

No. 32

5th Session, 13th Legislature, Alberta
7 Elizabeth II, 1959

BILL 32

A Bill respecting Trust Companies

HON. MR. HOOKE

Explanatory Note

This Bill would enact a new Act to be entitled The Trust Companies Act, 1959, which will replace the present chapter 345 of the Revised Statutes.

The new Act would be much more extensive and complete in regulating trust companies in Alberta. It provides, as does the present Act, for incorporation of provincial trust companies by special Act (but provides a Model Bill therefor); for the office of a Registrar of Trust Companies; and for the amalgamation of trust companies. Thereafter, the new Act goes into much greater detail as to the internal management of trust companies, powers thereof, types of investment allowed, and generally the regulatory and control powers of the Registrar with respect to registration and registered trust companies doing business in Alberta.

1. Short title.

2. Definitions.

BILL

No. 32 of 1959

An Act respecting Trust Companies

(Assented to _____, 1959)

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 Trust Companies Act, 1959*".

Definitions

2. In this Act,

- (a) "by-law" in reference to provincial companies incorporated otherwise than by special Act includes articles of association where that meaning can apply without conflict with *The Companies Act*;
- (b) "chief agency" means the principal office or place of business in Alberta of a company that has its head office out of Alberta;
- (c) "company" means a trust company;
- (d) "extra-provincial company" means a trust company other than one incorporated by or under the laws of the Province;
- (e) "head office" means the place where the chief executive officers of the company transact its business;
- (f) "Minister" means that member of the Executive Council charged with the administration of this Act;
- (g) "paid-up", when applied to any share, means a share on which there remains no liability, actual or contingent, to the issuing company;
- (h) "prescribed" means prescribed by the regulations;
- (i) "provincial company" means a trust company incorporated by or under the laws of the Province;
- (j) "real estate" includes lands, rents and hereditaments, whether freehold or of any other tenure and whether corporeal or incorporeal, and leasehold estates, and any undivided share thereof, and any estate, right or interest therein;
- (k) "registered trust company" means a company registered under this Act;
- (l) "Registrar" means Registrar appointed under this Act;

3. Application of Act.

4. Incorporation.

5. Corporate powers.

6. Provisional directors.

7. Organization of company by provisional directors.

- (m) "special Act" means the Act of the Legislature that incorporated the company;
- (n) "trust company" means a company constituted or operated for the purpose of acting as trustee, bailee, agent, executor, administrator, receiver, liquidator, assignee, guardian of a minor's estate, or committee of a mentally incompetent person's estate.

PART I

TRUST COMPANIES

DIVISION A

3. (1) This Act applies to every trust company within the meaning of this Act.

(2) Sections 4 to 54, except sections 25 and 41, apply only to provincial companies.

(3) With respect to every provincial company formed or incorporated before the commencement of this Act, the provisions of this Act supersede and prevail over any provision of its special Act or other Act of the Legislature, or ordinance of the Northwest Territories, under which or pursuant to which it was incorporated, that is inconsistent or in conflict with this Act.

Incorporation and Organization

4. (1) No trust company shall be incorporated in the Province otherwise than by an Act of the Legislature.

(2) The capital stock of every trust company incorporated after the commencement of this Act, the name of the trust company, the place where its head office is to be situated, the name, place of residence and occupation of each of the provisional directors, shall be declared in the Act of incorporation of every such trust company.

5. (1) A trust company incorporated by Act in the Form set forth in the Schedule is a body corporate by the name contained in its Act of incorporation, capable of exercising all the functions of an incorporated company.

(2) Every such trust company is vested with all the powers, privileges and immunities and is subject to all the liabilities and provisions set forth in this Act.

6. The number of provisional directors shall be not less than five, a majority of whom constitutes a quorum.

7. (1) The provisional directors may, after giving notice thereof by advertisement in one or more newspapers

8. Moneys on shares.

9. Term of office of provisional directors.

10. Capital stock requirement.

11. Qualification of voters.

12. Duties of shareholders at statutory meeting.

13. Registration and commencement of business.

14. Particulars in application.

published at the place where the head office of the company is situate and in *The Alberta Gazette*, open stock books, procure subscriptions of stock, make calls in respect of shares not fully paid up, and do generally whatever may be necessary to organize the company.

(2) Not less than thirty days' notice shall be given of any call, and any notice of call may be effectually given by sending the notice by registered letter to the latest known address of each shareholder as contained in the books of the company.

8. Subject to section 47, the provisional directors may, if they think fit, receive from any shareholder willing to advance the same all or any part of the money due upon the shares held by him beyond the sums actually called for.

9. The provisional directors hold office until directors are elected by the shareholders qualified as hereinafter provided.

10. As soon as not less than two hundred and fifty thousand dollars of the capital stock have been *bona fide* subscribed by at least twenty-five subscribers for the shares of the company, the provisional directors may call a general meeting of the shareholders, herein called the "statutory meeting", to be held at the place named in the Act of incorporation as the head office of the company.

11. At the statutory meeting only a shareholder who has paid in cash not less than ten per cent of the amount of the shares subscribed for by him is qualified to vote.

12. (1) The shareholders so qualified shall, at the statutory meeting,

- (a) determine the day upon which the annual general meeting of the company is to be held,
- (b) elect such number of directors duly qualified under this Act as they think necessary, but not less than five nor more than twenty, a majority of whom constitutes a quorum, except that when the number exceeds thirteen the quorum is seven, and
- (c) appoint an auditor or auditors to hold office until the first annual general meeting.

(2) Upon the election of directors the functions of the provisional directors cease.

13. The company shall not commence business by exercising any of the powers set forth in section 63 unless it has been registered pursuant to this Act.

14. (1) No application for registration shall be made under this Act and no registration shall be made until it has been shown to the satisfaction of the Minister by affidavit or otherwise that

15. Prohibited registrations.

- (a) the board of directors has been duly elected,
 - (b) not less than two hundred and fifty thousand dollars of capital stock have been *bona fide* subscribed and paid in cash,
 - (c) not less than twenty-five persons have subscribed to shares of the company and paid in cash not less in each case than ten per cent of the amount of stock subscribed for by each,
 - (d) the company has at its credit in a chartered bank or treasury branch a sum not less than two hundred and fifty thousand dollars paid in by shareholders on account of their subscriptions in excess of any and all liabilities of the company in connection with or arising out of the incorporation, procuring of subscriptions, organization or otherwise,
 - (e) all other requirements of this Act antecedent to registration have been complied with, and
 - (f) the expenses of incorporation and organization are reasonable.
- (2) The particulars of all liabilities of the company shall be disclosed to the Minister at the time the application for registration is made.

15. (1) No registration shall be made under this Act of a trust company heretofore incorporated by or under the laws of the Province unless the company was registered, otherwise than as an inactive trust company under *The Trust Companies Act*, at the commencement of this Act, or unless the company was incorporated at any time within the two years immediately preceding the commencement of this Act.

(2) Unless application for registration is made within two years after its incorporation or within such extended period not exceeding one year as the Lieutenant Governor in Council allows, a provincial company incorporated within two years before the commencement of this Act or hereafter incorporated shall not be registered under this Act.

(3) Where a provincial company is unable to obtain registration under this Act because of the provisions of subsection (1) or (2), the company's incorporation thereupon ceases to be in force except

- (a) for the purpose of winding up the affairs of the company and returning to the subscribers the amounts paid by them upon the subscribed stock or so much thereof as they may be entitled to, or
- (b) for the purpose of carrying on a business authorized to be carried on by the company under its special Act or pursuant to a general Act under or pursuant to which it was incorporated and its memorandum of association and not being the business of acting as trustee, bailee, agent, executor, administrator, receiver, liquidator, assignee, guard-

16. Annual meeting of shareholders.

17. Special general meeting of shareholders.

ian of a minor's estate, or committee of a mentally incompetent person's estate.

(4) If a provincial company at any time for two consecutive years does not use its corporate powers for the purposes set forth in its special Act or memorandum of association to engage in the actual and *bona fide* operation of a trust company the provincial company shall thereafter not be registered under this Act.

DIVISION B

Internal Regulations

General Meeting of Shareholders

16. (1) A general meeting of the shareholders shall be held at least once in each year for the purpose of considering the financial statement of the company and the election of directors and auditors, and the transaction of such other business as is proper at such general meeting under the law of Alberta and the by-laws of the company.

(2) Notice of the time and place of the holding of the annual general meeting of the shareholders shall be delivered, or shall be sent by post to the address of each shareholder so far as the same is known, or, on request, to his proxy and the notice of the meeting shall be so delivered or sent at least ten days before the time fixed for holding the meeting, and a copy of the financial statement of the company to a date not more than six months before the date of the meeting shall accompany the notice.

17. (1) The directors have the right at any time by resolution of the board passed in that behalf to call a special general meeting of the shareholders for the transaction of any business specified in the resolution.

(2) One-tenth part in value of the shareholders of the company, shall, by requisition delivered to the manager, acting manager, or secretary thereof, have at all times the right to have a special general meeting called by such officer for the transaction of any business specified in the requisition.

(3) Notice of the holding of a special general meeting of the shareholders, specifying the time and place of the meeting and the business to be transacted thereat, shall be delivered or shall be sent by ordinary mail, to the address of each shareholder, so far as the same is known, at least ten days before the day appointed for the meeting.

(4) No other business shall be transacted at any special general meeting unless all the shareholders are present in person or by proxy and unanimously consent thereto.

18. Penalty for failure to give notice of general meeting.

19. Voting power of shareholders.

20. Shareholder's vote by proxy.

21. Minute book.

22. Shareholders may make by-laws.

23. Seal of company.

24. By-laws to be recorded in by-law book.

(5) Before the business of any special general meeting is proceeded with there shall be produced and read a statutory declaration of the manager, acting manager or secretary of the company that the requirements of this section as to notice have been fully complied with.

(6) A copy of the notice so delivered or sent, and of the declaration in relation thereto, shall be entered in the minute book of the company as part of the proceedings of the meeting.

18. Any director or officer wilfully neglecting or omitting to give effect to the requisition mentioned in section 17, or to give the notice of any general meeting required by section 16 or 17, is guilty of an offence.

19. At all meetings of shareholders of the company a shareholder shall have one vote for each share held by him upon which he is not six months in arrear.

20. A shareholder may either vote in person or be represented and vote by a proxy who is a shareholder of the company and not six months in arrear.

21. The transactions of all annual and special general meetings of the company and of all meetings of the board of directors shall be entered in a book to be known as the minute book of the company.

By-laws

22. A meeting of the shareholders, called with due notice thereof, may make such lawful and proper by-laws for the government of the company, not repugnant to this Act or any other law in force in Alberta, as the majority of the shareholders present in person or by proxy deem proper.

23. Every by-law shall be reduced to writing and shall have affixed thereto the seal of the company, and is admissible in evidence without proof of the seal or of the signature or of the official character of the person or persons appearing to have signed the same, and without further proof thereof.

24. (1) The by-laws shall be forthwith recorded in a book to be kept by the company for that purpose and to be known as the "by-law book".

(2) The by-law book shall, without the payment of any fee or charge, be open during business hours for inspection by any shareholder, depositor, debenture holder or holder of a guaranteed investment certificate, by himself or his agent, and any such person may make extracts therefrom.

25. Filing of by-laws with Registrar.

26. Power of directors to amend and repeal by-laws for company.

27. By-laws for particular purposes.

28. Articles of association of trust companies incorporated under The Companies Act.

25. Every company shall deliver to the Registrar within one month after the passing thereof a certified copy of its by-laws and of every repeal, or addition to, or amendment or consolidation thereof.

26. (1) The shareholders in meeting may, by by-law, of which, as proposed, notice shall be given to each shareholder with the notice of the meeting, empower the directors to make, amend and repeal by-laws for the company.

(2) Every such by-law of the directors and every repeal, amendment or re-enactment thereof, unless in the meantime confirmed at a general meeting of the company duly called for that purpose, has force only until the next annual meeting of the company, and in default of confirmation thereat ceases, at and from that time, to have force, and in that case no new by-law to the same or the like effect or re-enactment thereof has any force until confirmed at a general meeting.

(3) The company may, at a general meeting duly called for the purpose or at an annual meeting, repeal, amend, vary or otherwise deal with any by-law passed by the directors, but no act done or right acquired under any by-law is prejudicially affected by any such repeal, amendment, variation, or other dealing.

(4) At a general meeting the shareholders may alter or amend such by-laws, and may confirm the same as so altered and amended.

27. The directors of a company, authorized as provided by section 26, may make by-laws, not repugnant to this Act or any other law in force in Alberta, to regulate

- (a) the allotment and issue of shares, the making of calls thereon, the payment thereof, the issue and registration of certificates of shares, the forfeiture of shares for non-payment, the disposal of forfeited shares and of the proceeds thereof, the transfer of shares, and subject to section 54 the subdivision of existing shares into shares of smaller amount,
- (b) the declaration and payment of dividends,
- (c) subject to section 61, the appointment, functions, duties and removal of agents, officers and servants of the company, and their remuneration,
- (d) the calling of meetings of the directors and the procedure at such meetings, and
- (e) the conduct in all other particulars of the affairs of the company.

28. In the case of a provincial company incorporated otherwise than by special Act, sections 24 to 27 apply, *mutatis mutandis*, to the articles of association of such company.

29. Term of office of directors.

30. Election of directors.

31. Provision in case of failure of election.

32. Interim vacancies.

33. Powers of directors.

34. Election of president and vice-president.

Directors

29. (1) The term of office of the directors of a company shall not exceed two years.

(2) Where the term of office is one year only, the number of directors shall not be less than five.

