

1967 Bill 60

Fifth Session, 15th Legislature, 15 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 60

An Act respecting Trust Companies

THE ATTORNEY GENERAL

First Reading

Second Reading

Third Reading

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BILL 60

1967

An Act respecting Trust Companies

(Assented to _____, 1967)

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, 1967*.
2. (1) In this Act,
 1. "by-law", with reference to provincial companies incorporated otherwise than by special Act, includes articles of association;
 2. "cash" includes money on deposit with a chartered bank or treasury branch;
 3. "chief agency" means the principal office or place of business in Alberta of an extra-provincial company;
 4. "company" or "trust company" means a corporation empowered to carry on the business of executing the offices of executor, administrator and trustee, either with or without other objects or powers;
 5. "company's own funds" means moneys owned by a company as the absolute and sole owner thereof and not in a trust or representative capacity or in the right of another person;
 6. "company's own property" means the company's own funds and all other real and personal property owned by a company as the absolute and sole owner thereof and not in a trust or representative capacity or in the right of another person;
 7. "corporation" includes a trust company;
 8. "deposits and investment moneys" means moneys received by a company before or after the commencement of this Act as deposits or in respect of which an investment certificate is issued or entered into;
 9. "Director" means the Director of Trust Companies;

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Explanatory Notes

General. This Bill repeals and replaces The Trust Companies Act, 1960, Statutes of Alberta, 1960, chapter 110. It is a general, extensive revision of the present Act and includes a number of new provisions, including the following affecting provincial trust companies:

1. Requirements as to proxies and proxy solicitation: see sections 22 to 29.
2. Limitations as to shareholdings by non-residents of Canada: see sections 64 to 67.
3. Requirement for minimum of 25 shareholders: see section 68.
4. Insider trading provisions: see sections 70 to 76.
5. Restricted borrowing powers: see section 96.
6. Additional restrictions and penalties as to unauthorized investments and loans: see especially sections 119, and 125 to 130.
7. Increased capital requirements for registration: see section 145(1)(d).
8. Restriction on trafficking in trust company charters: see section 148.

The provisions of the present Act regarding inspection, financial disclosure and suspension and cancellation of registration of registered companies have been extensively rewritten: see Part 2, Divisions 2, 3 and 4.

A section reference in an explanatory note refers to the section in the present Act that deals with the same or part of the same subject matter as that in the Bill. In Divisions 2 to 4 of Part 1, a number of provisions have been adapted from the Revised Uniform Draft Companies Act published in November, 1960, by the Conference of Commissioners on Uniformity of Legislation in Canada.

10. "extra-provincial company" means a trust company, other than a provincial company;
11. "federal company" means a trust company incorporated by or pursuant to an Act of the Parliament of Canada;
12. "former Act" means *The Trust Companies Act, 1960*, being chapter 110 of the Statutes of Alberta, 1960;
13. "fully paid", with reference to any share, means a share on which there remains no liability, actual or contingent, to the issuing corporation;
14. "guaranteed fund" means
 - (i) with reference to a provincial company, the assets ear-marked and definitely set aside by it pursuant to section 104, or
 - (ii) with reference to an extra-provincial company, the assets ear-marked and definitely set aside by it for the purpose of ensuring repayment of its deposits and investment moneys;
15. "head office" means the place where the chief executive officers of the company ordinarily transact its business;
16. "improved real estate" means real estate
 - (i) upon which there exists a building used or capable of being used for residential, commercial, industrial, educational, religious, charitable or recreational purposes, or
 - (ii) upon which such a building is being constructed, or
 - (iii) which is provided with the utilities necessary to serve such a building with electric power, water and sewers but only when the land is being mortgaged for the purpose of financing the construction of such a building, or
 - (iv) on which actual farming or ranching operations are being conducted;
17. "investment certificate" means
 - (i) with reference to a provincial company, an agreement made between the company and another person pursuant to section 100 of this Act or section 68 of the former Act, or
 - (ii) with reference to an extra-provincial company, an agreement made between the company and another person before or after the commencement of this Act of similar purport to an agreement mentioned in section 100,and includes an instrument commonly known as a guaranteed investment certificate, guaranteed trust certificate or savings certificate;

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18. "Minister" means the member of the Executive Council charged with the administration of this Act;
 19. "paid in", as applied to the capital stock of a company or to any of its shares, means the amount paid to it on its shares, not including the premium, if any, paid on such shares, whether such shares are or are not fully paid;
 20. "provincial company" means a trust company incorporated by a special Act or incorporated in Alberta under the *Companies Ordinance* before April 13, 1918;
 21. "real estate" means an estate in fee simple in land, and does not include any lesser estate or interest therein;
 22. "registered", with reference to a company, means registered under this Act;
 23. "special Act" means an Act of the Legislature of Alberta to incorporate a trust company;
 24. "Supreme Court" means the Supreme Court of Alberta and "Trial Division" and "Appellate Division" mean the respective divisions of that Court;
 25. "trust or representative capacity" means the capacity of a trustee, executor, administrator, bailee, agent, receiver, liquidator, sequestrator, assignee, custodian, trustee in bankruptcy, guardian of the estate of an infant, committee of the estate of a mentally incompetent person, or any other similar capacity;
 26. "unauthorized investment or loan" means an investment or loan of a company's own funds or its deposits and investment moneys that is not authorized by or is expressly prohibited by this Act or is made in contravention of any limitations prescribed by this Act;
 27. "unimpaired paid-up capital" means that part of the subscribed and paid in permanent capital stock of a corporation that is unimpaired;
 28. "vote of the shareholders" means a vote of the shareholders present at, or represented by proxy at, a general meeting of shareholders.
- (2) For the purposes of this Act, one corporation is associated with another if
- (a) one of the corporations controls the other,
 - (b) both of the corporations are controlled by the same person or group of persons,
 - (c) each of the corporations is controlled by one person and the person who controls one of the corporations is related to the person who controls the other, and

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2. (1) Definitions.

(2) to (7) Rules for determining associated corporations.
These rules are the same as those in the federal Income Tax Act
and Ontario legislation.

(8) Location of securities and real estate mortgages.

one of those persons owns directly or indirectly one or more shares of the capital stock of each of the corporations,

- (d) one of the corporations is controlled by one person and that person is related to each member of a group of persons that controls the other corporation, and one of those persons owns directly or indirectly one or more shares of the capital stock of each of the corporations, or
- (e) each of the corporations is controlled by a related group and each of the members of one of the related groups is related to all of the members of the other related group, and one of the members of one of the related groups owns directly or indirectly one or more shares of the capital stock of each of the corporations.

(3) For the purposes of subsections (2) and (5) and this subsection, "related persons", or persons related to each other, are

- (a) individuals connected by blood relationship, marriage or adoption,
- (b) a corporation and
 - (i) a person who controls the corporation, if it is controlled by one person, or
 - (ii) a person who is a member of a related group that controls the corporation, or
 - (iii) any person related to a person described by subclause (i) or (ii),
- (c) any two corporations,
 - (i) if they are controlled by the same person or group of persons, or
 - (ii) if each of the corporations is controlled by one person and the person who controls one of the corporations is related to the person who controls the other corporation, or
 - (iii) if one of the corporations is controlled by one person and that person is related to any member of a related group that controls the other corporation, or
 - (iv) if one of the corporations is controlled by one person and that person is related to each member of an unrelated group that controls the other corporation, or
 - (v) if any member of a related group that controls one of the corporations is related to each member of an unrelated group that controls the other corporation, or
 - (vi) if each member of an unrelated group that controls one of the corporations is related to

at least one member of an unrelated group that controls the other corporation.

(4) Where two corporations are related to the same corporation within the meaning of subsection (3), they shall, for the purposes of subsection (3), be deemed to be related to each other.

(5) In subsections (3) and (6) and this subsection,

(a) "related group" means a group of persons each member of which is related to every other member of the group, and

(b) "unrelated group" means a group of persons that is not a related group.

(6) For the purpose of subsection (3),

(a) where a related group is in a position to control a corporation, it shall be deemed to be a related group that controls the corporation whether or not it is part of a larger group by whom the corporation is in fact controlled, and

(b) a person who has a right under a contract, in equity or otherwise, either immediately or in the future or either absolutely or contingently, to, or to acquire, shares in a corporation, or to control the voting rights of shares in a corporation, shall be deemed to have had the same position in relation to the control of the corporation as if he owned the shares.

(7) For the purpose of clause (a) of subsection (3),

(a) persons are connected by blood relationship if one is the child or other descendant of the other or one is the brother or sister of the other,

(b) persons are connected by marriage if one is married to the other or to a person who is so connected by blood relationship to the other, and

(c) persons are connected by adoption if one has been adopted, either legally or in fact, as the child of the other or as the child of a person who is so connected by blood relationship, other than as a brother or sister, to the other.

(8) For the purposes of this Act, securities are located where they are physically located and mortgages of real estate are located where the real estate is located.

3. (1) Unless otherwise provided in the regulations, *The Companies Act* does not apply to a provincial company incorporated in Alberta under the *Companies Ordinance* before October 1, 1929.

(2) Notwithstanding section 5 of *The Companies Act*, none of the provisions of that Act apply to provincial companies incorporated by a special Act except where otherwise provided by this Act.

3. Application of Companies Act to provincial trust companies.

(3) With respect to a provincial company incorporated by a special Act before the commencement of the former Act, the provisions of this Act supersede and prevail over any provision of its special Act.

Director of Trust Companies

4. (1) There shall be a Director of Trust Companies who shall be appointed pursuant to *The Public Service Act, 1962*.

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

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

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

PART 1

PROVINCIAL COMPANIES

6. Except as otherwise provided in this Act, this Part applies only to provincial companies.

DIVISION 1

Incorporation and Organization

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

(2) An Act for the incorporation of a trust company shall be in the form of the Model Act in the Schedule.

8. (1) The number of provisional directors of a company shall be not less than five, a majority of whom constitutes a quorum.

(2) Notwithstanding anything in a company's special Act, a person is not eligible to act as a provisional director unless he is a subscriber for stock of the company for and on his own behalf, so as to become the absolute and sole owner in his individual right of such stock and not as trustee or in the right of another, on which subscription not less than

4. Director of Trust Companies. The office of Director will replace that of Registrar of Trust Companies. Cf. section 93.

5. Evidence obtained by Director. Section 95 (2) and (3).

6. Application of Part 1.

7. Incorporation of provincial trust companies. Sections 4 (1) and 5 (1).

8. Provisional directors. Section 6. Subsection (2) is new.

- (a) \$3,000 have been paid in, where the paid in capital stock of the company is \$1,000,000 or less, or
- (b) \$4,000 have been paid in, where the paid in capital stock of the company is over \$1,000,000 and does not exceed \$3,000,000, or
- (c) \$5,000 have been paid in, where the paid in capital stock of the company exceeds \$3,000,000.

9. (1) For the purpose of organizing the company, the provisional directors shall, after giving notice thereof by advertisement in one or more newspapers published at the place where the head office of the company is situated and in the *Gazette*, cause stock books to be opened, in which shall be recorded the subscriptions of the persons who have subscribed for shares of the capital stock of the company.

