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BILL 29

A Bill respecting Investment Contracts

HON. MR. MANNING

EDMONTON, ALBERTA
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1957

Explanatory Note

General. This Bill will enact a new Act to be known as "The Investment Contracts Act".

Persons and companies engaged in Alberta in the business of issuing investment contracts now come under The Securities Act 1955. By the nature of the business they do, investment companies and the persons engaged in selling investment contracts are unlike companies and salesmen now falling within the purview of The Securities Act, 1955.

The purpose of this Bill is to exclude the investment contract business from The Securities Act 1955 and to bring it under an Act dealing specifically with investment certificates.

1. Short title.

2. Definitions.

BILL

No. 29 of 1957

An Act respecting Investment Contracts

(Assented to _____, 1957)

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

1. This Act may be cited as "*The Investment Contracts Act*".

Interpretation

2. In this Act,

- (a) "Commission" means the Alberta Securities Commission established under *The Securities Act, 1955*;
- (b) "filed" means filed under this Act;
- (c) "investment contract" means a contract, agreement, certificate, instrument or writing containing an undertaking by an issuer to pay the holder thereof, or his assignee, or personal representative, or other person, a stated or determinable maturity value in cash or its equivalent on a fixed or determinable date and containing optional settlement, cash surrender or loan values prior to or after maturity, the consideration for which consists of payments made or to be made to the issuer in instalments or periodically, or of a single sum, according to a plan fixed by the contract, whether or not the holder is or may be entitled to share in the profits or earnings of, or to receive additional credits or sums from, the issuer, but does not include a contract within the meaning of *The Alberta Insurance Act*;
- (d) "issuer" means any company that offers for sale, sells, makes or enters into investment contracts of its own issue, but does not include an insurer within the meaning of *The Alberta Insurance Act*;
- (e) "prescribed" means prescribed by the regulations;
- (f) "qualified assets" means
 - (i) cash,

3. Prohibits certain dealings in investment contracts without registration.

4. Prescribes official to whom application will be made.

5. Address for service and effect of service thereto.

6. Requirements to register as a salesman. Termination of employment as salesman terminates registration.

- (ii) first mortgages on improved real estate and first mortgages made under *The Dominion Housing Act, 1935*, (Canada), *The National Housing Act, 1938*, (Canada), or the *National Housing Act, 1954*, (Canada), or any amendments thereto,
- (iii) bonds, debentures, stocks and other securities of the classes authorized under the *Canadian and British Insurance Companies Act*, (Canada) for the investments of the funds of companies registered thereunder,
- (iv) real property acquired by foreclosure or in satisfaction of a debt and held for a period of less than seven years, and
- (v) such other investments or securities as may be designated by regulation under this Act;
- (g) "registered" means registered under this Act;
- (h) "Registrar" means the Registrar of the Alberta Securities Commission;
- (i) "regulations" means regulations made under this Act;
- (j) "salesman" means a person employed, appointed or authorized by an issuer to sell investment contracts.

Registration

3. No person shall

- (a) issue an investment contract unless such person is registered as an issuer,
- (b) offer for sale or sell an investment contract unless such person is registered as an issuer or as a salesman of a registered issuer, or
- (c) hold himself out as an issuer or salesman unless such person is registered under this Act.

4. Every application for registration or renewal of registration shall be made to the Commission in writing upon the prescribed form and shall be accompanied by the prescribed fee.

5. Every applicant for registration or renewal of registration shall state in the application an address for service in Alberta, and all notices under this Act or the regulations are sufficiently served for all purposes if delivered or sent by prepaid mail to the latest address for service so stated.

6. (1) No person shall be registered as a salesman unless there has been filed with the Commission a written notice to the Commission from a registered issuer that such person has been employed, appointed or authorized to sell investment contracts issued by such issuer.

7. Alberta Security Commission's powers to grant or refuse registration.

8. Sets out the requirements for registration of an investment company as an issuer of investment certificates.

(2) The termination of the employment, appointment or authorization of a person employed, appointed or authorized to sell investment contracts issued by an issuer that has filed with the Commission a written notice pursuant to subsection (1) operates as a suspension of the registration of such person as a salesman.