(3) Where the term of office is two years, the number of directors shall be an even number not less than six, and one-half of the directors shall retire annually at the general meeting in rotation, but shall, if otherwise qualified, be eligible for re-election.

(4) Where the term of office is two years, the first elected directors shall at their first meeting determine by lot which of them will retire at the end of the first year.

30. (1) The election of directors shall be by ballot.

(2) No person is qualified to be a director unless he is of the full age of twenty-one years and a shareholder holding, in his own right, shares of the company, on which at least one thousand dollars has been paid in, and is not in arrear in respect of any call thereon.

(3) The majority of the directors shall at all times be resident in Canada and subjects of Her Majesty by birth or naturalization.

(4) Where more than the prescribed number of non-residents and aliens are elected, a new election shall be held forthwith to fill all the directorships to which aliens or non-residents have been elected, and so on until the number of non-residents or aliens is reduced to the prescribed number.

(5) The remuneration of directors shall be fixed by the shareholders in general meeting.

31. If at any time an election of directors is not held, or does not take effect at the proper time, the company is not thereby dissolved, but the election may take place at any general meeting of the company duly called for that purpose, and the retiring directors shall continue in office until their successors are elected.

32. Vacancies occurring in the board of directors may be filled for the unexpired remainder of the term by the board from among the qualified shareholders of the company.

33. The directors may lawfully exercise all the powers of the company except as to such matters as are directed by law or by the by-laws of the company to be transacted at a general meeting and have not been delegated to the directors by a general meeting as provided by section 26.

34. (1) The shareholders shall elect from among the directors a president and one or more vice-presidents, or the directors if so authorized by the by-laws shall elect from themselves a president and one or more vice-

35. Executive committee.

36. Powers of directors.

37. Doubt as to legality of claims.

presidents, and the directors shall in all things delegated to them act for and in the name of the company, and, subject to subsection (2), the concurrence of a majority of the directors present at any meeting is at all times necessary to any act of the board.

(2) On any question before the board each director is entitled to have one vote, but in the event of an equality of votes the president or presiding officer may have a second or casting vote.

35. (1) The shareholders of a company having more than six directors may, at a general meeting called for the purpose, by resolution of two-thirds of the shareholders present in person or by proxy, authorize the directors to delegate any of their powers to an executive committee consisting of not less than three to be elected by the directors from their number.

(2) A committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed upon them by such resolution or by the directors.

(3) Where directors delegate any of their powers to an executive committee, the powers so delegated shall be stated in writing and entered in the minute book of the company.

36. Subject to this Act and to the special Act constituting the company and to the by-laws of the company, the directors may

- (a) use or cause to be used and affixed the seal of the company, and may affix or cause it to be affixed to any document or paper that in their judgment may require the same,
- (b) make and enforce calls upon the shares of the respective shareholders,
- (c) declare the forfeiture of all shares on which such calls are not paid,
- (d) make any payments and advances of money that they may deem expedient and that are authorized to be made by or on behalf of the company, and enter into all contracts for the execution of the purposes of the company, and for all other matters necessary to the transaction of its affairs,
- (e) generally deal with, sell, exchange, lease and dispose of the lands, property and effects of the company in such manner as they deem expedient and conducive to the benefit of the company,
- (f) do and authorize, assent to or adopt all acts required for the due exercise of any further powers and authorities conferred by the special Act.

37. (1) Where the directors entertain reasonable doubts as to the legality of any claim to or upon any

38. “manager” and “managing director”.

39. Certain persons to furnish security.

40. Liability of directors declaring a dividend when company insolvent.

41. Liability of director.

share, bond, debenture or obligation of a company, or to or upon any dividend, coupon or the proceeds thereof, they may apply to the Supreme Court, stating such doubt, for an order or judgment adjudicating upon such claim and awarding such share, bond, debenture, obligation, dividend, coupon or proceeds to the person legally entitled to the same, and the court may restrain any action or proceeding against the company, or the directors or officers thereof, for the same subject matter, pending the determination of the application.

(2) If the order or judgment of the court is obeyed, the company and the directors and officers are fully protected and indemnified against all actions, claims and demands in respect of the matters in question in such application and the proceedings thereupon.

38. The secretary or treasurer or secretary-treasurer or other officer of the company may be styled "manager", and when the officer is also a director he may be styled "managing director".

39. Every officer or other person appointed to any office in anywise concerning the receipt, safekeeping or proper application of money shall furnish security according to the by-laws of the company and to the satisfaction of the directors for the just and faithful execution of the duties of his office, and any person entrusted with the performance of any other service may be required by the directors to furnish similar security.

40. The directors shall not declare or pay any dividend or bonus when the company is insolvent, or that renders the company insolvent or diminishes its capital, and if any director, present when any such dividend or bonus is declared, forthwith, or if any director then absent, within twenty-four hours after he becomes aware thereof, and is able to do so, enters his written protest against the same, and within eight days thereafter notifies the Registrar in writing of his protest, the director may thereby, but not otherwise, exonerate himself from liability.

41. (1) The directors of a company are jointly and severally liable to its labourers, servants and apprentices for all debts not exceeding one year's wages due for services performed for the company while they are such directors.

- (2) A director is not liable under subsection (1) unless,
- (a) the company has been sued for the debt within one year after it has become due and execution has been returned unsatisfied in whole or in part, or
 - (b) the company has, within that period, gone into liquidation or has been ordered to be wound up and the claim for such debt has been duly filed and proved,

42. Directors demand for unpaid shares of shareholders.

43. Liability of shareholders.

44. Set-off a defence to an action under section 43.

45. Par value of shares.

and unless he is sued for such debt while a director or within one year after he has ceased to be a director.

(3) If execution has so issued the amount recoverable against the director is the amount remaining unsatisfied on the execution.

(4) If the claim for such debt has been proved in liquidation or winding-up proceedings a director, upon payment of the debt, is entitled to any preference that the creditor paid would have been entitled to, and where a judgment has been recovered he is entitled to an assignment of the judgment.

Shares

Calls on Capital Stock

42. (1) The directors may call in and demand from the shareholders the amount unpaid on shares by them subscribed or held, at such times and places and in such payments or instalments as the special Act, or this Act, or the by-laws of the company require or allow, and interest shall accrue upon the amount of any unpaid call from the day appointed for payment thereof.

(2) The demand shall state that in the event of non-payment the shares in respect of which the call was made will be liable to be forfeited.

(3) If after the demand any call is not paid in accordance therewith, the directors, by resolution duly recorded in their minutes, may summarily forfeit any shares whereon such payment is not made, and the same thereupon becomes the property of the company and may be disposed of as, by by-law or otherwise, the company may determine, but such forfeiture does not relieve the shareholder of any liability to the company or to any creditor.

43. Every shareholder, until the whole amount of his shares has been paid up, is individually liable to the creditors of the company to an amount equal to that not paid up thereon, but is not liable to an action therefor by any creditor before an execution against the company has been returned unsatisfied in whole or in part, and the amount due on the execution, but not beyond the amount so unpaid on such shares, is the amount recoverable, with costs, against the shareholder.

44. In any action under section 43 a shareholder may plead by way of defence, in whole or in part, any set-off that he could set up against the company, except a claim for unpaid dividend, or a salary or allowance as a president or a director of the company.

45. The par value of a share of capital stock of a company incorporated after the commencement of this Act shall be any multiple of five dollars but shall not be less than ten dollars and not more than one hundred dollars.

46. Liability of persons holding shares in trust.

47. Right of shareholder to participate in dividends.

48. Restrictions on transfer of shares.

49. Directors consent to transfer of shares.

46. (1) No person holding shares in the company as executor, administrator, guardian, committee of a mentally incompetent person, or trustee of or for any estate, trust or person named in the books of the company as being so represented by him, is personally subject to any liability as a shareholder, but the estate and funds in his hands are liable in like manner and to the same extent as the testator, intestate, ward or person interested in such trust fund would be if living and competent to hold the shares in his own name.

(2) If the trust is for a living person, not under disability, such person also is liable as a shareholder.

(3) If such testator, intestate, ward, mentally incompetent person or person so represented is not named in the books of the company, the executor, administrator, guardian, committee or trustee is personally liable in respect of such shares as if he held them in his own name as owner thereof.

47. (1) Except with the consent of the directors, no payment on account of capital stock shall be made in advance of calls thereon.

(2) In respect of any sum so paid a shareholder is entitled to participate in any dividend declared, but it shall not bear interest and does not constitute a loan to or a debt of the company.

(3) The shareholder is entitled to have any such advance payment credited to him *pro tanto* as against subsequent calls.

48. Subject to section 49, no by-law shall be passed that in any way restricts the right of a holder of paid up shares to transfer the same, but nothing in this section prevents the regulation of the mode of transfer thereof.

49. (1) No transfer of shares, the whole amount whereof has not been paid, shall be made without the consent of the directors.

(2) Where any such transfer is made with the consent of the directors to a person who is not apparently of sufficient means fully to pay up such shares, the directors are, subject to subsection (3), jointly and severally liable to the creditors of the company in the same manner and to the same extent as the transferring shareholder, but for such transfer, would have been.

(3) If any director present when any such transfer is allowed, forthwith, or if any director then absent, within twenty-four hours after he becomes aware of the transfer, and is able to do so, enters his written protest against the transfer, and within eight days thereafter notifies the Registrar in writing of his protest, the director may thereby, but not otherwise, exonerate himself from liability.

50. Lost certificate.

51. Transfer of shares valid only after entry.

52. Transfer of shares.

53. Deposit of foreign probate, letters of administration, etc., with officer of company.

(4) Where a share upon which a call is unpaid is transferred with the consent of the directors, the transferee is liable for the call to the same extent and with the same liability to forfeiture of the share if the call remains unpaid, as if he had been the holder when the call was made, and the transferor remains liable also for the call until it has been paid.

(5) Where the special Act or by-laws of a company confer the power on the directors, they may decline to register a transfer of shares belonging to a shareholder who is indebted to the company.

50. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding one dollar, and on such terms, if any, as to evidence and indemnity as the directors think fit.

51. Unless made by sale under execution or under the order or judgment of a competent court, no transfer of shares is, until entry thereof has been duly made, valid for any purpose whatever, save only as exhibiting the rights of the parties thereto towards each other, and, if absolute, as rendering the transferee and the transferor jointly and severally liable to the company and its creditors until entry thereof has been duly made in the books of the company.

52. (1) The directors may, for the purpose of notifying the person registered therein as owner of such shares, refuse to allow the entry in any such books of a transfer of shares, and in that event shall forthwith give notice to the owner of the application for the entry of the transfer.

(2) The owner may lodge a caveat against the entry of the transfer and thereupon the transfer shall not be made for a period of forty-eight hours.

(3) If no order of a competent court enjoining the entry of the transfer is served upon the company within one week from the giving of the notice or the expiration of the period of forty-eight hours, whichever last expires, the transfer may be entered.

(4) Where a transfer is entered after the proceedings mentioned in this section, the company is, in respect of the shares so transferred, free from liability to a person whose rights are purported to be transferred, but without prejudice to any claim that the transferor may have against the transferee.

53. (1) Where

(a) a transmission of shares or other securities of a company takes place by virtue of any testamentary act or instrument, or in consequence of an intestacy, and

(b) the probate of the will or letters of administration

54. Increase or decrease of capital stock and subdivision of shares.

or document testamentary, or other judicial or official instrument under which the title, whether beneficial or as trustee, or the administration or control of the personal estate of the deceased is claimed to vest, purports to be granted by any court or authority in Canada, or in the Commonwealth, or in any foreign country,

the probate of the will or the letters of administration or the document testamentary or, in the case of a transmission by notarial will in the Province of Quebec, a copy thereof duly certified in accordance with the laws of Quebec, or the other judicial or official instrument, or an authenticated copy thereof or official extract therefrom under the seal of the court or other authority, without any proof of the authenticity of the seal or other proof whatever, shall be produced, and a true copy thereof, together with a declaration in writing showing the nature of the transmission, signed and executed by such one or more of the persons claiming by virtue thereof as the company may require, or, if any such person is a corporation, signed and executed by an officer thereof, shall be deposited with an officer of the company or other person authorized by the directors of the company to receive them.

(2) Such production and deposit is sufficient justification and authority to the directors for paying the amount or value of any dividend, coupon, bond, debenture, deposit, guaranteed investment certificate, obligation or share, or transferring, or consenting to the transfer of any bond, debenture, deposit, guaranteed investment certificate, obligation or share, in pursuance of, and in conformity to such probate, letters of administration or other such document aforesaid.

Increase or Decrease of Capital Stock and Subdivision of Shares

54. (1) The directors of a company may, at any time after ninety per cent of the capital stock of the company has been subscribed and ninety per cent thereof paid in, but not sooner, by by-law provide for the increase of the capital stock to any amount that the directors may consider requisite.

(2) The directors may at any time by by-law provide for the decrease of the capital stock to any amount, not less than two hundred and fifty thousand dollars, that they may consider sufficient.

(3) The by-law shall declare the number and par value of the shares of the stock so increased or decreased and provide for the manner in which they are to be allotted, or the rule or rules by which the allotment is to be made.

(4) The directors may pass a by-law providing upon terms therein stated for the conversion of partly paid up shares into paid up shares or for subdividing shares or altering the par value of shares of its capital stock.

(5) The liability of shareholders to persons who, at the time the stock or shares are so increased, decreased, converted or altered, are creditors of the company remains as though the stock or shares had not been increased, decreased, converted or altered.