(2) The provisional directors may keep the stock books open for such time as they consider necessary and may procure subscriptions for shares, make calls in respect of shares not fully paid, and do generally whatever may be necessary to organize the company.

(3) Not less than 30 days' notice shall be given of any call, and any notice of call may be given by sending the notice by registered letter to the latest known address of each subscriber as contained in the books of the company.

(4) Any subscriber may advance all or any part of the money due upon the shares held by him beyond the sums actually called for.

10. (1) The provisional directors may call a meeting of the subscribers, in this section called the "statutory meeting", to be held at the place named in the special Act where the head office of the company is to be situated, when not less than \$1,000,000 of the capital stock of the company has been *bona fide* subscribed by at least 25 subscribers for the shares of the company, reckoned in accordance with section 68.

(2) At the statutory meeting

- (a) only a subscriber who has paid in cash not less than 50 per cent of the amount of the shares subscribed for by him is qualified to vote, and
- (b) each subscriber so qualified is entitled to a number of votes equal to the number of shares of the capital stock of the company that would be fully paid up by the amount paid on his subscription.

(3) The subscribers so qualified shall, at the statutory meeting,

- (a) determine the day upon which the first annual general meeting of the company is to be held,

9. Initial subscriptions for shares. Sections 7 and 8.

10. Initial organizational meeting of subscribers. Sections 9, 10, 11 and 12. The minimum subscription in subsection (1) is increased from the present \$750,000.

- (b) elect not less than five directors qualified under this Act to hold office until the first annual general meeting of the shareholders, and
 - (c) appoint a firm of chartered accountants as the company's auditors to hold office until the first annual general meeting of the shareholders.
- (4) Upon the election of directors the functions of the provisional directors cease.

11. Until it is registered and has received its certificate of registration, a company shall not commence business and shall not exercise any of its powers except for purposes in connection with its organization under this Division and its application for registration.

12. Where a company

- (a) fails to apply for registration within one year of its incorporation, or
 - (b) having applied for registration within one year of its incorporation, fails to become registered after the completion of a review and appeal under section 147 or upon the expiry of the time limited under that section for requesting a review or commencing an appeal, as the case may be,
- the company's special Act ceases to be in force except 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 are entitled to.

DIVISION 2

Internal Regulations

By-laws

13. (1) The shareholders of a provincial company may, at any annual general meeting or at any special general meeting duly called for the purpose, make by-laws respecting the following matters, namely:

- (a) the changing of the place where the head office of the company is situated, which place shall be in Alberta;
- (b) the day on which the annual general meeting shall be held which shall be a day not more than 12 months after the holding of the last annual general meeting;
- (c) the record to be kept of proxies and the time not exceeding 48 hours, excluding Saturdays and holidays, within which proxies must be deposited with the company or an agent thereof prior to a meeting in order to entitle the holder to vote thereon;

11. Powers limited prior to registration. Section 13.

12. Special Act ceases to be effective in the event of failure to obtain registration. Section 15 (2) (3). The period for applying for registration is now one year instead of two years, and there is no longer provision for an extension by order in council.

13. Shareholders' by-laws. The present section 22 gives a general power to make "such . . . by-laws . . . as the majority of the shareholders . . . deem proper". Clause (j) replaces the present section 71.

- (d) the number of directors, which shall be an even number of not less than six nor more than 20;
 - (e) subject to the provisions of this Division, the qualifications of directors;
 - (f) the method of filling vacancies in the board of directors;
 - (g) the time and proceedings for the election of directors in case of a failure of any election on the day appointed for it;
 - (h) the remuneration of the chairman, vice-chairman, president, vice-presidents and other directors;
 - (i) the exercise of the borrowing powers of the company;
 - (j) the establishment of guarantee and pension funds for the employees and former employees of the company, or its predecessors in business and the dependants of those persons, and the making of contributions thereto out of the company's own property;
 - (k) any other by-laws authorized to be made by the shareholders by this or any other Act;
 - (l) any other matter incidental to the management and administration of the affairs of the company.
- (2) Where at the commencement of this Act, a company's by-laws prescribe an odd number of directors, clause (d) of subsection (1) does not apply to the company until the commencement of the company's annual general meeting in 1968.

14. (1) The directors of a company may make by-laws not contrary to law or this Act or any by-law passed by the shareholders

- (a) regulating the allotment and issue of shares, the making of calls thereon, the payment thereof, the issue and registration of certificates of shares, the issue of share warrants, the forfeiture of shares for non-payment, the disposal of forfeited shares and of the proceeds thereof, and the transfer of shares,
- (b) the declaration and payment of dividends,
- (c) setting aside out of premiums on shares or of profits a reserve fund, hereinafter called the "reserve",
- (d) the appointment, functions, duties and removal of agents, officers and employees of the company, and their remuneration,
- (e) the calling of meetings of the directors and the procedure at such meetings,
- (f) determining the company's fiscal year, which shall close on the last day of October, November or December, whichever the by-law specifies, and

14. Directors' by-laws. Sections 26 (2), (3), (4) and 27. Clause (c) of subsection (1) replaces the present section 73.

(g) the conduct in all other particulars of the affairs of the company.

(2) Every by-law made by 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 thereafter 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 shareholders 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.

15. (1) Every by-law shall be reduced to writing and shall have affixed thereto the seal of the company, and shall be admitted 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 it, and without further proof thereof.

(2) The by-law 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".

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

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

General Meeting of Shareholders

17. (1) A general meeting of the shareholders shall be held at least once in each year for the purpose of

- (a) considering the financial statement of the company,
- (b) the election of directors and auditors, and
- (c) 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) The annual general meeting shall be held at the place where the head office of the company is situated or at such other place in Alberta as the directors may determine.

15. By-laws as evidence. By-law book. Sections 23 and 24.

16. Delivery of copy of by-law to Director. Section 25.

17. Annual general meeting. Section 16.

(3) Notice of the time and place of the holding of the annual general meeting of the shareholders shall be delivered to, or sent by mail to, each common shareholder, or, on request, to his attorney authorized in writing, at his last address as shown on the books of the company, and the notice of the meeting shall be so delivered or sent at least 20 days before the time fixed for holding the meeting.

18. (1) The directors may at any time by resolution 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 are, by requisition delivered to the manager, acting manager or secretary of the company, at all times entitled to have a special general meeting called by that 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 to, or sent by ordinary mail to, the address of each shareholder, so far as it is known, at least 20 days before the day appointed for the meeting.

(4) Subject to section 27, no other business shall be transacted at any special general meeting unless all the shareholders of the company are present in person or by proxy and unanimously consent thereto.

(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.

19. Any director or officer wilfully neglecting or omitting

(a) to give effect to the requisition mentioned in section 18, or
(b) to give the notice of any general meeting required by section 17 or 18,
is guilty of an offence.

20. 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 the minute books of the company.

18. Special general meetings. Section 17.

19. Offence. Section 19.

20. Minute book.

21. At all meetings of shareholders of the company a shareholder is entitled only to one vote for each fully paid share held by him.

Proxies and Proxy Solicitation

22. In this section and in sections 23 to 29,

- (a) "form of proxy" means a written or printed form that, upon completion and execution by or on behalf of a shareholder, becomes a proxy;
- (b) "information circular" means the circular referred to in subsection (1) of section 25;
- (c) "proxy" means a completed and executed form of proxy by means of which a shareholder has appointed a person as his nominee to attend and act for him and on his behalf at a meeting of shareholders;
- (d) "solicit" and "solicitation" include
 - (i) any request for a proxy whether or not accompanied by or included in a form of proxy,
 - (ii) any request to execute or not to execute a form of proxy or to revoke a proxy,
 - (iii) the sending or delivery of a form of proxy or other communication to a shareholder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy, and
 - (iv) the sending or delivery of a form of proxy to a shareholder pursuant to section 24, but do not include
 - (v) the sending or delivery of a form of proxy to a shareholder in response to an unsolicited request made by him or on his behalf, or
 - (vi) the performance by any person of ministerial acts or professional services on behalf of a person soliciting a proxy.

23. (1) Every common shareholder, including a common shareholder that is a corporation, may by means of a proxy appoint a common shareholder of the company whose shares are fully paid, as his nominee to attend and act at the meeting in the manner, to the extent and with the power conferred by the proxy.

(2) A proxy shall be executed by the shareholder or his attorney authorized in writing or, if the shareholder is a corporation, under its corporate seal or by an authorized officer or attorney thereof, and ceases to be valid one year from its date.

(3) In addition to the requirements, where applicable, of section 27, a proxy shall contain the date thereof and the appointment and name of the nominee and may contain

21. One vote per fully paid share. The present section 19 permits voting of shares not fully paid if they are "not six months in arrears".

22. The sections under the heading "Proxies and Proxy Solicitation" are new and follow closely the equivalent provisions in Part 10 of the Bill for The Securities Act, 1967.

23. Proxies. Subsections (1) and (2) are the equivalent of the present section 20.

- (a) a revocation of a former proxy,
- (b) restrictions, limitations or instructions as to the manner in which the shares in respect of which the proxy is given are to be voted or that may be necessary to comply with the laws of any jurisdiction in which the shares of the company are listed on a stock exchange, and
- (c) a restriction or limitation as to the number of shares in respect of which the proxy is given.

(4) In addition to revocation in any other manner permitted by law, a proxy may be revoked by instrument in writing executed by the shareholder or by his attorney authorized in writing or, if the shareholder is a corporation, under its corporate seal or by an authorized officer or attorney thereof, and deposited either at the head office of the company at any time up to and including the last business day preceding the day of the meeting, or any adjournment thereof, at which the proxy is to be used or with the chairman of the meeting on the day of the meeting, or adjournment thereof, and upon either of such deposits the proxy is revoked.

(5) In the absence of a by-law made pursuant to clause (d) of section 13 pertaining thereto, the directors may by resolution fix a time not exceeding 48 hours, excluding Saturdays and holidays, preceding any meeting or adjourned meeting of shareholders before which time proxies to be used at that meeting must be deposited with the company or an agent thereof, and any period of time so fixed shall be specified in the notice calling the meeting or in the information circular relating thereto.

24. (1) Subject to section 26, the management of a company shall, concurrently with or prior to giving notice of a meeting of shareholders of the company, send by mail to each common shareholder or, on request, to his attorney authorized in writing, at his last address as shown on the books of the company, a form of proxy for use at the meeting that complies with section 27.

(2) If the management of a company fails to comply with subsection (1), the company is guilty of an offence and is liable on summary conviction to a fine of not more than \$1,000, and every director or officer of the company who authorized, permitted or acquiesced in the failure is also guilty of an offence and is liable on summary conviction to a like fine.

25. (1) Subject to subsection (2) and section 26, no person shall solicit proxies unless,

- (a) in the case of a solicitation by or on behalf of the management of a company, an information circular, either as an appendix to or as a separate document

24. Mandatory solicitation of proxies. New.

25. Information circular. New.

accompanying the notice of the meeting, is sent by prepaid mail to each shareholder of the company whose proxy is solicited at his last address as shown on the books of the company, or

- (b) in the case of any other solicitation, the person making the solicitation, concurrently with or prior thereto, delivers or sends an information circular to each shareholder of the company whose proxy is solicited.

