

COMPANY LAW

CONTENTS

COMPULSORY ACQUISITIONS

[§12.01]	Introduction	94
[§12.02]	Acquiring Person and Acquisition Offer	94
[§12.03]	Required Acceptance of Offer	94
[§12.04]	Compulsory Sale of Shares	94
[§12.05]	Court Application	95
[§12.06]	Acquisition of Shares	95
[§12.07]	Compulsory Purchase of Shares	95

Chapter 12

Compulsory Acquisitions¹

For further information on this topic, see Chapter 11 of the *British Columbia Company Law Practice Manual*, 2nd edition (Vancouver: CLE).

All legislative sections cited in this chapter and all references to the “BCA” are to the *Business Corporations Act*, S.B.C. 2002, c. 57, as amended, unless otherwise stated.

[§12.01] Introduction

There are several methods, of varying utility and effectiveness, of forcing out a minority shareholder of a company or, to put it another way, of acquiring all the shares of a company when a unanimous agreement of all the shareholders to sell their shares cannot be obtained. These methods can include such things as:

- an amalgamation (for example, minority shareholders would receive redeemable shares in the amalgamated company, which would be promptly redeemed following the amalgamation),
- an arrangement (for example, minority shareholders would have their shares bought out),
- a consolidation of shares, and
- an alteration of share capital so that shares held by minority shareholders would be converted into redeemable shares and promptly redeemed.

Another force-out method is the compulsory acquisition procedure under s. 300. A person makes an offer under a scheme or contract to acquire shares or any class of shares in a company (the “target”, or, to use the terminology of the *BCA*, the “subject company”). If that offer is accepted within four months by the holders of at least 90% of those shares or the shares of that class of shares (other than shares already held by the acquiring person or its affiliate or a nominee of either; referred to here as “controlled shares”) (the shares which are the subject of the offer, less controlled shares, are referred to here as “subject shares”), then the non-accepting holders of the remaining subject shares can be forced to sell to the acquiring person, and they can in turn force the acquiring person to purchase, their subject shares.

¹ **John O.E. Lundell**, QC kindly contributed this chapter in January 2004 and updated it in November 2004 and November 2005.

[§12.02] Acquiring Person and Acquisition Offer

The acquiring person can be any person (s. 300(1)), and can be two or more persons who, directly or indirectly, make an acquisition offer jointly or in concert, or intend to exercise jointly or in concert voting rights attached to shares for which an acquisition offer is made (s. 300(1)).

An “acquisition offer” is an offer made by an acquiring person under a scheme or contract to acquire shares, or any class of shares, of a company (s. 300(1)).

Every acquisition offer for shares of more than one class of shares is deemed to be a separate acquisition offer for shares of each class of shares (s. 300(2)(a)).

[§12.03] Required Acceptance of Offer

The acquisition offer in a compulsory acquisition is to “acquire shares, or any class of shares, of a company”. Each acquisition offer is accepted for the purposes of s. 300 if it is accepted within four months after it is made “regarding the shares, or regarding each class of shares involved” by shareholders holding in the aggregate at least 90% of those shares or of the shares of that class, other than controlled shares (that is, 90% of the subject shares) (s. 300(2)(b)).

[§12.04] Compulsory Sale of Shares

If the acquiring person obtains the necessary acceptances within the four month period, the acquiring person may, within five months after the making of the acquisition offer, send written notices to offerees who did not accept the acquisition offer (referred to here as “non-accepting offerees”) that the acquiring person wants to acquire their shares that were involved in the acquisition offer (a “notice of acquisition”) (s. 300(3)). This notice must be given within five months after making the acquisition offer; it is not tied to when the acquisition offer was accepted for the purposes of the section.

However, s. 300(9) requires the acquiring person to send the notice referred to in that subsection (a “notice of right to require acquisition”) within one month after becoming entitled to send the notice of acquisition, if it has not sent the notice of acquisition under s. 300(3).

If the notice of acquisition is sent under s. 300(3), the acquiring person must purchase and any offeree who receives such notice must sell, all the subject shares of that offeree at the price and on the terms in the acquisition offer, subject to the court ordering otherwise (s. 300(4)).

The acquiring person is not obligated to send the notice of acquisition to non-accepting offerees, and if it does, it is not obligated to send the notice of acquisition to all of them (s. 300(3)). However, if it does wish to acquire the subject shares of a non-accepting offeree, it must send a notice of acquisition to that offeree (s. 300(4)).

[§12.05] Court Application

Any non-accepting offeree who received the notice of acquisition may apply to the court within two months after the date (not the sending) of that notice (s. 300(4)).

On that application, the court may set the price and terms of payment and make consequential orders and give directions (s. 300(5)). The court can also order that the applicant is not required to sell his or her shares to the acquiring person (s. 300(4)).

[§12.06] Acquisition of Shares

If the acquiring person sends a notice of acquisition and the court has not ordered otherwise on an application made by a non-accepting offeree who received a notice of acquisition under s. 300(4) and (5), no earlier than two months after the date (not the sending) of the notice of acquisition or, if such a non-accepting offeree has made an application to court and it is then pending, at any time after that application has been disposed of, the acquiring person must send a copy of the notice of acquisition to the subject company and pay or transfer to the subject company the amount of money or other consideration representing the purchase price payable by the acquiring person for the shares referred to in the notice of acquisition (s. 300(6)).

On receiving the copy of the notice of acquisition and that amount or other consideration, the subject company must register the acquiring person as a shareholder with respect to those shares (s. 300(7)).

No transfer instrument for the shares is required (s. 114(b)).

[§12.07] Compulsory Purchase of Shares

If an acquiring person does not send a notice of acquisition within one month after becoming entitled to do so (that is, within one month after acquiring 90% of the subject shares) to a non-accepting offeree, it must send another written notice to every non-accepting offeree (the notice of right to require acquisition) (s. 300(9)).

The notice of right to require acquisition states that the non-accepting offeree may, within three months after receipt (not sending) of the notice of right to require acquisition, require the acquiring person to acquire the subject shares of the non-accepting offeree (s. 300(9)).

If the non-accepting offeree does so, the acquiring person must acquire those shares for the price and on the terms in the acquisition offer (s. 300(10)). It is not clear what the effect of a court order under s. 300(5) fixing a different price might be.