(6) Where it is proposed to pass a by-law under this section that will have the effect of increasing or decreasing the capital stock of the company or altering the liability of any holder of such stock, a copy of the proposed by-law shall be delivered to the Registrar and shall not be passed for at least six weeks thereafter.

(7) Before submission of any such by-law to a meeting of shareholders, as provided in subsection (8), such notice shall be given by publication and otherwise as the Registrar directs.

(8) No by-law for, or having the effect of, increasing or decreasing the capital stock of the company, whether such stock is or is not subscribed or issued, or for, or having the effect of, subdividing the shares of the company or altering the par value of such shares, or altering the liability of any holder of such shares, or converting partly paid up shares into paid up shares, has any force or validity until it has been duly adopted and ratified by a vote of shareholders present or represented by proxy at a general meeting of the company duly called for considering the by-law, and holding not less than two-thirds of the issued capital stock of the company represented at such meeting, and has afterwards been confirmed by the Lieutenant Governor in Council.

(9) The Lieutenant Governor in Council may grant such confirmation, if he is satisfied of the *bona fide* character of the changes provided for in the by-law, unless it appears that the confirmation of the by-law would not be in the public interest.

(10) With the consent of the company, evidenced by a resolution of the directors, the changes provided for in any such by-law may be varied or amended by the confirming order in council, and may be made subject to such conditions as the Lieutenant Governor in Council deems proper.

(11) The confirmation by the Lieutenant Governor in Council may be evidenced by a certificate of the Registrar or by a certified copy of the Registrar's certificate in the like manner and with the like effect as provided in sections 87 and 88.

(12) The Registrar's certificate is admissible in evidence as conclusive proof of all matters therein certified or declared, and of the due performance of all matters precedent or preliminary to the granting thereof.

(13) Subject to section 145 this section applies only to provincial companies incorporated after the commencement of this Act.

55. Record books to be kept.

Books

55. (1) Every company having its head office in Alberta shall cause the secretary, or some other officer specially charged with the duty, to keep a book or books wherein shall be kept recorded

- (a) a copy of any Act incorporating the company and the by-laws of the company duly authenticated, and if incorporated by memorandum of association, a copy of the memorandum and of any articles of association of the company,
- (b) the names, post office addresses, so far as known, of all persons who are or have been directors of the company, with the date on which each became and ceased to be a director,
- (c) the names, alphabetically arranged, of all persons who are shareholders of the company,
- (d) the post office address, so far as known, of every such person while he is a shareholder,
- (e) the number of shares held by each shareholder,
- (f) the amounts paid in, and remaining unpaid, on the shares of each shareholder, and
- (g) the date and other particulars of all transfers of shares in the order in which they were made.

(2) The books shall be kept at the head office of the company.

(3) Any director, officer or employee of a company who removes or assists in removing such books from Alberta or who otherwise contravenes the provisions of this section is guilty of an offence and liable to a fine of two hundred dollars.

(4) Upon necessity therefor being shown and adequate assurance given that the books may be inspected within Alberta by any person entitled to do so, after application for inspection to the Registrar, the Lieutenant Governor in Council may relieve any company from the provisions of subsection (2) upon such terms as may be deemed fit.

(5) The books mentioned in subsection (1) shall, without the payment of any fee or charge, be open during business hours for inspection by any shareholder, depositor, debenture holder or holder of a guaranteed investment certificate, by himself, his agent or his personal representative, and any such person may make extracts therefrom.

(6) A company that neglects to keep a book required under subsection (1) is liable to forfeit its registration under this Act.

(7) No auditor, director, officer or servant of the company shall knowingly make or assist in making any untrue entry in any such book or shall refuse or neglect to make any proper entry therein.

(8) Any person violating this section is liable in damages for all loss or injury that any person interested may have sustained thereby.

56. Register of securities.

57. Application of subsections.

58. Property in books of account.

59. After decease, bankruptcy, etc., books to be delivered to company.

60. Books as evidence.

61. Auditors—statement to shareholders.

56. Every company shall keep a register or registers of all securities held by the company.

57. Subsections (6) to (8) of section 55 apply to the registers prescribed by section 56.

58. (1) The books used by any auditor, officer, collector or agent for verifying or recording money received for the company are the property of the company.

(2) Neither an auditor, officer, collector or agent, nor any solicitor, counsel or other person has in or upon these or any other of the books of account or record of the company any ownership or proprietary right or any right of lien.

(3) Any person who, in contravention of this section, withdraws, withholds or detains any of the books referred to in subsection (1) from the possession or control of the directors, or from the receiver or liquidator of the company is guilty of an offence.

59. Where a person who has been but has ceased to be a director, manager, auditor, officer, agent, collector, servant or employee of a company, or any other person unlawfully retains possession of any accounts, books, money, securities, papers, matters or things that are the property of the company, a judge of the Supreme Court or of a district court, on application of the company or any depositor or shareholder therein or of the Minister or Registrar, and upon notice to the person affected, may order that such accounts, books, money, securities, papers, matters and things be forthwith delivered to such person as the judge may direct and in default that the person so retaining possession shall be imprisoned for such period as the judge may direct or until he complies with the direction of the order, and may authorize the sheriff of any judicial district in which the same may be found forthwith to seize and take such accounts, books, money, securities, papers, matters and things and deliver the same to the person to whom they have been directed to be delivered.

60. (1) In any action or proceeding against a company the books mentioned in sections 55 and 56 are admissible in evidence as *prima facie* proof of the facts purported to be thereby stated.

(2) The books of a company are admissible in evidence as *prima facie* proof of the truth of all matters purporting to be therein recorded as between the company and its shareholders, and as between its shareholders.

Audit

61. (1) The accounts of a registered trust company shall be examined at least once in every year and the correctness of the balance sheet shall be ascertained by two or more auditors or a firm of chartered accountants.

(2) The auditors shall be appointed by resolution at an annual general meeting of the company and hold office until the next annual meeting unless previously removed by a resolution of the shareholders in general meeting.

(3) The auditors may be shareholders in the company, but no person is eligible as an auditor who is interested otherwise than as a shareholder in any transaction of the company, and no director, officer or employee of the company is eligible during his continuance in office.

(4) If an appointment of auditors is not made at an annual meeting, the Minister may, on the application of any shareholder of the company, appoint an auditor of the company for the current year, and fix the remuneration, if any, to be paid to him by the company for his services.

(5) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act, and any auditor is eligible for re-appointment.

(6) The directors may, by a two-thirds vote, suspend any auditor for incapacity, misconduct or negligence until the next general meeting of the company, and in the event of suspension shall appoint an auditor *ad interim*.

(7) The remuneration of the auditors shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed to fill any casual vacancy may be fixed by the directors.

(8) Every auditor has right of access at all times to the books and accounts, cash, securities, documents and vouchers of the company, and is entitled to require from the directors and officers of the company such information and explanation as he may require.

(9) The auditors shall, at least once during their term of office, check the cash and verify the securities of the company at the chief office of the company, against the entries in regard thereto in the books of the company, and, should they deem it necessary, shall check and verify in the same manner the cash and securities at any branch or agency.

(10) The auditors shall make a report to the shareholders

- (a) that they have examined the books for the year ending the thirty-first day of December or any day not more than two months prior thereto and have verified the cash, bank balances and securities of the company and stating whether or not their requirements as auditors have been complied with,
- (b) that they have examined the financial statement of the company and that it agrees with the books of the company,
- (c) that after due consideration they have formed an independent opinion as to the position of the company,

62. Financial statement of company to shareholders.

63. Powers conferred on trust companies.

- (d) that with their independent opinion so formed and according to the best of their information and the explanations given them they certify that in their opinion the financial statement sets forth fairly and truly the state of the affairs of the company,
- (e) that all transactions of the company that have come within their notice have been within the powers of the company.

62. (1) Every company shall at least once in every year cause to be prepared a financial statement of its affairs.

(2) The financial statement shall have on the head thereof a printed notice in conspicuous type stating that the statement is the financial statement of the company.

(3) The financial statement shall be attested by the signature of the president or vice-president and the managing director or some other principal officer of the company and shall contain a certificate signed by the auditors reporting as provided in section 61.

(4) A copy of the financial statement shall be mailed or delivered without charge to every shareholder of the company at least ten days before the annual meeting.

(5) A copy of the financial statement shall be mailed or delivered without charge to any debenture holder, holder of guaranteed investment certificate or depositor of the company who requests the same.

DIVISION C

Powers of Company

63. Subject to sections 66 to 68, a provincial company and any other registered trust company that has capacity to do so may,

- (a) take, receive and hold all estates and real and personal property that may be granted, committed, transferred or conveyed to the company with its consent, upon any trust or trusts whatsoever not contrary to law, at any time or times, by any person or persons, body or bodies corporate, or by any court of competent jurisdiction,
- (b) take and receive as trustee or as bailee, upon such terms and for such remuneration as may be agreed upon, deeds, wills, policies of insurance, bonds, debentures or other valuable papers or securities for money, jewelry, plate or other chattel property of any kind, and to guarantee the safekeeping of the same,
- (c) receive and store for safekeeping all kinds of securities and personal property and rent spaces or compartments for the storage of securities or personal property and enter into all legal contracts

64. Purpose and functions of common trust fund.

for regulating the terms and conditions upon which such business will be carried on,

- (d) act generally as attorney or agent for the transaction of business, the management of estates, the collection of loans, rents, interest, dividends, debts, mortgages, debentures, bonds, bills, notes, coupons and other securities for money,
- (e) act as agent for the purpose of issuing or counter-signing certificates of stock, bonds or other obligations of any association or municipal or other corporation, and to receive, invest and manage any sinking fund therefor on such terms as may be agreed upon,
- (f) accept and execute the offices of executor, administrator, trustee, receiver, liquidator, assignee, custodian, trustee in bankruptcy, or of trustee for the benefit of creditors, and of guardian of any minor's estate, or committee of any mentally incompetent person's estate, and to accept the duty of and act generally in the winding up of estates, partnerships, companies and corporations,
- (g) invest any trust money in the hands of the company in any securities in which private trustees may by law invest trust money,
- (h) guarantee any investment made by the company as trustee, agent or otherwise,
- (i) sell, pledge, or mortgage any mortgage or other security, or any other real or personal property held by the company, and make and execute all requisite conveyances and assurances in respect thereof,
- (j) make, enter into, deliver, accept and receive all deeds, conveyances, assurances, transfers, assignments, grants and contracts necessary to carry out the purposes of the company, and promote its objects and business,
- (k) charge, collect and receive all proper remuneration, legal, usual and customary costs, charges and expenses for all such services, duties and trusts.

64. (1) In this section "common trust fund" means a fund maintained by a company in which moneys belonging to various estates and trusts in its care are combined for the purpose of facilitating investment.

(2) Notwithstanding this or any other Act, any provincial company and any other registered trust company that has capacity to do so may, unless the trust instrument otherwise directs, invest trust money in one or more common trust funds of the company and where trust money is held by the company as a co-trustee, the investment thereof in a common trust fund may be made by the company with the consent of its co-trustees whether the co-trustees are individuals or corporations.

65. Provincial company not to take deposits.

(3) The Lieutenant Governor in Council may make regulations with respect to the establishment and operation of common trust funds and the investment of trust money in such funds.

(4) Not more than three years after the date on which a common trust fund is established, and triennially thereafter, the company maintaining the common trust fund shall file and pass an account of its dealings with respect thereto in the office of the district court and a judge thereof on the passing of the account has, subject to this section the same duties and powers as in the case of the passing of executors' accounts.

(5) A company may at any time file and pass in the district court an account of its dealings with a common trust fund for any period of less than three years, but no subsequent accounting shall be for a period of more than three years.

(6) Notwithstanding any other Act or law, a company shall not be required to render an account of its dealings with a common trust fund except as provided in this section or the regulations.

(7) Upon the filing of an account pursuant to this section, the judge of the district court shall appoint a time and place for the passing of the account, and the company shall cause a written notice of the appointment and a copy of the account to be served upon the Registrar at least fourteen days before the day appointed for the passing, and the company shall not be required to give any other notice of the appointment.

(8) For the purposes of any such accounting an account may be filed on the form of audited accounts filed with the Registrar pursuant to the regulation.

(9) Upon the passing of an account pursuant to this section, the Registrar represents all persons having an interest in the funds invested in the common trust fund, but any person having an interest therein has the right at his own expense to appear personally or to be separately represented.

(10) Where an account filed pursuant to this section has been approved by a judge of the district court, that approval, except so far as mistake or fraud is shown, is binding and conclusive upon all interested persons as to all matters shown in the account and as to the company's administration of the common trust fund for the period covered by the account.

(11) The costs of passing an account pursuant to this section shall be charged to principal and income of the common trust fund in such proportions as the judge of the district court thinks proper.

65. A provincial company has no power to take deposits by way of borrowing money.

66. Provincial company's power to receive deposits.

67. Debentures.

68. Money for investment.

69. Liability of company.

66. (1) Subject to section 120 a provincial company and any other registered trust company that has capacity to do so may receive deposits of money repayable upon demand or after notice and may pay interest thereon at such rates and on such terms as the company may from time to time establish, and the company is entitled to retain the interest and profit resulting from the investment or loaning of such deposit money in excess of the amount of interest payable to depositors.

(2) Every company receiving deposits in the manner authorized by subsection (1) shall be deemed to hold the same as trustee for the depositors and to guarantee repayment thereof, and there shall be ear-marked and definitely set aside in respect thereof securities, or cash and securities, equal to the full aggregate amount thereof, and for the purposes of this subsection "cash" includes moneys on deposit and "securities" includes loans made upon securities.