(2) Subsection (1) does not apply to

- (a) any solicitation, otherwise than by or on behalf of the management of a company, where the total number of shareholders whose proxies are solicited is not more than 15, two or more persons who are the joint registered owners of one or more shares being counted as one shareholder,
- (b) any solicitation by a person made pursuant to section 79 of *The Securities Act, 1967*, and
- (c) any solicitation by a person in respect of shares of which he is the beneficial owner.

(3) A person who fails to comply with subsection (1) is guilty of an offence and is liable on summary conviction to a fine of not more than \$1,000, and, where that person is a company, every director or officer of the company who authorized, permitted or acquiesced in the failure is also guilty of an offence and is liable on summary conviction to a like fine.

(4) A person who effects a solicitation that is subject to this section by means of a form of proxy, information circular or other communication that

- (a) contains an untrue statement of a material fact, or
- (b) omits to state a material fact necessary in order to make any statement contained therein not misleading in the light of the circumstances in which it was made

is guilty of an offence and is liable on summary conviction to a fine of not more than \$1,000, and, where that person is a company, every director or officer of the company who authorized, permitted or acquiesced in the offence is also guilty of an offence and is liable on summary conviction to a like fine.

(5) No person is guilty of an offence under subsection (4) in respect of any untrue statement of a material fact or omission to state a material fact in a form of proxy or information circular, if the untruth of the statement or the fact of such omission was not known to the person who effected the solicitation and in the exercise of reasonable diligence could not have been known to the person.

26. (1) Upon the application of any interested person, a judge of the Supreme Court designated by the Chief Justice of the Trial Division may, if satisfied that in the circum-

26. Exemption orders. New.

stances of the particular case there is adequate justification for so doing, make an order, on such terms and conditions as seem to the judge just and expedient, exempting, in whole or in part, any person from the requirements of section 24 or from the requirements of subsection (1) of section 25.

(2) The applicant shall give the Alberta Securities Commission notice of an application under subsection (1) and the Commission has the right to appear and be heard thereon.

(3) An appeal lies to the Appellate Division from an order made under subsection (1).

27. Where section 24 or 25 is applicable to a solicitation of proxies,

- (a) the form of proxy sent to a shareholder by a person soliciting proxies
 - (i) shall indicate in bold face type whether or not the proxy is solicited by or on behalf of the management of the company, and
 - (ii) shall provide a specifically designated blank space for dating the form of proxy,
- (b) the form of proxy shall provide means whereby the person whose proxy is solicited is afforded an opportunity to specify that the shares registered in his name shall be voted by the nominee in favour of or against, in accordance with such person's choice, each matter or group of related matters identified therein or in the information circular as intended to be acted upon, other than the election of directors and the appointment of auditors, but a proxy may confer discretionary authority with respect to matters as to which a choice is not so specified by such means if the form of proxy or the information circular states in bold face type how it is intended to vote the shares represented by the proxy in each such case,
- (c) a proxy may confer discretionary authority with respect to amendments or variations to matters identified in the notice of meeting, or other matters which may properly come before the meeting, if
 - (i) the person by whom or on whose behalf the solicitation is made is not aware a reasonable time prior to the time the solicitation is made that any such amendments, variations or other matters are to be presented for action at the meeting, and
 - (ii) a specific statement is made in the information circular or in the form of proxy that the proxy is conferring such discretionary authority,
- (d) no proxy shall confer authority

27. Special form of proxy. New.

- (i) to vote for the election of any person as a direction of the company unless a *bona fide* proposed nominee for the election is named in the information circular, or
- (ii) to vote at any meeting other than the meeting specified in the notice of meeting or any adjournment thereof,
- (e) the information circular or form of proxy shall state that the shares represented by the proxy will be voted and that, where the person whose proxy is solicited specifies a choice with respect to any matter to be acted upon pursuant to clause (b), the shares shall, subject to section 28, be voted in accordance with the specifications so made,
- (f) the information circular or form of proxy shall indicate in bold face type that the shareholder has the right to appoint a person to attend and act for him and on his behalf at the meeting other than the person, if any, designated in the form of proxy, and shall contain instructions as to the manner in which the shareholder may exercise such right, and
- (g) if the form of proxy contains a designation of a named person as nominee, means shall be provided whereby the shareholder may designate in a form of proxy some other person as his nominee for the purpose of subsection (1) of section 23.

28. If the aggregate number of shares represented at a meeting by proxies required to be voted for or against a particular matter or group of matters are, to the knowledge of the chairman of the meeting, less than 5 per cent of the shares entitled to vote and represented at the meeting, the chairman of the meeting has the right not to conduct a vote by way of ballot on any such matter or group of matters unless a poll is demanded at the meeting.

29. The Lieutenant Governor in Council may make such regulations respecting the form and content of an information circular as he considers necessary or appropriate in the public interest.

Directors

30. (1) A provincial company shall be under the management of a board of directors elected or appointed in accordance with this Act.

(2) A person is not eligible to be a director unless he holds common shares of the company as the absolute and sole owner thereof in his individual right and not as trustee or in the right of another, on which not less than

- (a) \$3,000, or such greater amount as the by-laws require, have been paid in, when the paid in capital stock of the company is \$1,000,000 or less, or

28. Where vote by ballot not required. New.

29. Regulations re contents of information circular. New.

30. Qualifications of directors. Section 30. The shareholding requirements in subsection (2) are increased from the present \$1,000. Subsection (4) is new.

- (b) \$4,000, or such greater amount as the by-laws require, have been paid in, when the paid in capital stock of the company is over \$1,000,000 and does not exceed \$3,000,000, or
 - (c) \$5,000, or such greater amount as the by-laws require, have been paid in, when the paid in capital stock of the company is over \$3,000,000.
- (3) A person is not eligible to be elected or appointed a director if
- (a) he is under 21 years of age or 75 years of age or over, or
 - (b) he is in arrears in respect of any calls on shares held by him.
- (4) A person is not eligible to be elected or appointed a director of the company if
- (a) he is a director of a chartered bank, another trust company or a corporation incorporated under the laws of Canada or a province that carries on the business of a loan company and that accepts deposits from the public, or
 - (b) he is a director of a corporation that owns shares of the capital stock of a chartered bank, trust company or loan company described in clause (a) in any number that would, under the voting rights attached to the shares owned by the corporation of which he is a director, permit the corporation of which he is a director to vote more than 10 per cent of the total votes that could, under the voting rights attached to all the issued and outstanding shares of the chartered bank, trust company or loan company described in clause (a), be voted by the holders thereof,

but this subsection does not come into operation until May 1, 1968.

(5) Three-quarters of the directors shall at all times be Canadian citizens ordinarily resident in Canada.

(6) The election or appointment of any person as a director is void if the composition of the board would as a result thereof fail to comply with subsection (5).

31. (1) At the election of directors of a company in 1968,

- (a) one-half of the number of directors shall be elected for a term expiring at the annual general meeting in 1969, and
- (b) one-half of the number of directors shall be elected for a term expiring at the annual general meeting in 1970.

(2) At the election of directors in 1969 and in subsequent years, one-half of the number of directors shall be elected

31. Election of directors. Section 29. The present term of office is one or two years. The terms will now be two years in all cases, but with one-half elected each year.

for a term expiring at the annual general meeting held in the second year after the year in which they are elected.

(3) The terms of office of the directors of a company holding office immediately before the company's annual general meeting in 1968 expire upon the commencement of that meeting, notwithstanding that they were elected or appointed for a longer term.

(4) Where an election of directors is not made at the annual general meeting, the election may take place on any other day fixed in accordance with the by-laws, and, subject to this Act, the directors in office immediately prior to the annual general meeting remain in office until new directors are elected or appointed.

32. (1) Where a vacancy occurs in the board of directors, the board of directors may appoint a shareholder as a director to hold office for the remainder of the term of the director whom he replaces, if that shareholder is eligible to be appointed as a director.

(2) Where by reason of a vacancy in the board of directors the composition of the board fails to comply with subsection (5) of section 30, the directors shall, if the vacancy has not within 60 days of the occurrence thereof been filled under subsection (1), forthwith fill the vacancy.

(3) A vacancy in the board of directors does not impair the right of the remaining directors to act.

33. (1) The shareholders may, at any special general meeting of the shareholders called for the purpose, remove any director.

(2) A director ceases to be a director if

- (a) he ceases to fulfill the requirements of subsection (2) of section 30 with respect to holdings of shares, or
- (b) he ceases to be a Canadian citizen ordinarily resident in Canada and as a result thereof the composition of the board of directors ceases to comply with subsection (5) of section 30.

34. (1) The shareholders, or, if authorized by the by-laws, the directors

- (a) shall elect by ballot from among the directors a president and at least one vice-president, and
- (b) may elect by ballot from among the directors a chairman and vice-chairman of the board of directors and one or more vice-presidents in addition to the vice-president elected under clause (a).

(2) A person elected to an office under this section ceases to hold that office if he ceases to be a director.

32. Appointment of director in case of vacancy. Sections 31 and 32.

33. (1) Removal of director by shareholders. New.
(2) When director ceases to hold office. New.

34. Election of senior officers. Section 34 (1).

35. (1) When a vacancy occurs in the office of the president, the directors shall from their number elect a president.

(2) When a vacancy occurs in the office of a vice-president who is a director, the directors may from their number elect a vice-president and shall do so if without such an election there would be no vice-president who is a director.

36. (1) The chairman of the board, or in his absence the vice-chairman of the board or the president, or in their absence a vice-president who is a director, shall preside at all meetings of the directors.

(2) Where at any meeting of the directors the chairman of the board, the vice-chairman of the board, the president and all vice-presidents who are directors are absent, the directors present shall choose one of their number to preside at that meeting.

37. (1) At a meeting of the board of directors

(a) a majority constitutes a quorum except that where the number of directors exceeds 13, seven directors constitute a quorum, and

(b) subject to subsection (2), the concurrence of a majority of the directors present is necessary to any act of the board.

(2) Each director, including the person presiding, has one vote on any question before the board, but if there is an equal division on any question, the person presiding also has a casting vote.

38. (1) The shareholders of a company having more than six directors may, at a general meeting called for the purpose, by resolution passed by a vote of the shareholders representing two-thirds of the subscribed and issued capital stock of the company, authorize the directors to elect from their number an executive committee consisting of not less than three members.

(2) The executive committee may fix its quorum at not less than a majority of its members and may, subject to subsection (3) and to any restriction in the resolution constituting it or in the by-laws of the directors, exercise any of the powers of the directors delegated to it by the directors.

(3) The directors shall not delegate to the executive committee any of their powers under clauses (a), (b), (c), (e) and (f) of subsection (1) of section 14 or section 48, 49, 50 or 89 or their powers in respect of the borrowing of money by the company.

(4) Any act done by the executive committee, whether in conformity with its powers or not, binds all of the directors.

35. Election of president and vice-president in case of vacancy.
New.

36. Who presides at directors' meetings. New.

37. Procedure at directors' meetings. Section 34 (2).

38. Executive committee. Section 35.

39. The directors may lawfully exercise all the powers of the company except as to any matters that are required by law or by the by-laws of the company to be transacted only at a general meeting of the shareholders.

