

No. 112

2nd Session, 15th Legislature, Alberta
13 Elizabeth II

BILL 112

A Bill to amend The Trustee Act and The Trust Companies
Act, 1960

HON. MR. MANNING

Explanatory Note

1. This Bill amends chapter 346 of the Revised Statutes. The Trust Companies Act, 1960 is also amended by clause 5 of this Bill as a consequence of the amendment in clause 2(b) regarding capital requirements of approved corporations.

2. (a) The present subsection (3) of section 3 reads:

- (3) Subject to subsection (10), trustees may
 - (a) deposit trust funds with an approved corporation, and
 - (b) invest in
 - (i) terminable debentures or debenture stock of an approved corporation, or
 - (ii) guaranteed investment certificates of a trust company that is registered under The Trust Companies Act and that is an approved corporation,
- if the deposit or investment is in other respects reasonable and proper, and the debentures and guaranteed investment certificates are registered and transferable only on the books of the corporation or trust company in their name as trustees for the particular estate for which they are held.

This is a revision of subsection (3) primarily to include the new clause (c) which will authorize trustees to invest in investment contracts if the issuer is an "approved corporation" and registered under The Investment Contracts Act.

(b) The present subsections (5) and (8) combined but with two significant changes in the new clause (b). It now sets out two ways of meeting financial requirements for an approved corporation, viz., a modification of the present one and the new alternative of a minimum of \$1,000,000.00 unimpaired capital if the corporation has been in business in Alberta for three years. The modification in the present requirement is that the reserve fund is to be derived solely from earnings.

BILL

No. 112 of 1965

An Act to amend The Trustee Act and The Trust Companies Act, 1960

(Assented to _____, 1965)

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

1. *The Trustee Act* is hereby amended.
2. Section 3 is amended
 - (a) by striking out subsection (3) and by substituting the following:
 - (3) Trustees may
 - (a) deposit trust funds with an approved corporation,
 - (b) invest in
 - (i) terminable debentures or debenture stock of an approved corporation, and
 - (ii) guaranteed investment certificates of an approved corporation registered as a trust company under *The Trust Companies Act, 1960*,if, in the case of debentures or guaranteed investment certificates, they are registered and transferable only on the books of the corporation in their name as trustees for the particular estate for which they are held, and
 - (c) investment contracts within the meaning of *The Investment Contracts Act* issued by an approved corporation that is registered as an issuer under that Act,if the deposit or investment is in other respects reasonable and proper.
 - (b) by striking out subsection (5) and by substituting the following:
 - (5) In this section, an approved corporation means a corporation approved by the Lieutenant Governor in Council, but no such approval shall be given unless it is shown to the satisfaction of the Lieutenant Governor in Council that

Section 3, subsections (5) and (8) presently read:

- (5) Any corporation
 - (a) that has power to lend money upon mortgages or real estate,
 - (b) that has a capitalized, fixed, paid-up and permanent stock not liable to be withdrawn and amounting to at least five hundred thousand dollars,
 - (c) that has a reserve fund amounting to not less than twenty-five per cent of its paid-up capital, and
 - (d) whose stock has a market value or established value that is not less than seven per cent in excess of the par value thereof,
- (8) No deposits or investments shall be made under the authority of this Act with or in the debentures or debenture stock or guaranteed investment certificates of any society or company that has not obtained the order of the Lieutenant Governor in Council approving of deposits with or investments in the debentures or debenture stock or guaranteed investment certificates thereof.

(c) Subsections (9) and (10) presently read:

- (9) Notwithstanding subsection (8), approval shall not be granted to any society or company that does not appear to the satisfaction of the Lieutenant Governor in Council to have kept strictly within its legal powers in relation to borrowing and investment.
- (10) The Lieutenant Governor in Council, if he deems it expedient, may at any time revoke any order in council previously made approving of deposits with or investments in the debentures or debenture stock or guaranteed investment certificates of any society or corporation, and such revocation does not affect the propriety of deposits or investments made before the revocation.

The content of subsection (8) will now be in subsection (5). The new subsection (8) is the present subsection (9) revised. The new subsection (9) is the present subsection (10) revised. The new subsection (10) is a saving clause respecting the existing approved corporations and gives them five years in which to build up a 25% reserve fund derived solely from earnings if that is not presently the case. Only after that period can the approval be revoked on that ground.