(3) Every company receiving moneys on deposit under this section shall keep a record in the form approved by the Registrar, in which shall be entered all sums so received and the names and addresses, so far as known, of the persons from whom they are received.

67. A provincial company has no power to borrow money by issuing debentures.

68. (1) Subject to section 120, a provincial company and any other registered trust company that has capacity to do so may receive money for the purpose of its being invested by the company, and may guarantee the repayment of money so received, and the payment of the interest thereon at such rate as may be agreed upon on fixed days.

(2) The guarantee by the company shall not be deemed to be a debenture and the money shall not be deemed to be money borrowed by the company by issuing debentures but to be money received in trust, and in such cases, the company is entitled to retain the interest and profits resulting from the investment of such moneys in excess of the amount of interest payable thereon.

(3) Where it is provided by the agreement under which moneys are received by the company for guaranteed investment as mentioned in subsection (1) that specific securities shall be allocated in respect thereof, the specific securities shall be ear-marked and definitely set aside in respect thereof, and in respect of all other moneys received for guaranteed investment as mentioned in subsection (1) there shall be ear-marked and definitely set aside in respect thereof securities, or cash and securities, equal to the full aggregate amount thereof, and for the purposes of this subsection "cash" includes moneys on deposit and "securities" includes loans made upon securities.

69. (1) The liability of a company to persons interested in an estate held by the company as executor, administrator,

70. Reserves required on deposits.

71. General powers of company.

trustee, receiver, liquidator, assignee, guardian, or committee is the same as if the estate had been held by any private person in the like capacity, and the company's powers are the same.

(2) Where a company is authorized to execute the office of executor, administrator, trustee, receiver, liquidator, assignee, guardian or committee, and the Lieutenant Governor in Council approves of the company being accepted as a trust company for the purposes of the Supreme Court, every court or judge having authority to appoint such an officer may, with the consent of the company, appoint the company to exercise any of such offices in respect of any estate or person under the authority of such court or judge, or may grant to the company probate of any will in which the company is named as an executor, but no company that has issued or has authority to issue debentures or debenture stock, or that has received or has authority to receive deposits, except in the manner authorized by this Act, shall be approved.

(3) A company so approved may be appointed to be a sole trustee, notwithstanding that but for this Act it would be necessary to appoint more than one trustee.

(4) A company so approved may be appointed to any of the offices mentioned in subsection (2) jointly with another person.

(5) The appointment may be made whether the trustee is required under any deed, will or document creating a trust or whether the appointment is under *The Trustee Act* or otherwise.

(6) Notwithstanding any rule or practice or any provision of any Act requiring security, it is not necessary for the company to give any security for the due performance of its duty as such executor, administrator, trustee, receiver, liquidator, assignee, guardian or committee unless otherwise ordered.

(7) The Lieutenant Governor in Council may at any time revoke the approval given under this section.

70. Every company shall at all times maintain cash on hand and on deposit, debentures, bonds, stock or other securities of a kind referred to in subsection (3) of section 131 and loans payable on demand and fully secured by such securities, to an aggregate amount of at least twenty per cent of the amount of money deposited with the company in the manner authorized by subsection (1) of section 66.

DIVISION D

General Powers

71. (1) Every company may establish and support or aid in the establishment and support of associations, insti-

72. Extension of business beyond the Province.

73. Reserve fund.

74. Prohibition or limitation of loans upon shares.

75. Company not to lend on own stock.

76. Prohibition against acting as insurance agent.

tutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company, or its predecessors in business, or the dependants or connections of such persons, and to grant pensions and allowances and make payments towards insurance or for any object similar to those set forth in this subsection, and to subscribe or guarantee money for charitable or benevolent objects, or for any exhibition or for any public, general or useful object.

(2) Every provincial company shall be deemed to have possessed since the date of its incorporation the powers set forth in subsection (1) including the power to exercise such powers jointly with any registered trust company, by whatever authority incorporated, possessing the same or similar powers, in such a way as to benefit the employees, or ex-employees, of such companies or predecessors in business of companies or the dependants or connections of such persons.

72. A provincial company, unless it is otherwise expressly provided in the special Act creating it, may exercise its powers beyond Alberta to the extent to which the laws in force where the powers sought to be exercised permit, and may accept extra-provincial powers and rights.

73. A company may maintain a reserve fund out of its earnings or other income not required to meet its present liabilities.

74. (1) A company may pass a by-law prohibiting the loaning to shareholders upon the security of their shares, or, subject to the limitations contained in this section, may pass a by-law fixing the aggregate amount that may be loaned on such shares, and neither of such by-laws shall be repealed until all liabilities of the company are discharged.

(2) Subject to subsection (1), the company may lend upon its own paid up stock to an amount not exceeding at any one time in the aggregate of all such loans ten per cent of the company's paid up stock.

(3) No such loan shall exceed eighty per cent of the market price of the stock.

75. A company shall not, except in the manner provided by section 74, lend on its own shares with or without collateral security.

76. No company, and no director, officer or employee thereof, either personally or on behalf of such company, and no other corporation the majority of the capital stock of which is owned or controlled by such company, its shareholders, directors, officers or employees, shall, either directly or indirectly, transact the business of or act as insurance agent or broker within the meaning of

77. Minors may make deposits.

78. Trusts.

79. Power of attorney by company.

80. Official seal.

The Alberta Insurance Act, or exercise pressure upon any borrower or mortgagor to place insurance for the security of such company, in or through any particular agency or brokerage office; but nothing in this section prevents the company from stipulating in its contract of loan that any required insurance must be effected with an approved insurer.

77. A person not of the full age of twenty-one years may deposit money with a registered trust company in his own name, and the same may be repaid to him, and he may give a valid discharge therefor, notwithstanding his minority.

78. (1) A company is not bound to see to the execution of any trust, whether express, implied or constructive, to which any share of its stock, or any deposit, guaranteed investment certificate or debenture may be subject.

(2) The receipt of the person in whose name any such share, deposit, guaranteed investment certificate or debenture stands in the books of the company is a sufficient discharge to the company for any payment made in respect thereof, and a direction to transfer, signed by the person in whose name any such share, deposit, guaranteed investment certificate or debenture stands in the books of the company, is sufficient authority to the company for any transfer made in respect thereof, notwithstanding any trust to which the same may then be subject and whether the company has or has not had notice of the trust.

(3) A company is not bound to see to the application of the money paid upon such receipt.

79. A provincial company may, by writing under its seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute on its behalf, instruments or deeds to which it is a party in any capacity in any place situate within or without Alberta, and every instrument or deed signed by such attorney, on behalf of the company and under his seal, binds the company and has the same effect as if it were under the seal of the company.

80. (1) A provincial company may have a seal to be known as the "official seal" for use in any territory, district or place not situate in Alberta, which shall be a facsimile of the seal of the company, with the addition on its face of the name of the territory, district or place where it is to be used.

(2) A company having an official seal may, by writing under its seal, authorize any person appointed for the purpose in any territory, district or place not situate in Alberta, to affix the same to any instrument or other document to which the company is party in any capacity in that territory, district or place.

81. Amalgamation, purchase and sale of assets.

82. Application of sections.

83. Directors may make agreement for amalgamation or for purchase or sale of assets.

(3) The person affixing an official seal shall, by writing under his hand, on the instrument or other document to which the seal is affixed, certify the date and place of affixing the same.

(4) An instrument or other document to which an official seal is duly affixed binds the company as if it had been sealed with the seal of the company.

DIVISION E

Amalgamation and Purchase and Sale of Assets

81. A registered trust company may unite, merge, amalgamate and consolidate its stock, property, business and franchises with those of any other trust company in Canada, or may purchase the assets of any trust company in Canada or may sell its assets to any registered trust company, and for the purpose of carrying out such purchase or sale, the purchasing company shall assume the liabilities of the vendor company, and may enter into such bond or agreement of indemnity with the vendor company or the individual shareholders thereof, or both, as may be necessary, and the companies may enter into the agreements necessary to such union, merger, amalgamation, consolidation, sale or purchase.

82. Sections 83 to 91 do not apply to the purchase by a registered extra-provincial company of the assets of a trust company that is not registered under this Act.

83. (1) The directors of a company mentioned in section 81 may enter provisionally into a joint agreement under the seal of each of the companies for the union, merger, amalgamation or consolidation of the companies or for the sale or purchase by the one company of the assets of the other company.

(2) The agreement shall prescribe the terms and conditions of the proposed transaction, and the mode of carrying the same into effect.

(3) Where the two companies are to be merged into one company, the agreement shall specify the name of the new or of the continuing company, and the number of directors and the officers thereof, and shall state who are to be the first directors and officers, the capital stock, the number of shares into which the stock is divided, the par value of the shares and the manner of converting the capital stock of each of the existing companies into that of the new or continuing company.

(4) The agreement shall contain such other details as the directors of the companies deem necessary to perfect the new organization, and the union, merger, amalgamation and consolidation, and the after management and working

84. Proceedings to ratify agreement.

85. Proceedings to dispense with ratification agreement.

86. Ratified agreement to be filed with Registrar.

thereof and to complete the terms and mode of payment for the assets of one company purchased or acquired by the other.

(5) In any agreement for the purchase and sale of assets, the consideration may consist wholly or in part of partly paid or of paid up shares of the capital stock of the purchasing company.

(6) An agreement, or, if no agreement has been entered into but an offer has been made by a company under its seal for the purchase of the assets of another company, the offer, shall be submitted to the shareholders of each company at a meeting thereof to be held separately for the purpose of taking the agreement or the offer into consideration.

(7) Notice of the time and place of the meeting of the company in which he holds shares and the objects thereof shall be given by written or printed notice addressed to every shareholder, together with a copy of the proposed agreement, at his last known post office address, and also by a general notice in a newspaper published at the chief place of business of the company once a week for six successive weeks.

(8) A like notice, together with two copies of the proposed agreement, shall be delivered to the Registrar at least one month before the date of either of the meetings of shareholders called to consider it.

84. At each of the meetings of shareholders the agreement or offer shall be considered, and if at each meeting the agreement or offer is ratified or accepted by resolution passed by at least a three-fourths vote of such shares as are represented in person or by proxy and representing at least fifty per cent of the issued capital stock of the company, that fact shall be certified upon the agreement or offer by the secretary or manager under the seal of the company.

85. The Lieutenant Governor in Council, in the case of a proposed purchase of assets, may dispense with the ratification or acceptance of the agreement or offer by the shareholders of the purchasing company where it is shown to his satisfaction that the shareholders, after due notice thereof, have ratified a general resolution or by-law authorizing the purchase of the assets of the vendor company upon the basis and within the limits specified in such agreement or offer.

86. (1) If the agreement is ratified or the offer is accepted at the meeting of the shareholders of each of the companies, or in the case provided for in section 85 at the meeting of the shareholders of the selling company, the agreement or offer, with the certificates or certificate thereon, shall be filed with the Registrar.

(2) The agreement or offer shall be submitted for the assent of the Lieutenant Governor in Council.

87. Issue of certificate.

88. Evidence of assent of the Lieutenant Governor in Council.

89. Purchase and sale of assets.

(3) If the Lieutenant Governor in Council assents thereto, the agreement or offer shall be deemed to be the agreement and act of union, amalgamation and consolidation of the companies, or the agreement and deed of purchase and acquisition of the assets of the selling company by the purchasing company.

87. (1) Upon proof that the foregoing requirements have been duly complied with the Registrar shall issue a certificate under his hand and seal certifying the assent of the Lieutenant Governor in Council and the date thereof, and declaring the purchase and the sale of the assets and the names of the companies that are parties thereto, or, in the case of amalgamation, declaring the amalgamation of the companies, naming them, and the name of the new or of the continuing company, together with such other matters, if any, as may appear to him necessary or desirable in the public interest.

(2) The certificate of the Registrar shall for all purposes and in all courts be conclusive evidence of all matters therein certified or declared.

(3) The Registrar shall give public notice in *The Alberta Gazette* of the issue of the Registrar's certificate.

(4) A certified copy of the Registrar's certificate may be filed in any land titles office in which lands or interests in lands included or intended to be included in the transfer or amalgamation are registered, and any document under the hand or purporting to be under the hand of the Registrar, certifying the document to be or to contain a true copy of the Registrar's certificate, or of any instrument referred to in the certificate shall be received in the land titles office as proof of all matters therein certified or declared.

(5) For the purpose of any instrument required to be registered or filed under *The Bills of Sale Act* it is sufficient in order to show the transmission of title in respect of any personal property or interest in personal property included or intended to be included in a transfer or amalgamation, such as is mentioned in section 86 and this section, if the instrument affecting such property or interest recites the certificate in like manner as provided in subsection (4).

88. The Registrar may, by a certificate under his hand and seal endorsed upon or identifying the agreement or offer mentioned in subsection (6) of section 83, or any counterpart or copy thereof, certify that the agreement or offer has been assented to by the Lieutenant Governor in Council, and his certificate with a copy of the order in council attached is admissible in evidence as *prima facie* proof of the assent.

89. (1) In the case of a purchase and sale of assets so assented to, the assets of the selling company become

90. Amalgamation of companies.

91. Trusts to pass to new companies.

vested in the purchasing company on and from the date of such assent without any further conveyance, and the purchasing company shall thereupon become and be responsible for the liabilities of the selling company.

(2) In dealing with the assets of the selling company it is sufficient for the purchasing company to recite the agreement and the assent of the Lieutenant Governor in Council thereto, with the date of the assent.

(3) No such transfer affects the rights of any creditor of the transferring company.

(4) By every such agreement made or purporting to be made under this Act the purchasing company shall be deemed to covenant and agree with each creditor of the selling company that the purchasing company will pay to him the sum in which the selling company is indebted to him at such time and place as such sum would have been payable had such agreement not been made.