40. Subject to this Act 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,
- (b) make and enforce calls upon shares,
- (c) declare the forfeiture of all shares on which such calls are not paid,
- (d) make any payments and advances of money that they consider expedient and that are authorized to be made by or on behalf of the company,
- (e) 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, and
- (f) generally deal with, sell, exchange, lease and dispose of the company's own property in such manner as they consider expedient and conducive to the benefit of the company.

41. (1) Where the directors entertain reasonable doubts as to the legality of any claim to or upon any share or obligation of a company, or to or upon any dividend, coupon or the proceeds thereof, the company, on the authorization of a resolution of the directors, may apply to the Supreme Court by way of originating notice of motion for an order or judgment adjudicating upon such claim and awarding such share, obligation, dividend, coupon or proceeds to the person legally entitled to it, 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 motion.

(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 the application and the proceedings thereupon.

42. (1) A company shall acquire and at all times maintain a bond with a bonding company or insurance company acceptable to the directors for the indemnification of the company in the event of loss to it by reason of the fraudulent or criminal act of any of its officers or employees.

(2) Coverage under the bond referred to in subsection (1) is a condition of employment of every employee of the company and a condition upon which any director is elected to or holds office as an officer of the company.

39. Exercise of company's powers by directors. Section 33.

40. Particular powers of directors. Section 36.

41. Reference to Supreme Court to decide on claims re shares, etc. Section 37.

42. Mandatory bonding of all officers and employees. Section 39.

(3) Subsections (1) and (2) do not apply in respect of persons who are officers and employees of a company at the commencement of this Act until July 1, 1967.

43. (1) Not less than two officers of the company acting together shall

- (a) sign or endorse on behalf of the company any cheque, voucher, other negotiable instrument or other document authorizing payment of any money by the company or subjecting the company to any liability, or
- (b) be permitted by the company to have access to any vault, safe or other place where the company stores property for safekeeping, or
- (c) deliver or authorize the delivery to any person of any of the company's own property or any property held by the company in a trust or representative capacity, or
- (d) sign on behalf of the company any document transferring, assigning or in any way alienating, or any agreement to transfer, assign or in any way alienate, the company's own property or any property held by the company in a trust or representative capacity.

(2) The directors shall by resolution specify the employees of the company who are officers for the purposes of doing any of the acts mentioned in subsection (1) but may restrict the authority of any employee so specified to any of those acts.

44. (1) The directors shall not pass any by-law to declare or pay any dividend or bonus when the company is insolvent, or that renders the company insolvent or impairs or diminishes its capital.

(2) The persons who were directors of the company when a by-law was passed in contravention of subsection (1) are jointly and severally liable to the company for all moneys paid pursuant to that by-law unless,

- (a) being present at the meeting of the directors when the by-law was passed, he
 - (i) protested the by-law at that meeting orally or in writing, and
 - (ii) notified the Director, in writing, of his protest within eight days after the date of that meeting,
- or
- (b) not being present at the meeting of the directors when the by-law was passed, he
 - (i) filed his written protest against the by-law with the company, and

43. Dual control and custody as to property, vaults, cheques,
etc. New.

44. Illegal dividend and liability of directors therefor. Section
40.

- (ii) notified the Director, in writing, of that protest,
within 30 days after the day on which the by-law was passed.

45. (1) The directors of a company are jointly and severally liable to its employees for all debts of the company not exceeding one year's wages due for services performed for the company while they were 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 filed and proved,

and unless he is sued for the 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 the 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.

DIVISION 3

Capital Stock and Shares

Capitalization

46. Subject to this Act, the authorized capital stock of a company shall be divided into shares each having a par value of \$1, or any multiple thereof not exceeding \$100.

47. (1) A company shall not, after the commencement of this Act, create or issue more than one class of common shares.

(2) All common shares of a company have voting rights under all circumstances, notwithstanding that any class of them are issued without voting rights or with limited voting rights.

(3) All shares of a company, other than preferred shares, shall be designated as common shares.

48. (1) Subject to subsections (3), (4) and (5), the directors of a company may make by-laws for creating and issuing any part of the capital stock of the company as preferred shares.

45. Liability of directors for wages. Section 41.

46. Division of capital stock. The present section 45 permits shares of \$5 par value each, or any multiple not over \$100.

47. Common shares. New. Cf. section 45.

48. Preferred shares. New. Cf. section 45.

(2) Subject to subsection (3), a by-law under this section may specify that the shares may be preferred in any respect and deferred in any other respect and, without limiting the generality of the foregoing, may specify that the shares may be either preferred or deferred in matters of the division of profits, payment of dividends and bonuses or rank in winding-up proceedings.

(3) No by-law may be made under this section for the creation and issue of preferred shares carrying any voting rights and any preferred shares of a company created or issued before the commencement of this Act do not have voting rights under any circumstances, notwithstanding that they purport to confer full or limited voting rights.

(4) A by-law under this section is invalid unless

(a) it is approved by a vote of the shareholders at a special general meeting called for that purpose and the shares voted in favour of the approval represent at least two-thirds of the subscribed and issued capital stock of the company, and

(b) it is afterwards approved by the Lieutenant Governor in Council.

(5) No by-law may be made under this section to authorize the creation and issue of any preferred shares that are subject to

(a) redemption by the company of all or part of those shares, except for the purpose of exchanging the preferred shares for common shares of the company only, or

(b) the right of the company to purchase for cancellation all or any part of the shares.

(6) Nothing in this section shall be construed to prevent the Lieutenant Governor in Council from refusing to approve a by-law under this section.

49. (1) The directors of a company may, at any time after all of the capital stock of the company has been subscribed and at least 90 per cent thereof paid in, by by-law provide for the increase of the capital stock of the company.

(2) The by-law shall declare the number and par value of the shares of the stock so increased 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.

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

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

49. Increase of capital stock and subdivision of shares. Section
54. Provision for decrease in capital is omitted.

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

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

(7) A by-law under this section is invalid unless

(a) it is approved by a vote of the shareholders at a special general meeting of the shareholders called for that purpose and the shares voted in favour of the approval represent at least two-thirds of the subscribed and issued capital stock of the company, and

(b) it is afterwards approved by the Lieutenant Governor in Council.

(8) Nothing in this section shall be construed to prevent the Lieutenant Governor in Council from refusing to approve a by-law under this section.

Liabilities of Shareholders

50. (1) The directors may make calls on the holders of shares of the company that are not fully paid, at such times and places and in such payments or instalments as this Act or the by-laws of the company require or allow, and interest shall accrue at the rate of 6 per cent per annum upon the amount of any unpaid call from the day appointed for payment thereof.

(2) The call 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 a call is not paid in accordance with its terms, the directors, by resolution recorded in their minutes, may summarily declare the shares concerned to be forfeited.

(4) Shares declared to be forfeited under subsection (3) thereupon become the property of the company and may be disposed of as, by by-law or otherwise, the company determines, but the forfeiture does not relieve the shareholder of any liability to the company or to any creditor.

51. (1) Every shareholder is entitled to pay to the company on account of his shares any amount in advance of calls thereon.

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

50. Liability for calls on shares. Section 42.

51. Payments on shares in advance of calls. Section 47. A shareholder will no longer need the consent of the directors before paying in advance of calls.

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

52. (1) A shareholder is not, as such, liable or responsible for any act, default, obligation or liability of the company, or for any engagement, claim, payment, loss, injury, transaction, matter or thing related to or connected with the company beyond the amount of the subscription price remaining unpaid on his shares.

(2) Until the whole amount of the subscription price has been paid on his shares, a shareholder is liable to the creditors of the company for the amount remaining unpaid on the subscription price thereof, but he is not liable to an action therefor by a creditor until an execution at the suit of the creditor against the company has been returned unsatisfied in whole or in part.

(3) The amount due on such an execution, not exceeding the amount unpaid on his shares, is the amount recoverable from any such shareholder and when so recovered shall be considered as paid on his shares.

(4) A shareholder may plead by way of defence, in whole or in part, to any such action by a creditor any set-off that he could set up against the company except a claim for unpaid dividends or a salary or allowance as a director or officer of the company.

53. (1) No person holding shares of the capital stock of the company as executor, administrator, trustee, guardian or committee

(a) of or for any estate, trust or person named in the books of the company as being represented by him, or

(b) under or by virtue of a will or other instrument that is named in the books of the company in connection with such holding,

is personally subject to any liability as a shareholder for the amount remaining unpaid on the subscription price on the shares, 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 the estate and funds would be, if living and competent to hold the shares in his own name.

(2) Where the trust is for an individual or corporation, the individual or corporation is also liable as a shareholder to the extent of his or its interest in the shares.

(3) Where the estate, trust or person so represented, or the will or other instrument, is not named in the books of the company, the executor, administrator, trustee, guardian or committee is personally liable in respect of the shares as if he held them in his own name as owner thereof.

52. Liability of shares for debts and obligations of the company.
Sections **43** and **44**.

53. Liability as to shares held in trust. Section **46**.

54. (1) In this section "mortgagee" includes a trustee for holders of bonds, debentures, notes or other evidences of indebtedness.

(2) No mortgagee of a share of a company and no person holding such a share as collateral security who is

- (a) recorded in the register of shareholders as the holder of the share, and
- (b) described in that register as representing in either of those capacities a named mortgagor or person giving the collateral security

is personally liable in respect of the share that he so represents, but the mortgagor or other person giving the collateral security is liable as if he were registered on the books of the company as the holder of the share.

Share Certificates

55. (1) Every shareholder is entitled to a share certificate in respect of the fully paid shares held by him signed by the proper officers in accordance with the by-laws of the company in that regard.

(2) A company is not bound to issue more than one share certificate in respect of a share or shares held jointly by several persons, and delivery of a share certificate to one of several joint shareholders is sufficient delivery to all.

(3) A share certificate shall be admitted in evidence as *prima facie* proof of the title of the shareholder named therein to the shares represented thereby.

(4) A company may charge a fee of not more than \$1 for every share certificate issued but in the case of the allotment and issue of shares no fee shall be charged.

(5) A company shall not deliver a share certificate in respect of

- (a) shares issued by the company after the commencement of this Act, or
- (b) shares transferred under a transfer recorded in the share transfer register of the company after the commencement of this Act,

unless the shares are fully paid.

56. Where a share certificate is defaced, lost or destroyed, a new certificate may be issued in its place upon

- (a) payment of such fee, if any, not exceeding \$1 as the directors prescribe, and
- (b) the furnishing to the company of a bond of indemnity issued by a bonding company or insurance company that is acceptable to the directors.

54. Liability as to mortgaged share. New.

55. Share certificates. New.

56. Issue of new certificates. Section 50.

Transfer and Transmission of Shares

57. (1) The shares of a provincial company are personal property and, subject to this Act, are transferable.

(2) A fraction of a share is not transferable.

(3) Subject to section 58, no by-law is valid that in any way restricts the right of a holder of fully paid shares to transfer them.

58. (1) No registration of the transfer of a share that is not fully paid shall be made without the consent of the directors and of the transferee and, subject to subsection (4), where such a registration is made with the consent of the directors, the transferor is not liable to the company or to its creditors for the amount unpaid on such a share.

