1.4 inclusive of this paragraph 4.1, or
 - 4.1.6 a body corporate or a partnership or an association or an organization or a trust controlled directly or indirectly by a person within the prohibitions described in sub-paragraphs 4.1.1 to 4.1.5 inclusive of this paragraph 4.1.
- 4.2 Limited rights attached to common shares transferred or registered in contravention of the articles: The rights attached to a common share by sub-paragraphs 3.1.1 and 3.1.2 of these articles, including the right to participate in any dividend declared by the Corporation, shall cease:
- 4.2.1 if the person to whom such shares are transferred or the person who requests that his name be registered in a securities register maintained by or on behalf of the Corporation refuses or neglects or fails to provide to the Secretary of the Corporation, within the time period stipulated in the by-laws, a properly completed and signed Declaration of Ownership or Control requested from him under and in accordance with the by-laws; or
 - 4.2.2 if, having been provided by either of the persons aforesaid (hereafter referred to as the "Declaring Shareholder") with a Declaration of Ownership or Control properly completed and signed, the board of directors of the Corporation should be of the opinion that the Declaring Shareholder is a person to whom or in whose

name common shares may by the provisions of these articles not be transferred or registered;

and shall not revive until either or both the Declaring Shareholder and the person to whom the said common shares have been transferred by the Declaring Shareholder (hereafter referred to as the “transferee”) has or have provided to the Secretary of the Corporation proof satisfactory to the board of directors of the Corporation that the transferee is a person to whom or in whose name such shares may by the provisions of these articles be transferred or registered.

- 4.3 Divestiture of common shares transferred or registered in contravention of the articles: If, having been provided by the Declaring Shareholder with a Declaration of Ownership or Control properly completed and signed, the board of directors of the Corporation should be of the opinion that he is a person to whom or in whose name common shares may by the provisions of these articles not be transferred or registered:

- 4.3.1 the Secretary of the Corporation shall, no later than thirty (30) days after the decision by the board of directors of the Corporation, send to the Declaring Shareholder a written notice requiring that he within one (1) year from the date of the notice dispose of all the said common shares and advising the Declaring Shareholder that none of such common shares shall as from the date of the decision by the board of directors of the Corporation (which date shall be given in the said notice) have the rights to be voted or to receive or to participate in any dividend declared by the Corporation until the Corporation has been given written proof by the Declaring Shareholder that the said disposition has been made to a person to whom or in whose name common shares may by the provisions of these articles be transferred or registered;
- 4.3.2 the Corporation shall, upon expiry of the period of one (1) year referred to in sub-paragraph 4.3.1 and for so long as a disposition of common shares has not been effected under the said sub-paragraph 4.3.1, have the right but not the obligation to purchase from the Declaring Shareholder against payment of the weighted average price at which the common shares have traded on Canadian stock exchanges during a period of twenty (20) consecutive trading days ending not more than five (5) trading days prior to the date of a written notice by the Corporation in which the right it has to purchase common shares is exercised, all or any number of the said shares in respect of which a disposition has been required but not made; and
- 4.3.3 the restrictions set forth in paragraph 4.2 and in sub-paragraph 4.3.1 on the rights to vote or to receive or to participate in any dividend declared by the Corporation shall, notwithstanding that the Corporation has not ex-

exercised the right conferred on it by sub-paragraph 4.3.2 or has declined to exercise such right, continue until the Corporation has been provided with proof of the disposition referred to by the said sub-paragraph 4.3.1.

- 4.4 Restriction on the right to transfer special shares: No special share of the Corporation shall be transferred to or registered in the name of any person other than Her Majesty the Queen in right of Alberta as represented by the Provincial Treasurer of Alberta from time to time or by such other person or persons as may from time to time be designated by order of the Lieutenant Governor in Council of Alberta.

SCHEDULE 3

- 7.1 Definitions: For the purposes of this paragraph and of paragraphs 7.2 and 7.3 unless the context otherwise requires:
- 7.1.1 “investment” means the purchase of debt obligations or shares from, or a loan to, or any other form of financial assistance whether by way of guarantee or otherwise for the benefit of a corporation, other than an affiliate of the Corporation, or a firm or person or group of persons;
 - 7.1.2 “group of persons” means a group comprised exclusively of any combination of two or more persons as hereinafter defined;
 - 7.1.3 “loan” includes deposit;
 - 7.1.4 “person” means a director or an officer of the Corporation, his spouse and child or children;
 - 7.1.5 a director of the Corporation who is also a full time officer or employee of the Corporation is deemed not to be a director of the Corporation;
 - 7.1.6 a person or group of persons has a significant interest in a corporation if in the case of a person he owns beneficially either directly or indirectly more than five per cent (5%), or in the case of a group of persons they together own beneficially either directly or indirectly more than five per cent (5%), of the issued and outstanding voting shares of the corporation; and
 - 7.1.7 when a person or group of persons owns beneficially directly or indirectly a percentage of the voting shares of a corporation, that person or group of persons is deemed to own beneficially the same percentage of the voting shares of any other corporation that are owned beneficially directly or indirectly by the firstmentioned corporation.
- 7.2 Prohibition on loans to directors and others: The Corporation shall not knowingly make an investment
- 7.2.1 by way of a loan to or the provision of financial assistance to or for the benefit of a director or an officer of the Corporation, unless the same shall be part of a bona fide compensation scheme, or to or for the benefit of the spouse or child of such director or officer;
 - 7.2.2 in a corporation in which a person or group of persons has a significant interest; or
 - 7.2.3 in a firm of which a person is a partner.
- 7.3 Restriction on material contracts with directors and others: The Corporation shall not knowingly conclude a material contract for the purchase of services or materials from

- 7.3.1 a person or group of persons;
- 7.3.2 a corporation in which a person or group of persons has a significant interest; or
- 7.3.3 a firm of which a person is a partner;

unless the contract had first been put to public tender and is, in the honest opinion of the board of directors, both reasonable and in the best interests of the Corporation.

- 7.4 Restriction on the issue of common shares: No common share of the Corporation shall be issued to or registered in the name of a person to whom or in whose name such shares are by the provisions set forth in paragraph 4.1 of these articles not permitted to be transferred or registered, and the provisions set forth in paragraphs 4.2 and 4.3 of these articles shall with all necessary modifications apply to the Corporation and to a person to whom such shares are proposed to be or have been issued by or on behalf of the Corporation.
- 7.5 Restriction on the issue of special shares: No special share of the Corporation shall be issued to or registered in the name of any person other than Her Majesty the Queen in right of Alberta as represented by the Provincial Treasurer of Alberta from time to time or by such other person or persons as may from time to time be designated by order of the Lieutenant Governor in Council of Alberta.
- 7.6 Acts of the corporation: The provisions set forth in paragraphs 3.2 to 3.4 inclusive and in paragraphs 4.1 to 4.4 inclusive and in paragraphs 7.4 and 7.5 of these articles, read where appropriate with section 10 in the by-laws, shall apply at all times notwithstanding that any such provisions shall have been rendered operative by some act or omission on the part of the Corporation or its directors or officers or agents.
- 7.7 Special majority requirement: No alteration shall, without the prior written consents of all the holders of special shares, be made to the following provisions: any provision in paragraph 3 or 4 of these articles, paragraphs 7.4 to 7.6 inclusive of these articles, sections 10 or 12.10 or 12.17 in the by-laws and this paragraph 7.7.