90. (1) In the case of an amalgamation, the companies that are parties thereto are, from the date of the assent of the Lieutenant Governor in Council, consolidated and amalgamated and merged in and form one company by the name stated in the Registrar's certificate, and, subject to the law of Alberta, possess all the rights, privileges and franchises of each of the amalgamated companies.

(2) From the date of the assent all the business, real and personal property, and all the rights and incidents, appurtenant thereto, all stock, mortgages, or other securities, subscriptions and other debts due, and other things in action belonging to each of the companies are vested in the new or continuing company without further act or deed.

(3) All rights of creditors and liens upon the property of each of the companies are unimpaired by the amalgamation.

(4) All debts, liabilities and duties of each of the amalgamated companies thenceforth attach to the new or continuing company, and may be enforced against it to the same extent as if the same had been incurred or contracted by it.

91. (1) In this section

- (a) "fiduciary" includes trustee, bailee, executor, administrator, assignee, guardian, committee, receiver, liquidator or agent;
- (b) "instrument" includes every will, codicil, or other testamentary document, settlement, instrument of creation, transfer, mortgage, assignment, Act of the Legislature, and a judgment, decree, order, direction and appointment of any court, judge or other constituted authority.

(2) On and from the assent of the Lieutenant Governor in Council, as provided in subsection (1) of section 87,

92. Acquisition by trust company of another company by purchase of shares.

to the purchase and sale, or to the amalgamation, all trusts of every kind and description, including incomplete or inchoate trusts, and every duty assumed by or binding upon either of the companies that are parties to the purchase and sale, or to the amalgamation, are vested in and bind and may be enforced against the purchasing or new or continuing company as fully and effectually as if it had been originally named as the fiduciary in the instrument.

(3) Whenever in any instrument any estate, money or other property, or any interest, possibility or right is intended at the time or times of the publishing, making or signing of the instrument to be thereafter vested in or administered or managed by or put in the charge of the selling company or of either of the amalgamated companies as the fiduciary, the name of the new or continuing company shall be deemed to be substituted for the name of the old company, and such instrument vests the subject matter therein described in the new or continuing company according to the tenor of, and at the time indicated or intended by, the instrument, and the new or continuing company shall be deemed to stand in the place and stead of the old company.

(4) Where the name of the selling company or of either of the amalgamated companies appears as executor, trustee, guardian, or curator in a will or codicil, the will or codicil shall be read, construed and enforced as if the new or continuing company was so named therein, and it has in respect of the will or codicil, the same status and rights as the selling or amalgamating company.

(5) In all probates, administrations, guardianships, curatorships or appointments of administrator or guardian *ad litem* issued or made by any court of Alberta to the selling company or to either of the amalgamated companies, from which at the date of such assent it had not been finally discharged, the new or continuing company shall *ipso facto* be substituted therefor.

92. (1) Without limiting the powers a registered trust company has under section 81, a registered trust company may, for the purpose of acquiring the assets of any company in Canada pursuant to section 81, purchase not less than sixty-seven per cent of the outstanding shares of any such company, subject to the following:

1. No such purchase shall be made unless authorized by the Lieutenant Governor in Council.
2. The Lieutenant Governor in Council may authorize such purchase on the report of the Registrar, supported by evidence that
 - (i) an offer to purchase has been accepted by the holders of at least sixty-seven per cent of the outstanding shares of such company, the evidence of acceptance being in the form of writ-

ten agreements or in the form of a resolution signed by or on behalf of the shareholders voting therefor, in person or by proxy, at a meeting of shareholders duly called to consider the offer, or being partly in one form and partly in the other, and

- (ii) the purchase has been approved by at least a three-fourths vote of such shares as are represented in person or by proxy at a meeting of the shareholders duly called to consider the purchase and representing at least fifty per cent of the issued capital stock of the purchasing company.

3. The power to purchase shares under this subsection is in addition to the powers that a registered trust company has under section 120, and the limitations and conditions contained in section 123 do not apply to any such purchase of shares.

4. Where a company has purchased shares under this section, it shall, under the provisions of section 89, acquire the assets and assume the duties, obligations and liabilities of the other company within a period of two years after the purchase has been authorized by the Lieutenant Governor in Council, but on being satisfied that the circumstances so warrant the Lieutenant Governor in Council may extend that period from time to time, and after the expiration of that period and of any extension thereof, the said shares shall not be allowed as assets of the purchasing company in the annual report prepared by the Registrar for the Minister and the Registrar may direct the company to sell or otherwise absolutely dispose of the shares.

(2) The consideration for the shares acquired under the authority of this section may be cash or shares in the capital stock of the purchasing company or in part cash and in part shares of such purchasing company or such other consideration as may be agreed upon.

(3) Nothing in this section shall be construed as authorizing a company to purchase or acquire its own shares.

(4) Any provisions in any special Act or in any letters patent or memorandum of association by which a purchasing company was incorporated, or in any other statute or law, granting any shareholders or other persons a primary right to an allotment of shares, do not apply to the issue of any shares by the purchasing company for the purposes of subsection (2).

93. Registrar of Trust Companies.

94. Trust Companies Register.

95. Duties of Registrar.

96. Annual report by Registrar.

PART II

REGISTRATION OF TRUST COMPANIES

1. Registrar

93. (1) There shall be a Registrar of Trust Companies who shall be appointed pursuant to *The Public Service Act*.

(2) The Registrar shall perform such duties as are assigned to him by this Act or as may be assigned to him by the Lieutenant Governor in Council or the Minister.

(3) The Minister may, by order, delegate to the Registrar such of the duties and powers of the Minister under this Act as to the Minister seems fit.

(4) The Registrar shall have a seal of office, which shall bear upon its face the words "Registrar of Trust Companies".

94. The Registrar shall keep a register to be called the "Trust Companies Register", wherein shall be entered the names of such companies as are from time to time entitled to registry.

95. (1) The duty of determining, distinguishing and registering the companies that under this Act are required to be registered and are entitled to registry, and of granting registry accordingly, shall devolve upon the Registrar subject to appeal as provided in section 109.

(2) For the purposes of his duties the Registrar may require to be made, or may take and receive affidavits or depositions and may examine witnesses upon oath.

(3) The evidence and proceedings in any matter before the Registrar may be reported by a stenographer who has taken an oath before the Registrar faithfully to report the same.

96. (1) The Registrar shall prepare for the Minister from statements filed by the companies and from any inspection or inquiries made, an annual report, showing particulars of the business of each company as ascertained from such statements, inspection and inquiries, and the report may be printed and published forthwith after completion.

(2) In the report the Registrar shall allow as assets only such of the investments of the several companies as are authorized by this Act or by their Act of incorporation or by the general Acts applicable to such investments.

(3) In the report the Registrar shall make all necessary corrections in the annual statements made by the companies herein provided and is at liberty to increase or diminish the assets or liabilities of the companies to the true and correct amounts thereof as ascertained by him in the ex-

97. Examination and audit of books of account.

98. Special audit.

amination of their affairs at the head office or any branch thereof or otherwise.

(4) If it appears to the Registrar or if he has any reason to suppose from the statements prepared and delivered to him by the companies or otherwise, that the value placed by any company upon the real estate owned by it or any parcel thereof, is too great, or that the value of any investments of the funds of the company or of its trust funds is less than the amount of the value of the investments shown in the books of the company, he may either require the company to secure an appraisal of such real estate or other security by one or more competent valuers or may himself procure such appraisal at the expense of the company and it is made to appear that the value of such real estate or other security held, is less than the amount at which it is carried on the books of the company, he may write off such real estate, loan and interest, or investment, a sum sufficient to reduce the book value of the same to such amount as may fairly be realizable therefrom, such amount in no case to exceed the appraised value, and may insert such reduced amount in the report.

97. (1) The Registrar or any person authorized under his hand and seal shall, with the approval of the Minister, have, at any time within business hours, access to the books, vouchers, securities and documents of a company, and any officer or person in charge, possession, custody or control of the books, vouchers, securities or documents and refusing or neglecting to afford such access is guilty of an offence, and the company, if registered, is liable to have its registry suspended.

(2) The company, on continued refusal or neglect to afford such access, is liable to have its registry cancelled or not renewed after termination of the current certificate of registry.

98. (1) Where a company is three months in default in the delivery of the financial statement required by section 132 or upon proof that its accounts have been materially and wilfully falsified, or that for eighteen consecutive months there has been no *bona fide* audit of the books and accounts, or where there is filed with the Registrar a requisition for audit bearing the signatures, addresses and occupations of at least twenty-five shareholders of the company, holding shares upon which not less than ten thousand dollars has been paid in, and alleging to the satisfaction of the Registrar specific fraudulent or illegal acts, or repudiation of contracts, or insolvency, and accompanied by a deposit of three hundred dollars or such less sum as the Registrar may fix as security to cover the costs of the audit, the Registrar may nominate a competent accountant who shall under his direction make a special audit of the company's books, accounts and securities, and make to him a written report thereupon verified upon oath.

99. Appointment of examiner.

(2) A special auditor so appointed is sufficiently accredited if he delivers to the secretary or to any managing officer of the company a written statement under the hand and seal of the Registrar to the effect that the Registrar has nominated him to audit the books, accounts and securities of the company.

(3) The expense of a special audit shall be borne by the company, and the auditor's account therefor when approved in writing by the Registrar is conclusive and shall be payable forthwith.

(4) Where the facts alleged in the requisition appear to the Registrar to have been partly or wholly disproved by the audit, and he deems it just, he may pay the costs of the audit partly or wholly out of the deposit.

(5) The deposit or the balance, if any, remaining after payment of such costs shall be returned to the requisitioning shareholders upon the order of the Registrar.

(6) Where a company, by its officer, employee, servant or agent having in his custody, possession or power the funds, books, vouchers, securities or documents of the corporation, refuses to have the same duly audited as provided by section 61 or by this section or by section 99, or obstructs an auditor or examiner in the performance of his duties, the Registrar, upon proof of the fact, may suspend or cancel the registry of the company, or may terminate the registry upon the expiry of the current certificate of registry.

(7) If the report of the special auditor appears to the Registrar to disclose fraudulent or illegal acts on the part of the company, or a repudiation of its contracts, or its insolvency, he shall notify the company accordingly and furnish it with a copy of the report, allowing not more than two weeks for a statement in reply to be filed with him.

(8) Upon consideration of the report and of the company's statement in reply, and of such further evidence, documentary or oral, as he may require, the Registrar shall render his decision in writing, and may thereby continue or terminate, or suspend or cancel the registry of the company.

99. (1) The Minister, of his own motion or upon an application being made to him in writing, may appoint any competent person to make a special examination and audit of the company's books, accounts and securities, and to inquire into the conduct of the business of the company generally.

(2) The application shall be supported by such evidence as the Minister may require for the purpose of showing that there is good reason for requiring the investigation to be made, and that it is not prompted by malicious motives.

(3) The Minister may require security for the payment of the costs of the inquiry to be given before appointing the examiner.

100. Evidence.

101. Annual inspection of registered companies.

(4) The examiner may summon witnesses and take evidence under oath, and generally, for the purposes of such examination, audit and inquiry, has the like powers as may be conferred on a commissioner appointed under *The Public Inquiries Act*.

(5) Upon the conclusion of the examination, audit and inquiry the examiner shall make his report in writing to the Minister.

(6) The Lieutenant Governor in Council, upon being satisfied, by the report of the Minister after a special examination under this section of a trust company, that

- (a) the company is not *bona fide* carrying on the business of a trust company,
- (b) the company is insolvent, or
- (c) the manner in which the company affairs are managed is irregular or is calculated to jeopardize the interests of persons dealing with the company,

may by order cancel the registration of the company under this Act, and thereafter the company shall not again be registered under this Act unless it is approved for registration by order of the Lieutenant Governor in Council and then subject to any terms or conditions which may be attached to the approval.

100. (1) A notice published in *The Alberta Gazette* over the name of the Registrar is, without further proof, admissible in evidence as *prima facie* proof of the facts set forth in the notice.

(2) All copies of returns, reports or other official publications of the Registrar purporting to be printed by the Queen's Printer, or to be printed by order of the Assembly, are, without further proof, admissible in evidence as proof of such publication and printing and as true copies of the originals.

(3) A certificate under the hand of the Registrar and the Registrar's seal of office, that on a stated day the company mentioned therein was or was not registered, or that the registry of any company was originally granted, or was renewed, suspended, revived or cancelled, on a stated day, is admissible in evidence as *prima facie* proof of the facts stated in the certificate.

(4) Copies of, or extracts from, any book, record, instrument or document in the office of the Registrar or of or from any official instrument or document issued under this Act shall, if certified by him to be true copies or extracts and sealed with the Registrar's seal of office, be held as authentic and shall be *prima facie* evidence of the same legal effect as the original.

101. (1) The Registrar personally shall visit or cause a duly certified member of his staff or some person authorized by the Registrar to visit at least once annually the head office of each registered company, other than a

company as to which he adopts the inspection of another government, and he shall inspect and examine the statements of the condition and affairs of each company and make such inquiries as are necessary to ascertain its condition and ability to provide for the payment of its liabilities as and when they become due, and whether or not it has complied with this Act, and the Registrar shall report thereon to the Minister as to all matters requiring his attention and decision.

(2) Where the Registrar deems it necessary and expedient to make a further examination into the affairs of a company and so reports to the Minister, the Minister may in his discretion instruct the Registrar to visit or cause any duly qualified member of his staff or some person authorized by the Registrar to visit any branch office or offices of the company to inspect and examine into its affairs and to make such further inquiries as the Minister may require.