7. The Commission may grant registration, or a renewal thereof, to a salesman or issuer, if it is satisfied that the applicant is suitable, and the proposed registration is not for any reason objectionable, but if the Commission, after investigation, is for any reason of the opinion that the applicant should not be registered, it may refuse the application.

8. (1) No company shall be registered under this Act as an issuer, unless

- (a) there has been filed with the Commission
 - (i) a certified copy of the Act, letters patent or other instrument of incorporation of the company,
 - (ii) a certified list of the names and addresses of the executive officers of the company,
 - (iii) a certified copy of the balance sheet of the company as at the close of its last completed fiscal year and the auditor's report thereon, and
 - (iv) copies in duplicate of all forms of investment contracts proposed to be issued by the company for sale in Alberta,
- (b) the company's unimpaired paid-in capital, paid-in surplus and earned surplus, or any one or more of them, amount in the aggregate to five hundred thousand dollars or such lesser amount, not being less than two hundred and fifty thousand dollars, as the Commission may approve,
- (c) arrangements satisfactory to the Commission have been made for the deposit with a trust company, chartered bank or other suitable depository or depositories within Canada of qualified assets approved by the Commission aggregating in amount, when valued as provided in section 21, not less at any time than the amount for which such company, under the terms of its investment contracts, is liable as of such time to pay in cash to the holders of all its investment contracts then outstanding, but in the case of a company that maintains with a trust company, chartered bank or other suitable depository outside Alberta, but within Canada, a deposit or deposits of qualified assets in such an aggregate amount, no further deposit shall be required, and

9. Registrations lapse on 31st day of March, but renewals may be applied for on or before March 21st.

Act will not apply until 31 March, 1958 to issuers presently registered under The Securities Act, 1955.

10. Powers of suspension and cancellation of registration, by the Commission, as well as authority to refuse registration, or to suspend or cancel in specific cases.

11. Power to re-apply for registration after a refusal to register, or after a cancellation or suspension.

12. Matters required to be reported to the Commission by registered issuers, and salesmen.

13. Powers of Commission to require information from applicants or registrants.

(d) the company maintains the reserves specified in section 22.

(2) Subsection (1) does not apply until March 31st 1958 to an issuer registered under *The Securities Act, 1955*, to trade in investment contracts.

(3) The time fixed by subsection (2) may be extended by order of the Lieutenant Governor in Council.

9. Every registration and renewal of registration lapses on the thirty-first day of March, but any registered issuer or salesman desiring renewal of registration may, on or before the twenty-first day of March, make application for renewal of registration upon the prescribed form with the prescribed fee.

10. (1) The Commission may suspend or cancel any registration upon any grounds that would justify refusal to grant registration or renewal of registration.

(2) The Commission may refuse, suspend or cancel the registration of an issuer where it appears to it from the statements and reports filed with it, or from an investigation, inspection or valuation that the issuer will be unable to provide for the payment of its investment contracts at maturity.

11. Notwithstanding any direction, decision, order or ruling of the Commission, a further application may be made upon new or other material, or where it is clear that material circumstances have changed.

12. (1) Every registered issuer shall notify the Commission in writing within five days of

- (a) any change in its address for service,
- (b) any change in its executive officers, and
- (c) the commencement and termination of the employment, appointment or authorization of each of its salesmen.

(2) Every salesman registered under this Act shall notify the Commission in writing of

- (a) any change in his address for service, and
- (b) every commencement and termination of his employment, appointment or authorization by a registered issuer.

13. The Commission may at any time require further information or material to be submitted within a specified time by an applicant for registration or a registered issuer or salesman, and may require verification by affidavit or otherwise of any information or material then or previously submitted.

14. Requiring that the Commission serve notice of any decision, ruling, etc., upon person affected.

15. Grants a right of review to Alberta Securities Commission but no appeal thereafter.

14. A notice of every direction, decision, order or ruling of the Commission granting or refusing to grant registration to or renewing, refusing to renew, suspending, cancelling or changing the registration of any person or company, shall be served upon the applicant or the person or company whose registration is thereby affected, and upon such other person or company as in the opinion of the Commission is primarily affected by the direction, decision, order or ruling, at the address appearing in the application or upon the records of the Commission.