(2) Subject to subsection (3), where registration is made with the consent of the directors of the transfer of a share that is not fully paid to a person whom the directors have reason to believe is not of sufficient means to pay fully for the share, the directors in office when the resolution giving the consent was passed are jointly and severally liable to the company and to its creditors in the same manner and to the same extent as the transferor would have been liable if the registration had not been made.

(3) A director is not liable under subsection (2) if

(a) being present at the meeting of the board of directors or the executive committee at which the resolution giving the consent was passed, he

(i) did not vote in favour of the resolution and protested the resolution at that meeting, orally or in writing, and

(ii) notified the Director, in writing, of his protest within eight days after the date of that meeting,

or

(b) not being present at the meeting of the board of directors or the executive committee at which the resolution giving consent was passed, he

(i) filed his written protest against the resolution, and

(ii) notified the Director, in writing, of that protest

within 30 days after the date when the consent was given.

(4) Where a transfer of a share upon which a call is unpaid is registered with the consent of the directors and of the transferee, 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 also remains liable for the call until it is paid.

57. Transferability of shares. Section 48.

58. Transfer of shares not fully paid. Section 49.

59. Unless made by sale under execution or under the order or judgment of a competent court, no transfer of shares is, until it is recorded in the share transfer register of the company, valid for any purpose whatever, except only

- (a) as exhibiting the rights of the parties thereto towards each other, and
- (b) if absolute, as rendering the transferee and the transferor jointly and severally liable to the company and its creditors until it is recorded in the share transfer register of the company.

60. (1) The by-laws of a company may provide that transfers of shares of the capital stock of the company may be deposited with any branch office or any specified branch office of the company, for recording in the share transfer register of the company, subject to compliance with the procedure and conditions prescribed in the by-laws.

(2) Where a transfer of shares is deposited with a branch office pursuant to subsection (1), the person in charge of that office shall forthwith send the transfer to the head office of the company for recording in the share transfer register.

61. (1) Where upon the death of a holder of any shares of a company a transmission thereof takes place to or title to or control thereof vests or is claimed to vest in any person (in this section and section 62 called the "successor") the company may permit the recording thereof in the name of the successor in the share transfer register and the register of shareholders of the company or may pay the principal amount or any dividend thereon to the successor

- (a) if the successor claims by virtue of a grant of probate or letters of administration or other instrument issued or purporting to be issued by a court or other judicial authority in any jurisdiction, upon production of the grant or instrument or
 - (i) an authenticated copy thereof or extract therefrom, or
 - (ii) a certificate of the grant or instrument, under the seal of the court or other authority or a notarial copy thereof without proof of the authenticity of the seal or other proof, and upon deposit of a copy thereof, or
- (b) if the successor claims by virtue of the laws of any jurisdiction in which any such transmission or vesting of title or control takes place without any grant of probate or letters of administration or other court or judicial action, upon production and deposit of proof thereof in accordance with the laws of that jurisdiction and reasonable evidence of those laws,

together with, in any such event, production and deposit of an affidavit or statutory declaration by the successor, or

59. Effect of share transfer before registration. Section 51.

60. Deposit of transfer in branch office for the purpose of registration. New.

61. Transmission of shares. Section 53.

any one of the persons where more than one person is the successor, showing the nature of the transmission or vesting of title or control, as the case may be.

(2) Every grant or instrument required by subsection (1) to perfect the transmission of a share in the company shall, if made elsewhere than in a country of the British Commonwealth or any colony, dependency or protectorate of any such country,

- (a) be further authenticated by the clerk of a court of record under the seal of the court, or by a consul, vice-consul or other accredited representative of any of Her Majesty's Governments in the country where the grant or instrument was made, or
- (b) be made directly before such consul, vice-consul or other accredited representative.

62. A company may, in its discretion, record a transfer of a share executed by the successor of the share without the necessity of recording the transmission of the share under section 61 if the transfer is accompanied by the documents or proof that would be required by that section if the successor had applied to record a transmission thereunder.

63. (1) Where the transmission of a share of the capital stock of the company takes place by operation of law otherwise than because of the death of a shareholder, the company shall record the transmission in the share transfer register and register of shareholders upon being furnished with an affidavit or declaration in a form satisfactory to it signed by or on behalf of a person claiming under the transmission stating the nature and effect of the transmission together with any corroborative evidence that the company may request.

(2) Until the transmission has been recorded in the share transfer register of the company, no person claiming a share by virtue thereof is entitled to receive notice of or vote at meetings of shareholders or to receive any payment in respect of such share whether by way of dividend or otherwise.

64. (1) In this section and sections 65 to 67,

- (a) "corporation" includes an association, partnership or other organization;
- (b) "non-resident" means
 - (i) an individual who is not ordinarily resident in Canada, or
 - (ii) a corporation incorporated, formed or otherwise organized, elsewhere than in Canada, or
 - (iii) a corporation that is controlled directly or indirectly by non-residents as defined in sub-clause (i) or (ii), or

62. Transfer by successor without the necessity of a prior transmission. New.

63. Transmission by operation of law. New.

64. Interpretation provisions re sections 65 to 67. Sections 64 to 67 are new and in general restrict the shareholdings of non-residents of Canada to 25 per cent of the issued and outstanding shares of the company and 10 per cent of such shares in the case of any one non-resident and his associates.

- (iv) a trust established by a non-resident as defined in subclause (i), (ii) or (iii), or a trust in which non-residents as so defined have more than 50 per cent of the beneficial interest, or
- (v) a corporation that is controlled directly or indirectly by a trust mentioned in subclause (iv) ;
- (c) "resident" means an individual, corporation or trust that is not a non-resident.
- (2) For the purposes of sections 65 to 67, a shareholder is deemed to be associated with another shareholder if
 - (a) one shareholder is a corporation of which the other shareholder is an officer or director, or
 - (b) one shareholder is a partnership of which the other shareholder is a partner, or
 - (c) one shareholder is a corporation that is controlled directly or indirectly by the other shareholder, or
 - (d) both shareholders are corporations and one shareholder is controlled directly or indirectly by the same individual or corporation that controls directly or indirectly the other shareholder, or
 - (e) both shareholders are members of a voting trust where the trust relates to shares of the company, or
 - (f) both shareholders are associated within the meaning of clauses (a) to (e) with the same shareholder.
- (3) For the purposes of sections 65 to 67, where a share of the capital stock of the company is held jointly and one or more of the joint holders thereof is a non-resident, the share is deemed to be held by a non-resident.
- (4) For the purposes of this section and sections 65 to 67, a "shareholder" is a person who according to the register of shareholders of the company is the holder of one or more shares of the capital stock of the company and a reference in sections 65 to 67 to a share being held by or in the name of any person is a reference to his being the holder of the share according to the register of shareholders of the company.
- (5) Where after the commencement of this Act a corporation or trust that was at any time a resident becomes a non-resident, any shares of the capital stock of the company acquired by the corporation or the trust while it was a resident and held by it while it is a non-resident shall be deemed, for the purposes of sections 65 and 66, to be shares held by a resident for the use or benefit of a non-resident.

65. (1) The directors of a company shall refuse to allow a transfer of a share of the capital stock of the company to a non-resident to be recorded in the share transfer register of the company

- (a) if, when the total number of shares of the capital stock of the company held by non-residents exceeds

65. New. Limitations as to non-resident holdings.

25 per cent of the total number of the issued and outstanding shares of such stock, the transfer would increase the percentage of such shares held by non-residents, or

- (b) if, when the total number of shares of the capital stock of the company held by non-residents is 25 per cent or less of the total number of the issued and outstanding shares of such stock, the transfer would cause the total number of such shares held by non-residents to exceed 25 per cent of the total number of the issued and outstanding shares of such stock, or
- (c) when the total number of shares of the capital stock of the company held by the non-resident and by other shareholders associated with him, if any, exceeds 10 per cent of the total number of issued and outstanding shares of such stock, or
- (d) if, when the total number of shares of the capital stock of the company held by the non-resident and by other shareholders associated with him, if any, is 10 per cent or less of the total number of issued and outstanding shares of such stock, the recording of the transfer would cause the number of such shares of stock held by the non-resident and by other shareholders associated with him, if any, to exceed 10 per cent of the issued and outstanding shares of such stock.

(2) The directors of a company shall not allot or allow the allotment of any shares of the capital stock of the company in circumstances where, if the allotment were a transfer of the shares, the directors would be required under subsection (1) to refuse to allow the transfer to be recorded.

(3) Default in complying with the provisions of this section does not affect the validity of a transfer of a share of the capital stock of the company that has been recorded in the share transfer register of the company or the validity of the allotment of shares of the capital stock of the company.

66. (1) Notwithstanding section 21 and subsection (2) of section 47, where a resident holds shares of the capital stock of the company in the right of, or for the use or benefit of, a non-resident, the resident shall not, in person or by proxy, exercise the voting rights pertaining to those shares.

(2) Where any shares of the capital stock of a company are held in the name or right of or for the use or benefit of a non-resident, no person shall, either as proxy or in person, exercise the voting rights pertaining to such shares held by the non-resident or in his right or for his use or benefit, if the total of such shares so held, together with such shares held in the name or right of or for the use or benefit of

66. New. No voting of shares held by a nominee for a non-resident.

- (a) any shareholders associated with the non-resident,
or
- (b) any persons who would, under subsection (2) of section 64, be deemed to be shareholders associated with the non-resident were such persons and the non-resident themselves shareholders

exceed in number 10 per cent of the issued and outstanding shares of such stock.

(3) If any provision of this section is contravened at a general meeting of the shareholders of the company, no proceeding, matter or thing at that meeting is void by reason only of such contravention, but any such proceeding, matter or thing is, at any time within one year from the day of commencement of the general meeting at which the contravention occurred, voidable at the option of the shareholders by a resolution passed at a special general meeting of the shareholders.

67. (1) The directors may make such by-laws as they consider necessary to carry out the intent of sections 64 to 66 and subsections (2) to (6) of this section and in particular, and without restricting the generality of the foregoing, the directors may make by-laws

- (a) requiring any shareholders of the company to submit a declaration
 - (i) with respect to the ownership of such share,
 - (ii) with respect to the place in which the shareholder and any person in whose right or for whose use or benefit the share is held are ordinarily resident,
 - (iii) whether the shareholder is associated with any other shareholder, and
 - (iv) with respect to such other matters as the directors consider relevant for the purposes of sections 64 to 66 and this section,
- (b) requiring any person desiring to have a transfer of a share to him recorded in the share transfer register of the company or desiring to subscribe for a share of the capital stock of the company to submit such a declaration as may be required pursuant to this section in the case of a shareholder, and
- (c) prescribing the times at which and the manner in which any declaration required under clause (a) or (b) is to be submitted.

(2) Where pursuant to any by-law made under subsection (1) any declaration is required to be submitted by any shareholder or person in respect of the transfer of or subscription for any share, the directors may refuse to allow a transfer to be recorded in the share transfer register of the company or to accept a subscription without the submission of the required declaration.

67. By-laws and rules re non-resident shareholders. New.

- (3) In determining for the purposes of sections 64 to 66
 - (a) whether a person is a resident or non-resident,
 - (b) by whom a corporation is controlled, or
 - (c) any other circumstances relevant to the performance of their duties under those sections,

the directors of the company may rely upon any statements made in any declarations submitted under this section or rely upon their own knowledge of the circumstances, and the directors are not liable in any action for any thing done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge.