3. New Requirements for financial information by corporations other than registered trust companies and investment contract issuers.

- (a) the corporation is empowered to lend money upon the security of real estate,
 - (b) the corporation either
 - (i) has both a subscribed and paid-up permanent capital of which at least five hundred thousand dollars is unimpaired and a reserve fund derived solely from earnings amounting to at least twenty-five per cent of its paid-up capital, or
 - (ii) has a subscribed and paid-up permanent capital of which at least one million dollars is unimpaired and has been carrying on business in Alberta continuously for at least three years immediately prior to the application for approval,
 and
 - (c) the corporation's permanent capital stock has a market value or established value that is not less than seven per cent in excess of the par value thereof.
- (c) by striking out subsections (8) to (10) and by substituting the following:
- (8) Notwithstanding subsection (5), approval shall not be granted to any corporation that does not appear to the satisfaction of the Lieutenant Governor in Council to have kept strictly within its legal powers in relation to borrowing and investment.
- (9) The Lieutenant Governor in Council may revoke the approval of any corporation under this section but the revocation does not affect the propriety of deposits or investments made before the revocation.
- (10) With respect to a corporation which was an approved corporation under this section on the first day of April, 1965, no revocation of that approval may be made before the first day of May, 1970 on the ground only that the corporation cannot comply with subclause (i) of clause (b) of subsection (5) because the required reserve fund is not derived solely from earnings.

3. The following section is added after section 3:

3a. A corporation approved under section 3 that is not registered under *The Trust Companies Act, 1960* or *The Investment Contracts Act* shall, within two months of the close of each of its fiscal years and at such other times as the Attorney General may direct, file with the Attorney General

- (a) a certified copy of its balance sheet as of the close

4. Section 10, subsection (1) presently reads:

10. (1) Where a trustee dies or refuses to act or becomes incapable or unfit to act in the trusts or powers reposed in him, it is lawful for the person or persons, if any, empowered to appoint new trustees by the deed, will or other instrument creating the trust, or, if there is no such person able and willing to act, then for

- (a) the surviving or continuing trustee or trustees for the time being,
- (b) the executor or executors or the administrator or administrators of the last surviving and continuing trustee, or
- (c) the last retiring trustee,

to appoint in writing any other person to be a trustee in place of the trustee dying or refusing to act or becoming incapable or unfit to act as aforesaid.

This corrects an omission in the 1955 revision of the statutes and returns the subsection to its original wording. Trust deeds sometimes provide that certain persons are to appoint the trustees and the amendment here is to make clear that the trustees referred to in clauses (a), (b) and (c) can appoint a substitute trustee where under the trust deed there is "no such person" empowered to appoint trustees.

5. Section 120, subsection (4) presently reads:

(4) Where a provincial company is an approved corporation for trustee investments under The Trustee Act it may invest

- (a) any of its paid-up capital in excess of the paid-up capital required for an approved corporation, and
- (b) any moneys in excess of the reserve fund required for an approved corporation,

in such investments as the board of directors of the company may determine.

This clause amends chapter 110 of the Statutes of Alberta, 1960. The amendment is complementary to the amendments to section 3 of The Trustee Act: clause 2(b) of this Bill.

6. Commencement of Act.

of the fiscal year and the auditor's report thereon,
and

- (b) any other information pertaining to its financial position or affairs as the Attorney General may require.

4. Section 10, subsection (1) is amended

- (a) by striking out the words “, if any,”,
- (b) by striking out the words “no such person able and willing” and by substituting the words “no such person or no such person able and willing”.

5. *The Trust Companies Act, 1960* is amended by striking out subsection (4) of section 120 and by substituting the following:

(4) Where a provincial company is an approved corporation under section 3 of *The Trustee Act*, it may invest

- (a) any of its paid-up capital in excess of the minimum unimpaired capital required for the company by subclause (i) or (ii), as the case may be, of clause (b) of subsection (5) of section 3 of that Act, and

(b) any moneys in excess of the reserve fund required for the company under section 3 of that Act,
in such investments as the board of directors of the company may determine.

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

No. 112

SECOND SESSION

FIFTEENTH LEGISLATURE

13 ELIZABETH II

1965

BILL

An Act to amend The Trustee Act
and The Trust Companies Act, 1960

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. MANNING