Appeals

15. (1) A notice of every direction, decision, order or ruling of the Commission

(a) granting or refusing to grant registration to or renewing, refusing to renew, suspending, cancelling or changing the registration of any person or company, or

(b) regarding the issuing or offering for sale of any investment contract,

shall be served upon the applicant or the person or company whose registration or business is thereby affected and upon such other person or company as in the opinion of the Commission is primarily affected by the direction, decision, order or ruling, at the address appearing in the application or upon the records of the Commission.

(2) Any person or company upon whom a notice is served under subsection (1) or any other person or company who is primarily affected by any such direction, decision, order or ruling may, by notice in writing served upon the Registrar within thirty days after the mailing of the notice, request a hearing and review by the Commission of the direction, decision, order or ruling.

(3) Where a hearing and review is requested under subsection (2) the Registrar shall serve a notice in writing of the time, place and date thereof to the person or company requesting the hearing and review and to such other person or company as in the opinion of the Commission is primarily affected by the hearing.

(4) Upon the review the Commission may hear any evidence that is in the opinion of the Commission relevant to the review and that is submitted to it by the person or company requesting the review or by any other person or company.

(5) Upon the review the Commission is not bound by legal rules of evidence.

(6) Upon a review the Commission may by order confirm or revoke the direction, decision, order or ruling under review or may make such alteration therein or addition thereto as a majority of the members of the Commission deem proper, and the adjudication of the Commission is final.

16. Requiring that forms of investment contracts to be used by an issuer be filed and accepted for filing by the Commission before being used.

17. Powers of Commission to approve and to require submission to it of matter circulated or used by a registered issuer.

18. Requiring the filing quarterly of financial statements with the Commission.

(7) A notice of the order made upon every review shall be served forthwith upon the person or company requesting the review and to such other person or company as in the opinion of the Commission is primarily affected by such order.

(8) An order of the Commission under subsection (6) is final and there is no appeal therefrom but notwithstanding the order the Commission has power to make any further direction, decision, order or ruling upon new matter or if there is a material change in the circumstances, and every further direction, decision, order or ruling is subject to subsections (1) to (7).

Investment Contracts and Forms

16. (1) A copy in duplicate of each form of investment contract to be issued by the issuer for sale in Alberta shall be filed with the Commission.

(2) No form of investment contract shall be used unless it has been accepted for filing by the Commission and one copy thereof has been returned to the issuer bearing written evidence thereon that it has been accepted by the Commission for filing.

17. (1) No circular, pamphlet, brochure, specimen contract, application form or other document to be used by an issuer or a salesman in connection with the sale of any investment contract shall be used by an issuer or salesman until it has first been submitted to and approved in writing by the Commission.

(2) The Commission may at any time require any issuer or salesman to submit for review any circulars, pamphlets, brochures, specimen contracts, application forms or other documents used by such issuer or salesman in connection with the sale of investment contracts.

Filing of Statements

18. Not later than thirty days after the expiration of each quarterly period ending the thirty-first day of March, the thirtieth day of June, the thirtieth day of September and the thirty-first day of December, every registered issuer shall file with the Commission a statement certified to by its auditor and showing

- (a) the amount on the last day of the quarterly period required by section 22 to be maintained as reserves by the issuer on all outstanding investment contracts,
- (b) all qualified assets on deposit on the last day of the quarterly period last ended with the trust company, chartered bank or other depository or depositories within Canada approved by the Com-

19. Requiring the annual filing of balance sheet and profit and loss statement with the Commission.

20. Requires that an auditor be one acceptable to the Commission.

21. Prescribing the manner of valuating assets for the purpose of the annual balance sheet filed with the Commission.

mission, and the value, when valued as provided in section 21, of such qualified assets as at such date, and

- (c) such other information as the Commission may require.

19. (1) Not later than ninety days after the expiration of its fiscal year, every registered issuer shall file with the Commission a balance sheet and profit and loss statement for such completed fiscal year, certified by two of its directors and reported on by its auditor, and such other financial statements as the Commission may require.