(3) For the purpose of an examination, the company shall prepare and submit to the Registrar such statements with respect to its business, finances or other affairs, in addition to the statement mentioned in section 62 as the Registrar may require, and the officers, agents and servants of the company shall cause their books to be open for inspection and shall otherwise facilitate such examination so far as it is in their power.

(4) In order to facilitate the examination of the books and records of a company, the company may be required by the Registrar, with the approval of the Minister, to produce the books and records at the head office or chief agency of the company in Alberta, or at such other convenient place as the Registrar may direct.

(5) The Registrar, or any person authorized by the Minister, may examine under oath the officers, agents or servants of the company for the purpose of obtaining any information that he deems necessary for the purpose of the examination.

(6) Where an examination is made under subsection (2) of any branch or other office situated outside of Alberta, the company shall pay the account in connection with the examination upon the certificate of the Registrar approved by the Minister.

(7) If, as the result of the examination, the Registrar is of the opinion that the assets of the company are insufficient to justify its continuance in business, he shall make a special report to the Minister on the condition of the company.

(8) If the Minister, after a reasonable time has been given to the company to be heard by him, and upon such further inquiry and investigation as he sees fit to make, reports to the Lieutenant Governor in Council that he agrees with the opinion of the Registrar, the Lieutenant Governor in Council may, if he also concurs in the opinion,

102. Applications for initial registry.

103. Power of attorney.

suspend or cancel the registry of the company, and the company shall thereupon cease to transact further business; but the Minister may, during such suspension or cancellation, issue such conditional registry as he may deem necessary for the protection of the public.

(9) If the Minister deems it advisable, the conditional registry may provide that the company shall, during the continuance of the conditional registry, arrange for the sale of its assets and for the transfer of its liabilities.

(10) If upon the expiration of the conditional registry no arrangement satisfactory to the Minister has been made for such sale and transfer, and if in the opinion of the Minister the company's condition is not then such as to warrant the restoration of the company's registry, the registration shall be cancelled.

2. Registration

102. (1) Applications for initial registry shall be made according to a form to be supplied by the Registrar, and the applicant shall deliver to the Registrar the application duly completed, together with such information, material and evidence as the form requires.

(2) The applicant shall, if required, furnish such further information, material and evidence, and give such public notice of the application as the Registrar may direct.

(3) The applicant shall file with the application a statement in such form as may be required by the Registrar of the financial condition and affairs of the company on the thirty-first day of December next preceding or on the last day of the fiscal year of the company, if the last day is not more than twelve months before the filing of the statement, and the statement shall be signed and verified as prescribed by section 62.

103. (1) Where a company applying for registry has its head office elsewhere than in Alberta the application shall be accompanied by a power of attorney from the company to an agent or agents resident in Alberta.

(2) The power of attorney shall be under the seal of the company, and shall be signed by the president and secretary or other proper officers thereof in the presence of a witness who shall make oath as to the due execution thereof.

(3) The official positions in the company held by the officers signing the power of attorney shall be verified by the oath of any person cognizant of the facts.

(4) The power of attorney shall declare at what place in Alberta the chief agency of the company is, or is to be established, and shall expressly authorize the agent or agents to receive service of process in all actions and proceedings against the company in Alberta for any liability incurred

104. Recording registry entries on register.

by the company therein, and also to receive from the Registrar all notices that the law requires to be given, or that it is thought advisable to give, and shall declare that service of process for or in respect of such liability on any of the agents and receipt of the notices at the chief agency or personally by any of the agents shall be legal and binding on the company.

(5) The power of attorney and the affidavit of execution shall be filed with the Registrar.

(6) The power of attorney may confer upon the agent or agents any further or other powers that the company may deem advisable.

(7) The production of a copy of the power of attorney certified by the Registrar is sufficient proof for all purposes of the power and authority of the person or persons therein named to act on behalf of the company in the manner and for the purposes set forth in the certified copy.

(8) Whenever the company changes any of its agents or the chief agency in Alberta, it shall file with the Registrar a similar power of attorney, stating the change or changes and containing a similar declaration as to service of process and notices.

(9) After the power of attorney is filed, any process in any action or proceeding against the company for a liability incurred in Alberta may be validly served on the company at its chief agency; but nothing in this section shall render invalid service in any other mode in which a company may be lawfully served.

(10) This section applies notwithstanding any special or other legislation of Alberta affecting any registered company.

104. (1) The Registrar shall cause to be entered on the proper register the name of every company entitled to registry, together with the date of the commencement of the registry and the term for which the registry is to endure.

(2) The term shall begin on the date of such commencement and shall end not later than the thirtieth day of June next ensuing.

(3) The Registrar shall also cause to be entered on the register the place where the head office and the chief agency, if any, are situate, and if there is a chief agency the name and address of the chief agent, and of the agent or agents appointed under section 103.

(4) If the registry is suspended, revived, revoked or cancelled, the date of and authority for such suspension, revivor, revocation or cancellation shall also be entered.

(5) The Registrar shall issue under his hand and seal of office to every registered company a certificate of registry, setting forth that the company is entitled to registry as a trust company under this Act, and that the company is accordingly registered for the term stated in the certificate.

105. Restrictions upon use of names.

106. Admissible to registry.

(6) Every certificate of registry shall specify the first day and the last day of the term for which the company is registered, and the company so registered shall be deemed to be registered from the commencement of the first day to the end of the last day so specified.

(7) A certificate of registry that does not specify an earlier date of expiry, unless sooner suspended or cancelled, remains valid until the next ensuing thirtieth day of June, when, if the company has complied with the law and continues solvent, it is entitled to a certificate of renewed registry, and so on every succeeding thirtieth day of June thereafter.

(8) Notwithstanding failure to comply with this Act within the prescribed time, the Registrar may, upon receipt of the prescribed fee, grant an interim certificate of registry or extend the currency of a subsisting certificate.

105. (1) No company shall be registered under a name identical with that under which any other existing company is registered, or under any other name likely, in the opinion of the Registrar, to deceive, mislead or confuse the public as to its identity.

(2) No registered company shall be registered under a new or different name except upon proof that such new or different name is authorized by law.

(3) Where a provincial company desires to adopt a name different from that by which it was incorporated, or where, in the opinion of the Registrar, the name by which the company was incorporated may be confused with that of another existing company, the Lieutenant Governor in Council may change the name of the company to some other name to be stated in the order in council.

(4) No change of name affects the rights or obligations of the company.

(5) The location of the head office of a company may be changed in like manner.

(6) Such public notice shall be given of any change of name or head office, and of any application for such change, in *The Alberta Gazette* and otherwise as the Registrar may direct.

106. (1) Trust companies whose powers do not include that of buying and selling land as beneficial owner except as authorized by this Act and do not exceed the powers that are conferred upon trust companies under this Act, may, upon due application, be admissible to registry.

(2) A company incorporated under the laws of any other country may, upon due application, with the approval of the Minister, be admitted to registry on such terms and conditions as he may prescribe.

(3) A company that invests in or purchases mortgages, charges or hypothecs on real estate or that lends money

107. Suspension or cancellation of registry.

108. Decision of Registrar to be in writing and to be delivered to company.

109. Hearing and review.

on the security of real estate shall not be registered unless at least ninety-five per cent of those investments, purchases or loans are first mortgages, charges or hypothecs or are secured thereby.

107. (1) Upon proof that registry or a certificate of registry has been obtained by fraud or mistake, or that a company exists for an illegal purpose, or is insolvent, or has failed to pay its obligations, or has wilfully, and after notice from the Registrar, contravened any of the provisions of this Act or of the Act or instrument incorporating the company, or of any law in force in Alberta, or has ceased to exist, the registry of the company may be suspended or cancelled by the Registrar.

(2) On the suspension or cancellation of the registry of any existing company the Registrar shall cause notice in writing thereof to be delivered to the company.

(3) Where the company has ceased to exist, the notice shall be published in *The Alberta Gazette*.

(4) After such suspension or cancellation, or after termination of registry without renewal, the company shall, unless again registered, cease to transact or undertake business in Alberta, except so far as is necessary for the winding up of its business; but any liability incurred by the company may be enforced against it as if such suspension, cancellation or termination had not taken place.

108. Where in any disputed case the Registrar decides that a company is or is not legally entitled to registry, or to renewal of registry, or where he suspends, revives or cancels the registry of a company, his decision, except as otherwise provided, shall be given in writing, and he shall cause a copy thereof certified under his seal of office to be delivered to the company.

109. (1) Any company whose registration or right to registration is affected by any decision of the Registrar may, by notice in writing served upon the Registrar within thirty days after the delivery of the copy of the decision under section 108, request a hearing and review of the matter by the Registrar.

(2) Where a hearing and review is requested, the Registrar shall send a notice in writing to the company notifying it of the time and place of the hearing.

(3) Upon a review the Registrar may hear such evidence as may be submitted to him and that in his opinion is relevant to the matter in dispute, but he is not bound by any law respecting the admissibility of evidence, and all oral evidence submitted shall be taken down in writing and together with such documentary evidence and things as are received in evidence by the Registrar shall form the record.

(4) Upon a review the Registrar may confirm or revoke

110. Cancellation of registry.

111. Company not to be registered.

112. Minister may direct amendment of by-laws.

his former decision or may make alterations therein or additions thereto as he may deem proper.

(5) Notice of his decision made upon a review shall be delivered forthwith to the company that requested the review.

(6) Where the Registrar has reviewed a decision and given his decision upon the review, the company that requested the review may appeal to a justice of appeal of the Appellate Division of the Supreme Court.

(7) Every appeal shall be by notice of motion served upon the Registrar within thirty days after the delivery of the decision under subsection (5), and the practice and procedure in relation to the appeal shall be the same, *mutatis mutandis*, as upon an appeal from a judgment of a judge of the Supreme Court in an action, provided that the Rules of Court may be amended to vary or amend the practice and procedure in respect of appeals taken under this section.

(8) The Registrar shall certify to the Clerk of the Supreme Court,

- (a) the decision that has been reviewed by the Registrar,
- (b) the decision of the Registrar upon the review, together with any statement of reasons therefor,
- (c) the record of the review, and
- (d) all written submissions to the Registrar and other material that in the opinion of the Registrar are relevant to the appeal.

(9) The Attorney General may designate counsel to assist the judge upon the hearing of any appeal taken under this section.

(10) Where an appeal is taken under this section, the judge may by his order direct the Registrar to make such decision as the Registrar is authorized to do under this Act and as the judge deems proper and thereupon the Registrar shall act accordingly.

(11) The order of the judge is final and there shall be no appeal therefrom, but notwithstanding the order the Registrar shall have power to make any further decision upon new material or where there is a material change in the circumstances, and every such further decision is subject to this section.

110. The Registrar may at the request of the company evidenced as he may direct, cancel its registry.

111. A company not registered under *The Trust Companies Act* on the commencement of this Act shall not be granted registry if the stock or shares of the company consist of or include terminating stock or shares.

112. If on receiving an application for registry the Registrar finds in the by-laws or articles of association of

113. Furnishing evidence.

114. Capital required before registration.

115. Representations that standing of company is vouched for by Registrar.

116. Unregistered company.

the applicant anything repugnant to this Act or to the law of Alberta, he may direct an amendment of the by-laws or articles of association, and, upon their being amended as directed and returned certified as having been so amended, the application may be proceeded with.

113. (1) Every company doing business in Alberta, if required to do so by the Registrar, shall furnish satisfactory evidence that any by-law has been duly passed, and is a legal and valid by-law according to the Act or instrument incorporating the company and also that the by-law conforms to the law of Alberta.

(2) A company refusing or failing to furnish such evidence promptly is liable to have its registry suspended or cancelled.

114. No company shall be registered to transact business in Alberta that has not an unimpaired paid-up capital and surplus of at least two hundred and fifty thousand dollars.

115. (1) No company shall under the penalty of becoming disentitled to registry or of having its registry suspended or cancelled make, print, publish, circulate, authorize or be a party or privy to the making, printing, publishing or circulating of any statement or representation that its solvency or financial standing is vouched for by the Registrar or that the publication of its statement in his report is a warranty or representation of the solvency of the company, or of the truth or accuracy of the statement in any particular.

(2) Any director, auditor, officer, servant, employee or agent of a company who makes or uses or authorizes or is party or privy to the making or using of any such statement or representation is guilty of an offence.

3. Unregistered Companies

116. (1) No incorporated body or person acting in its behalf, other than a registered company and a person duly authorized by it to act in its behalf, shall undertake or transact in Alberta the business of a trust company.

(2) Any setting up or exhibiting of a sign or inscription containing the name of the company, or any distribution or publication of any proposal, circular, card, advertisement, printed form or like document in the name of the company, or any written or oral solicitation on the company's behalf, shall, both as to the company and as to the person acting or purporting to act on its behalf, be deemed undertaking the business of the company within the meaning of this section.

(3) Any promoter, organizer, manager, director, officer, collector, agent, employee, or person who undertakes or transacts any business of a company that is not registered under this Act is guilty of an offence.

117. Use of certain words in name of company while un-registered.

118. Contracts.

117. Any person, partnership, organization, society, association, company or corporation, not being a company registered under this Act or under *The Alberta Insurance Act*, assuming or using in Alberta a name that includes any of the words "Trust", "Trusts", or "Guarantee", in combination or connection with any of the words "Corporation", "Company", "Association" or "Society", or "Limited", or "Incorporated" or any abbreviations thereof, or in combination or connection with any similar collective term, or assuming or using in Alberta any similar collective term or assuming or using in Alberta any similar name, or any name or combination of names that is likely to deceive or mislead the public is guilty of an offence, and any person acting on behalf of such person, partnership, organization, society, association, company or corporation is also guilty of an offence.