68. (1) A company shall at all times have recorded in its register of shareholders at least 25 shareholders.

(2) The directors shall refuse to allow a transfer of the share of the capital stock of the company to be recorded in the share transfer register of the company if as a result thereof the number of shareholders would be fewer than 25.

(3) In determining the number of shareholders of the company for the purposes of this section, either before or after the recording of any transfer, only shares of the following kinds shall be counted:

- (a) shares recorded in the name of one person only, except where that person
 - (i) to the knowledge of the company, holds the shares as trustee for or in the right of another shareholder or shareholders, or
 - (ii) is recorded as holding the shares in a trust capacity for the benefit of two or more persons, or
 - (iii) is recorded as holding the shares as mortgagee or as holding the shares as collateral security, if he is also described as only representing two or more mortgagors or two or more persons giving the collateral security, as the case may be;

and

- (b) shares held by two or more persons upon the recording of a transmission under this Division if, prior to the recording of the transmission, the shares could have been counted under clause (a).

(4) Where at the commencement of this Act a company does not have at least 25 shareholders, this section does not apply to the company until April 1, 1968.

69. (1) Every director of a company who knowingly authorizes or permits a contravention of any provision of section 65 or 68 is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000 or to im-

68. New. No transfer to reduce number of shareholders to less than 25. The present Act requires a minimum of 25 subscribers when the company applies for registration but there has been no requirement to maintain that minimum after registration.

69. Offences re prohibited share transfers and minimum requirement of 25 shareholders. New.

prisonment for a term of not more than one year or to both such fine and imprisonment.

(2) Every person who knowingly contravenes section 66 is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000 or to imprisonment for a term of not more than one year or to both such fine and imprisonment.

(3) Where the register of shareholders does not, on April 1, 1968, comply with subsection (1) of section 68, the company is liable to a penalty of \$100 for each day, commencing on April 1, 1968, that the default continues.

Insider Trading

70. (1) In this section and in sections 71 to 76,

- (a) "affiliate" means a corporation that is an affiliated company within the meaning of section 2 of *The Securities Act, 1967*;
- (b) "associate", where used to indicate a relationship with any person, means
 - (i) any corporation of which that person beneficially owns, directly or indirectly, equity shares carrying more than 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding,
 - (ii) any trust or estate in which that person has a substantial beneficial interest or as to which that person serves as trustee or in a similar capacity, or
 - (iii) any relative or spouse of that person or any relative of that spouse who, in any such case, has the same home as that person;
- (c) "capital share" means any share of any class of shares of a corporation;
- (d) "Commission" means the Alberta Securities Commission;
- (e) "equity share"
 - (i) with reference to a provincial company, means a common share of the capital stock of the company, and
 - (ii) with reference to any corporation other than a provincial company, means any share of any class of shares of the corporation carrying voting rights under all circumstances and any share of any class of shares carrying voting rights by reason of the occurrence of any contingency that has occurred and is continuing;
- (f) "insider" or "insider of a provincial company" means

70. Sections 70 to 76 under "Insider Trading" follow similar legislation in Ontario pertaining to Ontario trust companies. "Insiders" of a provincial trust company will have to report their holdings to the Alberta Securities Commission. An insider with confidential information who buys shares knowing that the value of the shares will likely increase when the information becomes generally known, is liable to any shareholder who sold him the shares for any loss suffered by him. The insider is also liable to account to the company for the profit. There are also similar provisions in Part 11 of the Bill for The Securities Act, 1967.

- (i) any director or senior officer of a provincial company, or
 - (ii) any person who beneficially owns, directly or indirectly, equity shares of a provincial company carrying more than 10 per cent of the voting rights attached to all equity shares of the company for the time being outstanding, except that in computing the percentage of voting rights attached to equity shares owned by an underwriter there shall be excluded any equity shares that have been acquired by him as underwriter in the course of distribution to the public of such shares, but such exclusion ceases to have effect on completion or cessation of the distribution to the public by him;
- (g) "senior officer" means
- (i) the chairman or any vice-chairman of the board of directors, the president, any vice-president, the secretary, the treasurer or the general manager of a corporation or any other individual who performs functions for the corporation similar to those normally performed by an individual occupying any such office, and
 - (ii) each of the five highest paid employees of a corporation, including any individual referred to in subclause (i);
- (h) "underwriter" has the same meaning as in *The Securities Act, 1967*.
- (2) For the purposes of this section and sections 71 to 76,
- (a) every director or senior officer of a corporation that is itself an insider of a provincial company shall be deemed to be an insider of that company,
 - (b) an individual shall be deemed to own beneficially capital shares beneficially owned by a corporation controlled by him or by an affiliate of such corporation,
 - (c) a corporation shall be deemed to own beneficially capital shares beneficially owned by its affiliates, and
 - (d) the acquisition or disposition by an insider of a put, call or other transferable option with respect to a capital share shall be deemed a change in the beneficial ownership of the capital share to which such transferable option relates.

71. (1) A person who is an insider of a provincial company at the commencement of this Act shall, on or before July 10, 1967, file with the Commission a report, as of the date of the commencement of this Act, of his direct or indirect beneficial ownership of capital shares of the company.

71. Insiders to report holdings to Alberta Securities Commission.
New.

(2) A person who, after the commencement of this Act, becomes an insider of a provincial company shall, within 10 days after the end of the month in which he becomes an insider, file with the Commission a report, as of the day on which he became an insider, of his direct or indirect beneficial ownership of capital shares of the company.

(3) If a person who is an insider of a provincial company, but has no direct or indirect beneficial ownership of capital shares of the company, acquires direct or indirect beneficial ownership of any such shares, he shall, within 10 days after the end of the month in which he acquired such direct or indirect beneficial ownership, file with the Commission a report, as of the date of such acquisition, of his direct or indirect beneficial ownership of capital shares of the company.

(4) A person who has filed or is required to file a report under subsection (1), (2) or (3) and whose direct or indirect beneficial ownership of capital shares of the company changes from that shown or required to be shown in such report or in the last report filed by him under this subsection shall, within 10 days following the end of the month in which such change takes place, if he was an insider of the company at any time during such month, file with the Commission a report of his direct or indirect beneficial ownership of capital shares of the company at the end of such month and the change or changes therein that occurred during the month and giving such details of each transaction as may be required by the regulations made under section 76.

72. All reports filed with the Commission under section 71 shall be open to public inspection at the offices of the Commission during normal business hours of the Commission, and any person may make extracts from such reports.

73. (1) Every person who is required to file a report under section 71 and who fails to do so is guilty of an offence and is liable on summary conviction to a fine of not more than \$1,000, and, where that person is a company, every director or officer of the company who authorized, permitted or acquiesced in the failure is also guilty of an offence and is liable on summary conviction to a like fine.

(2) Every person who files a report under section 71 that is false or misleading by reason of the misstatement or omission of a material fact is guilty of an offence and is liable on summary conviction to a fine of not more than \$1,000, and, where that person is a company, every director or officer of the company who authorized, permitted or acquiesced in the filing of the false or misleading report is also guilty of an offence and is liable on summary conviction to a like fine.

72. Reports may be inspected. New.

73. Offences and penalties. New.

(3) No person is guilty of an offence under subsection (2) if he did not know and in the exercise of reasonable diligence could not have known that the report was false or misleading by reason of the misstatement or omission of a material fact.

(4) No prosecution shall be brought under subsection (1) or (2) without the consent of the Commission.

(5) Whenever it appears to the Commission that any person has failed to comply with section 71, it may in its discretion apply to a judge of the Supreme Court designated by the Chief Justice of the Trial Division for an order requiring that person to comply therewith.

(6) An appeal lies to the Appellate Division from an order made under subsection (5).

74. (1) Every insider of a provincial company or associate or affiliate of such insider, who, in connection with a transaction relating to the capital shares of the company, makes use of any specific confidential information for his own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of such shares,

(a) is liable to compensate any person for any direct loss suffered by such person as a result of such transaction, unless such information was known or ought reasonably to have been known to such person at the time of such transaction, and

(b) is also accountable to the company for any direct benefit or advantage received or receivable by such insider, associate or affiliate, as the case may be, as a result of such transaction.

(2) An action to enforce any right created by subsection (1) may be commenced only within two years after the date of completion of the transaction that gave rise to the cause of action.

75. (1) Upon application by any person who was at the time of a transaction referred to in subsection (1) of section 74 or is at the time of the application an owner of capital shares of the company, a judge of the Supreme Court designated by the Chief Justice of the Trial Division may, if satisfied that

(a) such person has reasonable grounds for believing that the company has a cause of action under section 74, and

(b) either

(i) the company has refused or failed to commence an action under section 74 within 60 days after receipt of a written request from such person to do so, or

74. Liability of insiders. New.

75. Order to commence action. New.

(ii) the company has failed to prosecute diligently an action commenced by it under section 74, make an order, upon such terms as to security for costs and otherwise as to the judge seems fit, requiring the Commission to commence or continue an action in the name of and on behalf of the company to enforce the liability created by section 74.

(2) The company and the Commission shall be given notice of any application under subsection (1) and may appear and be heard thereon.

(3) Every order made under subsection (1) shall provide that the company shall co-operate fully with the Commission in the institution and prosecution of such action and shall make available to the Commission all books, records, documents and other material or information known to the company or reasonably ascertainable by the company relevant to such action.

(4) An appeal lies to the Appellate Division from an order made under subsection (1).

76. The Lieutenant Governor in Council may make regulations

- (a) prescribing the form and content of the reports required to be filed under section 71, and
- (b) respecting any other matter necessary or advisable to carry out effectively the intent and purpose of sections 70 to 75.

DIVISION 4

Records and Financial Disclosure

Accounts and Records

77. Every company shall cause the following documents and registers to be kept:

- (a) a copy of its special Act or memorandum of association and the by-laws of the company;
- (b) a register of shareholders setting out
 - (i) the names, alphabetically arranged or alphabetically indexed in appropriate categories, and addresses of all persons who are shareholders of the company,
 - (ii) the names, alphabetically arranged or alphabetically indexed, of all persons who have been shareholders of the company, and the date any person ceased to be a shareholder,
 - (iii) the names, alphabetically arranged or alphabetically indexed of every person described in the register as a mortgagee as holding the share as collateral security or as representing a

76. Regulations. New.

77. Documents and registers. Section 55 (1).

named person or an estate, with the name of the mortgagor or holder of the collateral security or a description of the capacity in which he represents the other person or estate and the name of the mortgagor, person or estate so represented,

- (iv) the date each person's name was entered in the register as a shareholder,
 - (v) the number and class of shares held by each shareholder and the amounts paid up and remaining unpaid on the shares of each shareholder, and
 - (vi) particulars of the transfer by any shareholder of his shares;
- (c) a register of directors setting out the names, addresses and other occupations, if any, of all persons who are or have been directors of the company with the several dates on which each became or ceased to be a director;
 - (d) a register called the "share transfer register" in which transfers and transmissions of shares may be recorded in accordance with this Act and the by-laws of the company.