(2) The market value of all securities at the date of the statement shall be noted on the balance sheet.

20. The auditor of an issuer registered under this Act shall be a person or firm acceptable to the Commission.

21. (1) In any statement or balance sheet to be filed with the Commission under this Act, an issuer may value its assets as follows:

- (a) cash, in the amount thereof in lawful money of Canada;
- (b) first mortgages, in the amount of the balance of the principal sum secured thereby together with all unpaid interest accrued thereon;
- (c) bonds, debentures and other evidences of indebtedness having a fixed term and rate of interest, and not in default as to principal or interest, and, in the opinion of the Commission, amply secured,
 - (i) if purchased at par, at the par value,
 - (ii) if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield meantime the effective rate of interest at which the purchase was made, but the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase;
- (d) bonds, debentures and other evidences of indebtedness having a fixed term and rate of interest and in default as to principal or interest, or not amply secured in the opinion of the Commission, at the market value at the date of the statement;
- (e) stocks, at the book value not in excess of the cost to the issuer and in the aggregate not in excess of the aggregate market value at the date of the statement;
- (f) other securities, at the book value but not in excess of the aggregate market value at the date of the statement.

22. Requires the maintenance of reserves and specifies the amount thereof.

23. Prohibits the issuing of investment contracts unless the specified reserves are maintained and the deposit of the assets specified in clause (c) of section 8 are maintained.

24. The Commission's powers to inspect books of issuers and salesmen.

(2) Notwithstanding subsection (1), where any assets consist of securities whose market values are unduly depressed and in respect of which companies registered under the *Canadian and British Insurance Companies Act* (Canada) have been authorized to use values in excess of such market values, such assets may, with the approval of the Commission, be valued as authorized under that Act.

(3) Notwithstanding subsection (1), if it appears to the Commission that the amount secured by mortgage on any parcel of real estate, together with interest due and accrued thereon, is greater than the value of the parcel, or that the parcel is not sufficient for the loan and interest, he may procure an appraisal thereof, and if from the appraised value it appears that such parcel of real estate is not adequate security for the loan and interest, such loan or mortgage shall be valued at an amount not to exceed the appraised value.

Reserves

22. Every registered issuer shall, at all times, maintain reserves for the payment of its outstanding investment contracts that, together with all future payments to be received by it on those investment contracts, or the portions of such future payments still to be applied to reserves, and with accumulations of interest at an assumed rate provided in the contracts, but not to exceed a rate approved by the Commission, will attain the face or maturity value specified in the contracts when due, or the amounts payable in accordance with the terms of the contracts.

23. A registered issuer shall not issue investment contracts for sale in Alberta unless the issuer maintains

- (a) such reserves as are specified in section 22, and
- (b) the deposit or deposits of such assets as are specified in clause (c) of section 8.

Supervision and Inspection

24. (1) The Commission may at any time make or cause to be made an inspection of the books, documents and records of any issuer and of any salesman.

(2) Upon any such inspection, the Commission or its duly authorized representative is entitled to free access to all books of account, cash, securities, documents, bank accounts, vouchers, correspondence and records of every description of the issuer or salesman, and no person shall withhold or destroy, cancel or refuse to furnish any information or thing reasonably required by the Commission for the purposes of the inspection.

25. Requiring yearly publication of list of companies registered under this Act.

26. Specifying authorized investments for investment contract companies.

27. Prohibits officers and agents of issuer dealing in securities on their own account with the issuer.

28. Powers of issuer with respect to real property holdings.

29. Creates offences and prescribes penalties therefor.

25. The Commission shall cause to be published in *The Alberta Gazette* in the month of July of each year a list of companies registered under this Act.

Investments

26. Subject to section 27 and to the regulations, a registered issuer may invest its funds only in investments in which a company registered under the *Canadian and British Insurance Companies Act* (Canada) may invest its funds.

27. (1) No officer, director or employee of an issuer shall directly or indirectly purchase from or sell to the issuer any securities, mortgages or real property in which he has any equitable or legal interest.

(2) No officer, director or employee of an issuer shall traffic or deal directly or indirectly in securities, mortgages or real property being acquired by or sold by the issuer except in the ordinary course of his duties as agent of the company.