118. (1) In this section, "contract" means any contract, agreement, undertaking or promise,

- (a) to pay to or for the contract holder any money or money's worth,
- (b) to sell, supply or procure any building or site or land or to bring about the purchase and sale or supply thereof, or
- (c) to construct or procure the construction of any house or building,

made upon any consideration that includes an entrance or membership fee, or expense contribution, initial, renewal, periodical or recurrent, or that includes any periodical or recurrent contribution to a fund, or account, or source for, or intended or alleged to be for, the carrying out of such contract, and includes any contract, agreement, undertaking or promise, the benefit of which to the contract holder paying any such consideration is to be wholly or partly postponed or deferred until other contract holders have been provided for, or is to depend upon the number or the persistence of the other contract holders, or upon the accession of new contract holders, or upon the order or sequence of the contract.

(2) Any person, partnership, organization, society, association, company or corporation, not being a company registered under this Act or under *The Alberta Insurance Act*, undertaking or effecting, or offering to undertake or effect, any contract is guilty of an offence, and any person acting on behalf of such person, partnership, organization, society, association, company or corporation, is also guilty of an offence, and the convicting justice, in addition to imposing the prescribed penalty, may at the time of conviction or thereafter make such order for the restitution of the money that was unlawfully taken as to him seems just, and in default of compliance with such order the offender is liable to imprisonment for a term of not more than twelve months.

119. Illegal contract.

120. Investments by trust companies.

119. Where in any case arising under section 116, 117 or 118 it is found by the justice that the person, partnership, organization, society, company or corporation charged or his or its agent is exhibiting or using any sign, inscription or name, or distributing, using or publishing any document, including any proposal, circular, card, advertisement, notice, application, contract or printed form that, in the opinion of the justice, induces, or tends to induce, a violation of any such section, or is likely to deceive or mislead the public either as to the party or the status of the party undertaking the contract, or as to the nature, terms or effect of the contract, the justice may summarily order the discontinuance of the sign, inscription, name or document, and non-compliance with such order is an offence.

4. Investments

120. (1) A registered trust company may invest its own funds and any moneys received as deposits or for guaranteed investment in any of the securities mentioned in section 121, if at all times at least fifty per cent of moneys received as deposits in the manner authorized by subsection (1) of section 66 or for guaranteed investment in the manner authorized by subsection (1) of section 68, are invested in or loaned upon such securities only as are authorized by *The Trustee Act*.

(2) The total book value of the investments of a registered trust company in real estate for the production of income shall not exceed, in the case of its funds, five per cent of the book value of the funds, and, in the case of moneys received for guaranteed investment or as deposits, five per cent of the moneys held by the company for that purpose or twenty-five per cent of the company's unimpaired paid up capital and reserve, but the amount invested in any one parcel of such real estate by a company shall not exceed one half of one per cent of the aggregate of the book value of its funds and of the moneys held by it for guaranteed investment or as deposits.

(3) In addition to the investments it may make by lending on the security of or by purchasing mortgages, charges or hypothecs upon real estate pursuant to the provisions of the *National Housing Act*, (Canada), or the *National Housing Act, 1954* (Canada) or any amendments thereto, a registered trust company may invest its funds to an aggregate amount not exceeding five per cent thereof and may, notwithstanding the provisions of subsection (1), invest moneys received as deposits or for guaranteed investment under sections 66 and 68 to an aggregate amount not exceeding five per cent of such moneys, in any other classes or types of investments pursuant to the said Acts, or any amendments thereto, including the purchase of land, the improvement thereof, the construction of buildings thereon, and the management and disposal of such lands and buildings.

121. Investments.

(4) Subject to the condition set out in subsection (1), a registered trust company may lend its own funds and moneys received as deposits, or for guaranteed investment, on the security of,

- (a) any of the securities mentioned in clauses (a), (b) and (c) of section 121, or on improved real estate or leaseholds, or on guaranteed investment certificates of a trust company, or
- (b) the bonds, debentures, notes, stocks or other securities of any company or bank, other than those mentioned in clause (c) of section 121, if
 - (i) the market value of the securities on which the loan is made will at all times exceed the amount of the loan by at least twenty per cent of the market value, and
 - (ii) the amount loaned on the security of the stocks of any such company or bank will not at any time exceed ten per cent of the market value of the total outstanding stocks of such company or bank.

(5) A provincial company shall not make or undertake any investment in the shares, stocks or real or personal property of any corporation, or otherwise, in which it or any of its directors or officers are directors or officers or shareholders.

121. Subject to section 120 a registered trust company may, for the purpose of investing its own funds and moneys received as deposits or for guaranteed investment under sections 66 and 68, purchase or invest in

- (a) mortgages, charges or hypothecs upon real estate in Alberta or elsewhere where the company is carrying on business, but the amount paid for a mortgage, charge or hypothec together with the amount of indebtedness, if any, under any mortgage, charge or hypothec on the real estate ranking superior to the mortgage, charge or hypothec, in which the investment is made shall not exceed sixty per cent of the value of the real estate covered thereby,
- (b) the debentures, bonds, stock or other securities of or guaranteed by the government of Canada or of or guaranteed by the government of any province of Canada, or of or guaranteed by the government of the United Kingdom, or of any of Her Majesty's realms and territories, or of any state forming part of any such realm or territory, or of or guaranteed by any foreign country or state forming part of the foreign country where the interest on the securities of the foreign country or state has been paid regularly for the previous ten years, or of any municipality or school corporation in Canada or elsewhere where the company is carrying on business, or guaranteed by any municipal corporation

in Canada, or secured by rates or taxes levied, under the authority of the government of any province of Canada on property situated in such province and collectible by the municipalities in which the property is situated,

- (c) the bonds, debentures, debenture stock, or other securities of any corporation or bank incorporated by Canada, or by any province of Canada, or by any former province now forming part of Canada, that are secured by a mortgage or hypothec to a trust company either singly or jointly with another trustee upon improved real estate of the corporation or bank or other assets of such corporation of the classes mentioned in clauses (a) and (b),
- (d) the bonds, debentures or other securities issued or guaranteed by the International Bank for Reconstruction and Development established by the Agreement for an International Bank for Reconstruction and Development approved by the *Bretton Woods Agreement Act, 1945* (Canada) if the bonds, debentures or other securities are payable in the currency of Canada, the United Kingdom, any member of the Commonwealth or the United States of America,
- (e) the bonds or debentures of a company or institution incorporated in Canada that are secured by the assignment to a trust company in Canada of payments that the government of Canada has agreed to make, if such payments are sufficient to meet the interest as it falls due on the bonds or debentures outstanding and to meet the principal amount of the bonds or debentures upon maturity,
- (f) the bonds or debentures of a company or institution incorporated in Canada that are secured by the assignment to a trust company in Canada of payments that are payable, by virtue of an Act of a province of Canada, by or under the authority of the province, if the payments are sufficient to meet the interest as it falls due on the bonds or debentures outstanding and to meet the principal amount of the bonds or debentures upon maturity,
- (g) equipment trust obligations or certificates issued to finance the purchase of transportation equipment for a railway company incorporated in Canada or for a railway company owned or controlled by a railway company so incorporated if the obligations or certificates are fully secured by an assignment of the transportation equipment to, or by the ownership thereof by, a trustee, and by a lease or conditional sale thereof to the railway company,
- (h) the debentures or other evidences of indebtedness of any corporation or bank that has paid regular dividends on its preferred or on its common stocks for a term of at least five years immediately pre-

ceding the date of investment in the debentures or other evidences of indebtedness,

- (i) the preferred stocks of any corporation or bank that has paid regular dividends upon such stocks or upon its common stocks for not less than five years preceding the purchase of the preferred stocks,
- (j) the fully paid-up common stocks of any corporation or bank that, in each year of a period of seven years ended less than one year before the date of purchase or investment, has paid a dividend upon its common stocks of at least four per cent of the average value at which the stocks were carried in the capital stock account of the corporation or bank during the year in which the dividend was paid, or
- (k) real estate in Canada for the production of income, either alone or jointly with any other company,
 - (i) if a lease of the real estate is made to, or guaranteed by, a corporation that has paid a dividend in each of the five years immediately preceding the date of investment at least equal to the specified annual rate upon all of its preferred shares, or that has paid a dividend in each year of a period of five years ended less than one year before the date of investment upon its common shares of at least four per cent of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid,
 - (ii) if the lease provides for a net revenue sufficient to yield a reasonable interest return during the period of the lease and to repay at least eighty-five per cent of the amount invested by the company in the real estate within the period of the lease, but not exceeding thirty years from the date of investment, and
 - (iii) if the total investment of the company in any one parcel of real estate does not exceed one-half of one per cent of the book value of the company's total funds,

and the company may hold, maintain, improve, lease, sell or otherwise deal with or dispose of the real estate, but the total book value of the investments of the company in real estate for the production of income pursuant to this clause shall not exceed five per cent of the book value of the company's total funds.

122. (1) A company may take personal security as collateral for any advance or for any debt due to the company.

123. Restrictions on amount of investments.

124. Other investments authorized.

(2) The company may do all acts that are necessary for advancing sums of money, and for receiving and obtaining repayment thereof, and for compelling the payment of all interest accruing due thereon, and the observance and fulfilment of any conditions annexed to the advance, and for enforcing the forfeiture of any term or property consequent on the non-fulfilment of such conditions, or of conditions entered into for delay of payment.

123. (1) On and after the commencement of this Act, no company shall,

- (a) except as to securities issued or guaranteed by the government of Canada or the government of any province of Canada or by any municipal corporation in Alberta,
 - (i) subject to subclause (iii), invest in any one security an amount exceeding fifteen per cent of its own paid in capital stock and reserve funds, or
 - (ii) make a total investment in any one company or bank maturing in more than one year, including the purchase of its stock or other securities and the lending to it on the security of its debentures, mortgages or other assets or any part thereof, of an amount exceeding fifteen per cent of its own paid in capital stock and reserve funds, or
 - (iii) make an investment referred to in subclause (ii) maturing in one year or less in an amount which together with the amount invested to which subclause (ii) applies exceeds the aggregate of twenty per cent of its own paid in capital stock and reserve funds and five per cent of moneys received as deposits and for guaranteed investment under sections 66 to 68,
- (b) make any investment the effect of which will be that the company will hold more than twenty per cent of the stock or more than twenty per cent of the debentures of any one corporation, company or bank.

(2) Subsection (1) applies only to the investment of its own funds and of moneys received as deposits or for guaranteed investment under sections 66 and 68.

(3) This section does not apply to an investment in the paid up capital stock of a company having its head office in Alberta if the same has been authorized by the Lieutenant Governor in Council.

124. (1) The Lieutenant Governor in Council may authorize the acceptance by a company of bonds, notes,

125. Estates and interests in land.

stocks, debentures or other assets not fulfilling the requirements of this Act,

- (a) obtained in payment or part payment for securities sold by the company,
- (b) obtained under a *bona fide* arrangement for the re-organization of a company whose securities were previously owned by the company,
- (c) obtained under an amalgamation with another corporation of the corporation whose securities were previously owned by the company,
- (d) obtained for the *bona fide* purpose of protecting investments previously made by the company, or
- (e) obtained by virtue of the purchase by the company of the assets of another company,

but the bonds, notes, stocks or debentures or other assets whose acceptance is so authorized shall be sold and disposed of within five years after the acquisition thereof, or within such further time not exceeding one year as the Lieutenant Governor in Council shall, on report of the Minister, fix and determine unless it can be shown to the satisfaction of the Minister that the bonds, notes, stocks, debentures or other assets whose acceptance is so authorized are not inferior in status or value to the securities for which they have been substituted.

(2) For the purpose of determining the eligibility as investments under this Act of the preferred or common stocks of any corporation that has been voluntarily re-organized without the impairment of the status or value of its securities, dividends paid on the preferred and common stocks of the corporation before such re-organization may be counted as dividends paid on such stocks respectively of the re-organized corporation.

125. (1) A registered trust company may hold real estate that, having been mortgaged or hypothecated to it, has been acquired by it for the protection of its investment, and real estate conveyed to it in satisfaction of debts previously contracted in the course of its business, and may from time to time sell, mortgage, lease, exchange or otherwise dispose of the same, and may sell or otherwise dispose of as it deems advisable any mortgage or security that it has lawfully acquired.

(2) The company shall, subject to section 126, sell any real estate acquired by it under any mortgage, charge or hypothecation, or in satisfaction of any debt, within twelve years after it has been so acquired, otherwise it may be forfeited to Her Majesty for the use of Alberta; but no such forfeiture shall be enforced until the expiration of six months after notice in writing to the company of the intention of Her Majesty to claim such forfeiture.

(3) The company may give receipts, acquittances and discharges, either absolutely and wholly or partially, and may grant or take such transfers, assignments or other

126. Power to hold real estate for business.

127. Power to construct larger buildings.

128. Limit of amount of investments in buildings.

129. Loans to directors and auditors prohibited.

130. Corporation may be required to dispose of unauthorized investments.

131. Annual and semi-annual returns.

instruments as are necessary for carrying any such holding, purchase, exchange or re-sale into effect, and the transferee or assignee in any such instrument shall stand in the place of, and be entitled to, and have all the same rights, powers and remedies, and shall be subject to the same obligations and liabilities as the transferor or assignor would have been entitled to or would have been subject to if the transfer or assignment had not been made.