78. Every company shall cause to be kept proper books of account and accounting records in respect of all financial and other transactions of the company and, without limiting the generality of the foregoing, records of

- (a) all sums of money received and disbursed by the company and the matters in respect of which receipt and disbursement take place,
- (b) all assets and liabilities of the company, and
- (c) all other transactions affecting the financial position of the company.

79. The documents and registers mentioned in sections 77 and 78 shall be admitted in evidence before and after dissolution of the company as *prima facie* proof of all facts purporting to be stated therein.

80. (1) Every company shall cause minutes of all proceedings at meetings of the shareholders and of the directors and of any executive committee to be entered in books kept for that purpose.

(2) Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were had or by the chairman of the next succeeding meeting, shall be admitted in evidence as *prima facie* proof of the proceedings.

(3) Unless the contrary is proved, where minutes have been made, as required by this section, of the proceedings

78. Accounting records. New.

79. Evidence. New.

80. Minutes. New.

- (a) at a meeting of the shareholders, or
- (b) at a meeting of the directors, or
- (c) at a meeting of an executive committee,

the meeting shall be deemed to have been duly held and convened and all proceedings had thereat to have been duly had and all appointments of directors, managers, officers or liquidators to have been duly made.

81. (1) Every company shall cause the documents and registers mentioned in section 77 and the books of account and accounting records mentioned in section 78

- (a) to be open for inspection by any director during the normal business hours of the company, and
- (b) except as provided in subsection (3), to be kept at the head office of the company.

(2) Every person who removes or assists in removing from Alberta any of the documents and registers mentioned in section 77 is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000.

(3) Any company may keep at any branch office such part of the accounting records as relate to the operations and assets and liabilities thereof or to such business of the company as may be carried on or supervised or accounted for at that branch office, but the company shall keep at the head office of the company such records as will enable the directors to ascertain quarterly with reasonable accuracy the financial position of the company.

82. (1) Subject to section 84, a company shall allow

- (a) a shareholder of the company, or his agent or personal representative, to inspect the minutes of proceedings at meetings of shareholders mentioned in section 80 and the documents and registers mentioned in section 77, and
- (b) a creditor of the company, or his agent or personal representative, to inspect the documents and registers mentioned in section 77,

and allow him to make extracts therefrom during the normal business hours of the company and at the place where the minutes, documents or registers are kept.

(2) A company shall not make any charge for an inspection of the minutes or of the register of directors, but may charge \$1 or such other sum as the company may prescribe, for each inspection of the documents or other registers.

(3) Every company shall, upon request, provide to any shareholder or creditor of the company or his agent or personal representative

81. Location of registers, records, etc. Section 55 (2) (3).

82. Inspection of registers, documents, records, etc. Section 55 (5).

- (a) a copy of the register of shareholders, or any part thereof, on payment of such sum as the company may prescribe, for every name copied, and
- (b) a copy of the register of directors, or any part thereof, on payment of \$1 or such other sum as the company may prescribe.

(4) Every company shall, within seven days after a request, provide to a shareholder a copy of all minutes mentioned in section 80 on payment of such sum as the company may prescribe.

(5) Where a company is convicted of an offence against this section, the convicting magistrate may order that the inspection be allowed or a copy be furnished within such time as he thinks fit.

83. (1) Every company shall send to a shareholder thereof at his request a copy of its special Act, memorandum of association, by-laws, or any special or ordinary resolution of the company, on payment of such sum as the company may prescribe.

(2) Where a company is convicted of an offence against this section, the convicting magistrate may order that the copy be furnished within such time as he thinks fit.

84. A company may close the register of shareholders and the share transfer register for a period of time not exceeding 15 days, exclusive of Saturdays and holidays, immediately preceding any meeting of the shareholders.

85. (1) Where

- (a) the name of any person is, without sufficient cause, entered in or omitted or deleted from the register of shareholders of a company, or
- (b) default is made or unnecessary delay takes place in entering therein the fact of any person having ceased to be a shareholder of the company,

the person aggrieved, or any shareholder of the company, or the company, may petition the Supreme Court for rectification of the register.

(2) The Court may either refuse the petition or direct rectification of the register and payment by the company of any damages sustained by any party aggrieved.

(3) The Court may, in any proceedings under this section, decide any question relating to the entitlement of any party to the proceedings to have his name entered in or omitted or deleted from the register, whether the question arises

- (a) between shareholders and alleged shareholders, or
- (b) between any shareholder or alleged shareholder, on the one hand, and the company on the other

and the Court generally may decide any question necessary or expedient to be decided for rectification of the register.

83. Furnishing copies of by-laws, resolutions, etc. New.

84. Closure of shareholders' register before meeting. New.

85. Rectification of shareholders' register. New.

(4) The company shall file with the Director a copy of the order within 15 days after the making thereof.

86. (1) A company is not bound to see to the execution of any trust, whether express, implied or constructive, in respect of any share.

(2) The receipt of the shareholder in whose name the share is registered on the books of the company is a valid and binding discharge to the company for any payment made in respect of any share notwithstanding any trust to which the share may be subject and whether the company has or has not had notice of the trust.

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

87. (1) The registers, books of account, accounting records, documents, minutes, files and other records of a company, including any books of account or accounting or other records used by a company's auditors or the officers, employees and agents of a company, are the sole property of the company and no other person is entitled to any solicitor's lien or other lien in respect thereof.

(2) Any person, without lawful justification, who removes, withholds or detains any thing mentioned in subsection (1) from the possession or control of the directors of the company that owns it, or from the receiver and manager or liquidator of the company, is guilty of an offence.

88. Where a person who has been but has ceased to be a director, manager, auditor, officer, employee or agent of a company, or any other person, unlawfully retains possession of any registers, books of account, accounting records, documents, minutes, files, records, moneys, securities or other things that are the property of the company, a judge of the Supreme Court on the petition of the company or any depositor or shareholder of the company or of the Director, and upon notice to the person affected, may

- (a) order that the things so retained 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
- (b) authorize the sheriff of any judicial district in which they may be found forthwith to seize, take possession of and deliver them to the person to whom they have been directed to be delivered.

Shareholders' Audit

89. (1) The shareholders shall by resolution at each annual meeting of the company appoint as the auditors of

86. Shares subject to trusts. Section 78.

87. Property rights in company's records. Section 58.

88. Court order to deliver records unlawfully retained. Section
59.

89. Appointment of auditors. Section 61 (2) to (7).

the company a firm of chartered accountants acceptable to the Director.

(2) The auditors of the company hold office until the close of the next annual meeting unless previously removed by a resolution of the shareholders in general meeting or by the directors under subsection (6).

(3) No firm is eligible to be appointed or to hold office as a company's auditors, and no member, employee or agent of that firm is entitled to conduct or take part in any audit of a company's accounts or perform any of the powers, duties or functions of auditors under this Act if that firm, member, employee or agent, as the case may be,

- (a) is a shareholder of the company, or
- (b) is interested in any transaction of the company, or
- (c) is a director, officer or employee of the company.

(4) If an appointment of auditors is not made at an annual meeting or by the directors under subsection (6), the Director may, on the application of any shareholder of the company, appoint a firm of chartered accountants as the auditors of the company for the current year, and fix the remuneration, if any, to be paid to them by the company for their services.

(5) The directors may, by a two-thirds vote, remove the auditors for incapacity, misconduct or negligence.

(6) Where the company's auditors resign or are removed pursuant to subsection (5), the directors shall, by a majority vote, appoint as the company's auditors another firm of chartered accountants acceptable to the Director.

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

90. (1) The auditors of a company shall audit its accounts at least once in every year and shall report thereon to the shareholders in accordance with this section.

(2) The auditors shall make such examination as will enable them to make their report under this section.

(3) The auditors have right of access at all times to the books and accounts, cash, securities, documents and vouchers of the company, and are entitled to require from the directors and officers of the company such information and explanation as in their opinion may be necessary to enable the auditors to report to the shareholders under this section.

(4) The auditors shall, at least once during their term of office, check the cash and verify the investments and loans of the company at the head office of the company, against the entries in regard thereto in the company's records, and, if they consider it necessary, shall check and verify in the

90. Annual audit and auditors' report to shareholders. Section 61 (1), (8), (9) and (10). Subsections (6) and (7) above are new.

same manner the cash, investments and loans at any branch or agency.

- (5) The auditors' report to the shareholders shall show
 - (a) that they have examined the books for the preceding fiscal year,
 - (b) that they have verified the cash and securities of the company,
 - (c) whether or not their requirements as auditors have been complied with,
 - (d) that they have examined the financial statement of the company and that it agrees with the books of the company,
 - (e) that their examination includes a general review of the accounting procedures and such tests of accounting records and other supporting evidence as they consider necessary in the circumstances,
 - (f) that after due consideration they have formed an independent opinion as to the position of the company,
 - (g) 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 the financial position of the company and the results of its operations in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding fiscal year, and
 - (h) that all transactions of the company that have come within their notice have been within the powers of the company, except as otherwise specified pursuant to subsection (6).
- (6) The auditors in their report shall make such statements as they consider necessary in any case where
 - (a) the financial statement of the company is not in agreement with the accounting records, or
 - (b) the financial statement of the company is not in accordance with the requirements of this Act or the regulations, or
 - (c) they have not received all the information and explanations that they have required, or
 - (d) proper accounting records have not been kept, so far as appears from their examination, or
 - (e) it has come to their attention that the company, at any time during the period under review, made, held or disposed of any investment or loan, that is, in their opinion, an unauthorized investment or loan.
- (7) The auditors of a company are entitled to attend any meeting of shareholders of the company at which any accounts that have been examined or reported on by them are to be laid before the shareholders for the purpose of

making any statement or explanation they desire with respect to the accounts.

Financial Disclosure to Shareholders

91. (1) Every company shall within 60 days after the end of its fiscal year cause to be prepared comparative financial statements relating separately to

- (a) the period that commenced on the date of incorporation and ended as of the close of its first fiscal year or, if the company has completed a fiscal year, the latest completed fiscal year, as the case may be, and
- (b) the period covered by the fiscal year next preceding such latest completed fiscal year, if any,

and made up of

- (c) a statement of profit and loss for each period,
- (d) a statement of surplus for each period,
- (e) a balance sheet as at the end of each period, and
- (f) any additional statements as to its affairs that are required under the regulations.

(2) The financial statements mentioned in subsection (1) shall be prepared in accordance with the regulations.

(3) The financial statements shall be certified under a certificate signed by

- (a) the chairman or the vice-chairman of the board of directors or the president or a vice-president who is a director, or by two other directors, and
- (b) the general manager or a person authorized to sign in the place of the general manager,

stating that to the best of their knowledge and belief, the financial statements are correct and show truly and clearly the financial condition of the company's affairs.

(4) A copy of the financial statements, the certificate made under subsection (3) and the auditors' report made under section 90 shall be mailed or delivered without charge to every common or preferred shareholder of the company at least 20 days before the annual meeting of shareholders.

(5) A copy of the financial statements, the certificate made under subsection (3) and the auditors' report made under section 90 shall be mailed or delivered without charge to any holder of an investment certificate or depositor of the company on request, at any time after copies are first mailed or delivered to the shareholders.