28. (1) A registered issuer may acquire and hold for its own use and benefit such real property as is necessary for the transaction of its business and may acquire or hold or construct a building larger than is required for the transaction of its business, and may lease any part of such building not so required.

(2) A registered issuer may acquire and hold such real property as is *bona fide* mortgaged to it by way of security, and any real property acquired for it by foreclosure or in satisfaction of a debt, and may sell, mortgage, lease or otherwise dispose of such real property, but an issuer shall sell any real property acquired by foreclosure or in satisfaction of a debt, within seven years after it has been so acquired.

Offences and Penalties

29. (1) Every person who violates clause (a) of section 3 or section 16 or section 23 is guilty of an offence and liable on summary conviction to a fine of not more than five thousand dollars, and in default of payment to imprisonment for a term not exceeding six months.

(2) A person who violates clause (b) or (c) of section 3 is guilty of an offence and liable on summary conviction to a fine of not more than one thousand dollars, and in default of payment to imprisonment for a term not exceeding three months.

(3) A person who violates any other provision of this Act is guilty of an offence and liable on summary conviction to a fine of not more than one thousand dollars, and in default of payment to imprisonment for a term not exceeding three months.

30. Limits the time within which proceedings may be instituted for offences against this Act and requires that the written consent of the Attorney General be first obtained.

31. Permits the Commission to extend the time for filing of any matter or the making of an application under this Act.

32. Stipulates that the Act is to relate to the business of selling investment contracts and not to isolated sales by individuals not in the course of such business or in the business.

33. Prevents Commission being held out as approving companies or persons registered with it.

34. Provides protection to Commission and its members against actions arising out of performance of their duties.

35. Empowering the making of regulations.

tion to a fine of not more than five hundred dollars, and in default of payment to imprisonment for a term not exceeding one month.

30. No proceedings to recover the penalties provided in section 29 shall be instituted except with the written consent of the Attorney General and within two years after the offence is committed.

Miscellaneous

31. The Commission may extend the time for the filing of any statement, balance sheet or other document, or the making of any application for renewal of registration under this Act.

32. Nothing in this Act prevents the sale of an investment contract by or on behalf of the holder thereof where such sale is not made in the course of continued and successive transactions of like character, or by a person whose usual business is the issuance or sale of investment contracts.

33. No person or company shall make representation, written or oral, that the Commission has in any way passed upon the financial standing or solvency of any issuer registered under this Act or upon the merit of any investment contract.

34. (1) Except with the consent of the Attorney General no action whatever and no proceedings by way of injunction, mandamus, prohibition, or other extraordinary remedy lies or shall be instituted against any person whether in his public or private capacity, or against any company in respect of any act or omission in connection with the administration or carrying out of the provisions of this Act or the regulations, where such a person is a member of the Commission, a representative of the Commission or the Registrar, or where such person or company was proceeding under the written consent of the Attorney General made under this Act.

(2) No person or company has any rights or remedies and no proceedings lie or shall be brought against any person or company in respect of any act or omission of the last mentioned person or company, done or omitted in compliance or intended compliance

(a) with any requirement, order or direction, under this Act, of the Commission or any member thereof, or

(b) with this Act and the regulations.

35. The Lieutenant Governor in Council may make regulations

36. Excludes investment certificates from the operation of The Securities Act, 1955.

37. Coming into force provision.

- (a) prescribing the fees payable upon applications for registration and renewal of registration and any other fees for services in connection with the administration of this Act and the regulations,
- (b) prescribing the forms for use under this Act,
- (c) designating investments or securities as qualified assets within the meaning of this Act, and
- (d) respecting any other matter necessary or advisable to carry out effectively the intent and purpose of this Act.

36. Notwithstanding anything in *The Securities Act, 1955*,

- (a) an investment contract shall be deemed not to be a security, and
- (b) an issuer shall be deemed not to be an investment company within the meaning of that Act.

37. This Act comes into force on the day upon which it is assented to.

THIRD SESSION
THIRTEENTH LEGISLATURE
5 ELIZABETH II
1957

BILL

An Act respecting Investment
Contracts

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. MANNING