126. A registered provincial company may hold to its own use and benefit such real estate as is necessary for the transaction of its business, or is acquired or held *bona fide* for building upon or improving for that purpose, and may sell, mortgage or dispose of the same.

127. A registered provincial company, when so authorized by its special Act or by the Lieutenant Governor in Council, may acquire or may construct, on any lands held pursuant to section 126, a building larger than is required for the transaction of its business and may lease any part of the building not so required.

128. A provincial company shall not make or undertake any investment under section 126 or 127 that will cause the total amount at which such investments are carried on its books to exceed thirty-five per cent of its paid up capital and reserve funds.

129. A company shall not lend or advance money to any of its directors or auditors or to the wife or child of any director or auditor.

130. The Registrar may request any company to dispose of and realize any of its investments acquired after the commencement of this Act and not authorized by this Act, and the company shall within sixty days after receiving the request dispose of and realize such investments, and if the amount realized therefrom falls below the amount paid by the company for such investments, the directors of the company are jointly and severally liable for the payment to the company of the amount of the deficiency; but if any director present when any such investment is authorized, forthwith, or if any director then absent, within twenty-four hours after he becomes aware of such investment, and is able to do so, enters his written protest against the same, and within eight days thereafter notifies the Registrar in writing of his protest, the director may thereby, but not otherwise, exonerate himself from liability.

5. Returns

131. (1) Every company receiving deposits in the manner authorized by subsection (1) of section 66 shall make a return to the Registrar on or before the fifteenth day of

132. Annual statement to Registrar.

January in each year, drawn in accordance with the form prescribed, showing the amount of the deposits, and showing all securities including loans made upon securities, and cash, including money on deposit, ear-marked and definitely set aside as provided in subsection (2) of section 66 as such amounts stood on the thirty-first day of December next preceding, and stating that the same were on such date so ear-marked and definitely set aside.

(2) Every company receiving funds for guaranteed investment as mentioned in subsection (1) of section 68 shall make a return to the Registrar on or before the fifteenth day of January in each year, drawn in accordance with the form prescribed by the Registrar, showing the amount of the funds, and showing all securities, including loans on securities, and cash, including money on deposit, ear-marked and definitely set aside as provided in subsection (3) of section 68 as such amounts stood on the thirty-first day of December next preceding, and stating that the same were on such date so ear-marked and definitely set aside.

(3) Every company receiving deposits in the manner authorized by subsection (1) of section 66 shall make a return to the Registrar on or before the fifteenth days of January and July in each year, drawn in accordance with the form prescribed by the Registrar, showing the amount of the deposits, and showing the amount of cash on hand and on deposit, and the amount of debentures, bonds, stock or other securities of, or guaranteed by Canada, and of, or guaranteed by, any province of Canada, less any encumbrances thereon, and the amount of bonds, debentures and other securities of any municipal corporation in Alberta or of any city in Canada, less any encumbrances thereon, and the bonds or debentures issued by any company incorporated in Canada in respect of which bonds or debentures annual or semi-annual subsidy payments sufficient to pay both principal and interest thereof are, by virtue of any Act of Canada or of a province thereof, payable by the government of Canada or province thereof to a company as trustee for the holders of such bonds or debentures, and the principal amount of any moneys payable to the company on demand, the payment of which is secured by the mortgage or pledge of any of the securities mentioned in this subsection as the said amounts stood at the end of the last preceding month, and including in such return all such cash and securities and loans as defined in this subsection, whether owned by the company or held by it as deposits or for guaranteed investment under section 66 or 68 and stating that the same were on hand at the date mentioned in the return.

132. (1) The managing director, manager or secretary of every registered trust company shall prepare annually on the first day of January, or within two months thereafter, according to a printed form to be supplied on application to the Registrar a statement of the financial con-

dition and affairs of the company up to the thirty-first day of December next preceding or to any day not more than two months prior thereto.

(2) In the case of an extra-provincial company, the Registrar may accept the statement required by subsection (1) as for the then last fiscal year of the company.

(3) Such annual statement shall be certified by the auditors of the company who shall make an affidavit thereon stating whether or not their requirements as auditors have been complied with and,

- (a) that they have examined the statement and that it agrees with the books of the company,
- (b) that after due consideration they have formed an independent opinion as to the position of the company,
- (c) that with their independent opinion so formed and according to the best of their information and the explanations given them, they certify that in their opinion the statement sets forth fairly and truly the state of the affairs of the company,
- (d) that all transactions of the company that have come within their notice have been within the powers of the company.

(4) The annual statement shall also be proved by the affidavit of the president or vice-president and of the managing director, or some other principal officer of the company, and shall be accompanied by a certified copy of a resolution of the directors showing that the same had been adopted by them.

(5) The annual statement shall be filed with the Registrar on or before the first day of March next ensuing.

(6) On sufficient cause shown and upon payment of the prescribed fee, the Registrar may by writing under his hand and seal of office, before or after the first day of March, extend the time for filing the statement.

(7) Any company that does not file its statement as required by this section or make prompt and explicit answer to any inquiries then or at any time made by the Registrar touching its contracts, finances, stock, shares, securities, obligations, by-laws or books or, if required, produce for examination its books, records, securities, accounts and vouchers is liable to suspension, cancellation, or non-renewal of registry, and is liable to a penalty of fifty dollars for each day of default, but not exceeding in the whole one thousand dollars.

(8) Where it is made to appear to the Registrar that an extra-provincial company does not, in Alberta, accept deposits or other moneys for investment and does not exercise in Alberta any of the powers of a trust company, the Registrar may direct that this section shall not apply to the corporation, in which case the corporation shall make such returns and give such information as the Registrar requires.

133. Special verified returns.

134. Exemption.

135. Disposition of deposits or debentures on death.

(9) The company shall file with the statement a certified copy of any statement furnished to shareholders during the year then ended.

133. (1) The Registrar may, by notice in writing, whenever he sees fit, require a company to make, in addition to its financial statement and other returns required by this Act, a return verified by affidavit of one of its officers, or to furnish information verified in the same manner upon any subject connected with its affairs, and the company shall make the return within the time mentioned in the notice requiring the same.

(2) The notice may be given to the president, secretary, managing director, or other officers having apparent control of the books of the company, or any of them, in Alberta, and non-compliance with the notice is an offence.

6. Miscellaneous

134. Any amount not exceeding three hundred dollars standing to the credit of any depositor in a registered company is not, while in the hands of the company or while in course of transmission from the company, liable to demand, seizure or detention under legal process as against the depositor or his nominee, assignee or representative, or as against any person to whom the company is by section 135 authorized to pay such amount.

135. (1) A person who

- (a) has on deposit with a company a sum not exceeding six hundred dollars,
- (b) is the holder of debentures or guaranteed investment certificates issued by a company for a sum not exceeding six hundred dollars, or
- (c) has on deposit with a company a sum and holds debentures or guaranteed investment certificates issued by the company, the amounts of which in the aggregate do not exceed six hundred dollars,

may by a writing, signed by him and deposited with the company, nominate any person to receive the amount thereof at his death.

(2) Upon receiving an affidavit as to the death of a person who has made a nomination under subsection (1) the company may substitute on its books the name of the nominee in place of the name of such person or may forthwith pay to the nominee the amount due to such person.

(3) Where a depositor, debenture holder or holder of a guaranteed investment certificate as described in clause (a), (b) or (c) of subsection (1) dies without making a nomination in accordance with that section, the deposit, debenture or guaranteed investment certificate may, without letters probate or letters of administration being taken out, be paid or transferred to the person who appears to

136. Payments by mistake.

137. Service of notices.

138. Application of certain sections.

139. Refusal to make entries.

140. False statements or returns.

the company to be entitled (under the will of such depositor, debenture holder or holder of a guaranteed investment certificate or in the case of an intestacy under the law relating to devolution of property) to receive the same, upon receiving an affidavit of the death and that the person claiming is so entitled.

136. Where the company, after the death of a depositor, debenture holder or holder of a guaranteed investment certificate, has paid or transferred the deposit, debenture or guaranteed investment certificate to the person who at the time appeared to be entitled thereto, the payment or transfer shall be valid and effectual with respect to any demand from any other person as the legatee or next of kin or as the lawful representative of the deceased against the company, but the legatee, next of kin or representative is entitled to recover the amount of the deposit, debenture or guaranteed investment certificate from the recipient or transferee.

137. Delivery of any written notice or document to a company for any purpose of this Act, where the mode is not otherwise expressly provided, may be by letter delivered at the head or chief office of the company in Alberta or its chief agency therein, or sent by registered post addressed to the company, its manager or agent at such head or chief office or agency, or by delivering it personally to an authorized agent of the company.

138. Except where the provisions of this Act are inconsistent, Divisions (3) to (7), inclusive, of Part X of *The Companies Act* apply to provincial companies under this Act, substituting for the Registrar of Joint Stock Companies under that Act the Registrar of Trust Companies under this Act.

7. Offences and Penalties

139. Every director, manager, auditor, officer, agent, collector, servant or employee of a company who refuses or neglects to make any proper entry in any book of record, entry or account of the company, or to exhibit the same, or to allow the same to be inspected or audited either for the general purposes of the company or for the purposes of this Act, and extracts to be taken therefrom, is guilty of an offence.

140. (1) Every person who makes any wilfully false or deceptive statement in any account, statement, return, report or other document respecting the affairs of a company is guilty of an offence and liable on summary conviction to imprisonment for a term of not more than five years.

(2) Every president, vice-president, director, auditor, manager or other officer of a company, who

141. Offences for which no special penalty.

142. Commutation on proposed discontinuance of business.

143. Fees.

144. Registration.

- (a) prepares, signs, approves or concurs in any such account, statement, return, report or document containing such false or deceptive statement, or
- (b) uses the same with intent to deceive or mislead any person,

shall be held to have wilfully made such false or deceptive statement, and shall further be held responsible for all damages sustained by any person in consequence thereof.

141. (1) For every contravention of this Act, that is declared to be an offence and for which no other penalty is provided, the offender is, for the first offence, liable to a fine of not less than twenty dollars and not more than two hundred dollars, and for any subsequent offence of the same kind is liable to imprisonment for a term of not less than three months and not more than twelve months, or in the case of an organization, society, association, company or corporation to a fine of not more than one thousand dollars.

(2) The information or complaint shall be laid or made in writing within one year after the commission of the offence.

(3) The fines imposed under this Act are recoverable under *The Summary Convictions Act* and belong to the Crown in right of Alberta.

8. Fees

142. Where a registered trust company proves to the satisfaction of the Registrar that it is discontinuing business in Alberta, and has given such public notice of intended discontinuance as is required, the prescribed fee for registry or renewal of registry, as the case may be, may, on the certificate of the Registrar, be commuted to one-fourth of the prescribed fee; but registry at such commuted fee shall not be granted for more than four years in all, unless for cause shown to the satisfaction of the Registrar, in which case registry may be granted year by year for an additional number of years.

143. The Lieutenant Governor in Council may, by regulation, prescribe fees for services, filings, registration and other matters under this Act and prescribe forms for use hereunder.

PART III

TRANSITIONAL PROVISIONS

144. Where at the commencement of this Act a provincial company was carrying on business as a registered trust company under *The Trust Companies Act*, being

145. Capital stock.

146. Payment of capital stock by shareholders.

147. Repeal.

148. Coming into force.

chapter 345 of the Revised Statutes, its registration under that Act constitutes registration under this Act for the year 1959.

145. (1) Where a registered provincial company mentioned in section 144 has less than two hundred and fifty thousand dollars of unimpaired paid-up capital and surplus, it shall, within one year from the commencement of this Act or such other period or periods as may be allowed it by orders of the Lieutenant Governor in Council, increase the capital stock of the company so that the amount of unimpaired paid-up capital and surplus shall not be less than two hundred and fifty thousand dollars.

(2) Section 54 applies to an increase of capital stock for the purposes of this section.

146. Where a provincial company referred to in section 145 fails to increase its capital stock as required by that section within the period or extended periods granted under or pursuant to section 145, the registration of that company under this Act shall be cancelled, and it shall not again be registered under this Act until the company is able to comply with all the requirements of this Act respecting registration.

147. A registered provincial company mentioned in section 144 shall, within one year from the commencement of this Act, or within such further periods as may be allowed by order of the Lieutenant Governor in Council, dispose of any investments not authorized by section 120 or 121.

148. *The Trust Companies Act*, being chapter 345 of the Revised Statutes, is hereby repealed.

149. This Act comes into force upon a date to be fixed by proclamation.

SCHEDULE

MODEL BILL

FOR INCORPORATION OF A TRUST COMPANY

An Act to Incorporate The (*state the name of the company*).

WHEREAS the persons hereinafter named have by their petition prayed that it be enacted as hereinafter set forth and it is expedient to grant the prayer of the said petition:

NOW THEREFORE 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 (*state name of company*) Act.

2. (*Insert names of the persons applying for incorporation*), together with such persons as become shareholders in the company, are incorporated under the name of (*state name of company*), hereinafter called "the company".

3. The persons named in section 2 (*or as the case may be*) shall be the provisional directors of the company. (*The name, address and occupation of each director must be given.*)

4. The capital stock of the company shall be.....
dollars, divided into.....shares of.....
dollars each.

5. The head office of the company shall be in the.....
.....of.....in the Province of Alberta.

6. The company has all the powers, privileges and immunities conferred by, and is subject to all the limitations, liabilities and provisions of *The Trust Companies Act, 1959*.

No. 32

FIFTH SESSION

THIRTEENTH LEGISLATURE

7 ELIZABETH II

1959

BILL

An Act respecting Trust Companies

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. HOOKE