91. Annual financial statement to shareholders. Section 62. The regulations contemplated by this section will require financial disclosure along lines similar in extent to the requirements in Part 12 of the Bill for The Securities Act, 1967.

DIVISION 5

Powers of Provincial Companies

General Powers

92. A provincial company 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 not contrary to law, at any time or times, by any person or by any court,
- (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 may 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 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 may receive, invest and manage any sinking fund therefor on such terms as may be agreed upon,
- (f) accept and execute the offices of trustee, executor, administrator, receiver, liquidator, sequestrator, assignee, custodian, trustee in bankruptcy, tutor, curator, guardian of the estate of an infant, committee of the estate of a mentally incompetent person or trustee for the benefit of creditors, and may accept the duty of and act generally in the winding up of estates, partnerships, companies and corporations,
- (g) make investments or loans of moneys held by the company in a trust or representative capacity in or upon any securities or other property in which private trustees may by law invest or lend trust funds,
- (h) sell any real or personal property held by the company, and execute and deliver all necessary conveyances and assurances in respect thereof,

92. General powers of provincial companies. Section **63**.

- (i) 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, and
- (j) charge, collect and receive all proper remuneration, legal, usual and customary costs, charges and expenses for all such services, duties and trusts.

93. A provincial company

- (a) may exercise its powers in any jurisdiction outside Alberta where it is registered or licensed to carry on business as a trust company, in accordance with and subject to the laws in force in that jurisdiction, and
- (b) shall not accept or exercise any additional powers that could otherwise be conferred on it by or under the laws in force in that jurisdiction.

94. (1) A company may establish and maintain branch offices in Alberta or elsewhere where the company is registered or licensed to carry on business as a trust company.

(2) A company, if authorized by its by-laws, may have an official seal for use at each or any of its branch offices.

(3) An official seal shall be a facsimile of the common seal of the company.

(4) Any document to which an official seal is duly affixed binds the company to the same extent as if it had been sealed with the common seal of the company.

95. A provincial company may, 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 within or outside Alberta, and every instrument or deed signed by such attorney, on behalf of the company and under his own seal, binds the company and has the same effect as if it were under the seal of the company.

Borrowing Powers

96. (1) Except as provided in subsection (2) of this section, clause (d) of subsection (2) of section 113 and the regulations under clause (e) of section 139, a provincial company has no power to borrow money.

- (2) A provincial company may, if authorized by a by-law,
 - (a) borrow on the credit of the company such sums as it requires from time to time to meet its obligations as they become due, and
 - (b) mortgage, hypothecate or pledge any part of the company's own property to secure any money so borrowed.

93. Exercise of extra-provincial powers. Section 72, except as to clause (b).

94. Branch offices and official seals. Section 80.

95. Power of attorney. Section 79.

96. Borrowing. Section 67. Subsections (4) and (5) are new.

(3) A by-law under subsection (2) is invalid unless it is made by a vote of the shareholders representing at least two-thirds of subscribed and issued capital stock of the company.

(4) A provincial company shall not borrow any money pursuant to subsection (2) from

(a) any person to whom the company is prohibited from lending money by section 125, or

(b) another trust company.

(5) A provincial company that borrows money for the purpose of investing or loaning that money is liable to a penalty of an amount equal to 10 per cent of the amount of money so borrowed.

97. A provincial company has no power to guarantee the repayment of a debt owed by any other person.

Common Trust Funds

98. (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, but does not include deposits and investment moneys.

(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.

(3) Subject to the regulations, a company may enter into an agreement with a trustee, other than another trust company, for the inclusion of any trust funds held by that trustee in a common trust fund of the company.

(4) 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.

(5) 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 of the district in which the company maintains its head office or chief agency in Alberta, 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.

97. Guarantees of debts prohibited. New.

98. Common trust fund. Present section 64 with the addition of subsection (3) which will permit private trustees to participate in a common trust fund of a company.

(6) 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 required for a period of more than three years.

(7) 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.

(8) 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 Director at least 14 days before the day appointed for the passing, and the company shall not be required to give any other notice of the appointment.

(9) For the purposes of any such accounting an account may be filed on the form of audited accounts filed with the Director pursuant to the regulations.

(10) Upon the passing of an account pursuant to this section, the Director 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.

(11) 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.

(12) The costs of passing an account pursuant to this section shall be charged to the income of the common trust fund on a prorated basis and shall not be charged to the principal unless the income is insufficient for that purpose.

DIVISION 6

Deposits and Investment Moneys

99. (1) Subject to the provisions of this Division, a provincial company 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.

(2) 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.

99. Deposits with company. Cf. sections 65 and 66 (1) and (3).

(3) Every company receiving deposits under this section shall keep a record in the form approved by the Director, 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.

(4) A provincial company has no power to receive or hold moneys on deposit under an arrangement or agreement whereby the company is the debtor of the depositor.

100. (1) Subject to the provisions of this Division, a provincial company may enter into agreements with any persons whereby the company receives moneys for the purpose of its being invested by the company.

(2) An agreement under this section

- (a) may be in the form of a certificate or receipt issued by the company,
- (b) shall contain a promise by the company to repay the full amount of the moneys received by it at the maturity of the term specified therein together with interest payable at a specified rate and at the time or times fixed for payment, and
- (c) shall not be deemed to be a debenture or to constitute the borrowing of money by the company by issuing debentures.

(3) The company is entitled to retain the interest and profits resulting from the investment of moneys received under agreements made under this section in excess of the amount of interest payable thereon.

101. All deposits and investment moneys received by a provincial company and any amounts payable as interest thereon are held by the company as trustee for the person entitled thereto, notwithstanding any agreement to the contrary.

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

(2) The receipt of the person in whose name any such deposit or investment certificate stands in the books of the company is a sufficient discharge to the company for any payment made in respect thereof, notwithstanding any trust to which it 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 a receipt.

103. The total of the sums of money received as deposits and investment moneys shall not exceed such amount as the Lieutenant Governor in Council, in his discretion, determines for the company, not exceeding an amount equal

100. Agreements to receive moneys for investment. Investment certificates. Cf. section 68.

101. Company holds deposits and investment moneys as trustee. Cf. Sections 66 (2) and 68 (2).

102. Deposits and investment certificates subject to trusts. New.

103. Ratio of deposits and investment moneys to capital and reserve. Cf. section 68a.

to 15 times the combined amounts of its unimpaired paid-up capital and reserve.

104. (1) Subject to sections 105 and 106, a provincial company shall at all times ear-mark and definitely set aside assets of the following kinds, namely

- (a) cash, and
- (b) investments and loans made or held in accordance with this Act, except an investment or loan that can only be made with the use of the company's own funds,

equal in value to the total amount of the company's liability to its depositors and investment certificate holders.

(2) The assets required to be ear-marked and definitely set aside under this section may be referred to as the "guaranteed fund".

(3) Assets from time to time comprising a company's guaranteed fund are held by the company in trust for the benefit of the company's depositors and investment certificate holders to the extent of the company's liability to them.

(4) For the purposes of this Division,

- (a) securities, as defined in section 108, forming part of a company's guaranteed fund shall be valued at their market value, and
- (b) all other assets forming part of a company's guaranteed fund shall be valued at their book value.

(5) In determining, for the purposes of this Division, the value of any assets forming part of a company's guaranteed fund that are mortgaged, hypothecated or pledged by the company to secure money borrowed by it, the outstanding amount of the company's indebtedness shall be deducted from that value.

105. Every company shall at all times maintain its guaranteed fund so that at least 50 per cent in value of the assets in the guaranteed fund consist of

- (a) bonds, debentures, notes or other evidences of indebtedness or other securities held as investments or as security for a loan authorized by clauses (a) to (e) of subsection (1) of section 111, or
- (b) first mortgages on improved real estate held as investments or as security for a loan authorized by section 112, or
- (c) approved loans, obligations or insured loans mentioned in subsection (2) of section 113.

106. (1) In this section,

- (a) "demand liability" means the total of the amount of deposits and investment moneys of the company withdrawable or repayable in less than 100 days;

104. Guaranteed fund of assets equal in value to the company's deposits and investment moneys. Cf. sections 66 (2) and 68 (3).

105. Fifty per cent of guaranteed fund to consist of authorized securities other than preferred and common shares. This requirement is presently found in section 120 (1).

106. Liquidity requirements as to demand liability. Cf. section 70.

- (b) "fully secured" means secured in accordance with section 118;
- (c) "obligations" means bonds, debentures, notes or other evidences of indebtedness.

(2) A reference in this section to obligations guaranteed by the Government of Canada or any province of Canada does not include a mortgage of real estate that is guaranteed by the Government of Canada or any province of Canada.

(3) Every company shall maintain its guaranteed fund so that at all times

- (a) an amount at least equal to 5 per cent of its demand liability is either
 - (i) held in cash, or
 - (ii) invested in obligations of or guaranteed by the Government of Canada maturing in not more than 10 years, or
 - (iii) held as demand loans fully secured by such obligations,or any combination thereof, and
- (b) a further amount at least equal to 5 per cent of its demand liability is either
 - (i) held in cash, or
 - (ii) invested in obligations of or guaranteed by the Government of Canada maturing in not more than three years, or
 - (iii) held as demand loans fully secured by such obligations,or in any combination thereof, and
- (c) a further amount at least equal to 10 per cent of its demand liability is either
 - (i) held in cash, or
 - (ii) invested in obligations of or guaranteed by the Government of Canada or the government of any province of Canada, or
 - (iii) held as demand loans fully secured by such obligations,or in any combination thereof.

107. (1) Where the Director is satisfied, on the basis of a return made by a company or upon an inspection and examination of the company or otherwise, that the company is not complying with sections 104, 105 and 106 or any of them, the Director may by order direct the company to so comply within 30 days after the day the order is served on the company.

(2) Where a company fails to comply with an order of the Director within the 30-day period referred to in subsection (1), the company is liable to a penalty of \$100 for each day

107. Order to comply with section 104, 105 or 106. New.

during which the failure to so comply continues, commencing with the day immediately following the expiry of that period.

DIVISION 7

Investments, Loans and Real Estate

108. (1) In this Division,

- (a) “encumbrance or notification”, with reference to real estate, means any instrument, agreement, notification, memorandum or other document
 - (i) making the real estate security for the payment of money, or
 - (ii) charging the real estate with payment of money, or
 - (iii) having the effect of making the real estate liable to be sold, leased or otherwise dealt with for the purpose of satisfying a debt or claim, or indicating that it may be so liable, or
 - (iv) having the effect of prohibiting or restricting the right of the owner to alienate the real estate or any interest therein, or to mortgage, charge or otherwise deal with the real estate,and includes any caveat in respect of any instrument, agreement, notification, memorandum or other document mentioned in subclauses (i) to (iv), and
- (b) “securities” means any bonds, debentures, notes, evidences of indebtedness, obligations, certificates, investment certificates, investment contracts, receipts and shares referred to in section 111.

(2) The provisions of *The Trustee Act* pertaining to the investment or lending of trust funds do not apply to the investment or lending of deposits and investment moneys.

109. An investment or loan authorized by this Division may be made by a company only if the investment or loan is in all other respects reasonable and proper.

110. Where a company makes or has made a loan authorized by this Division, it may take any personal property as security but only in addition to the other security required in respect of the loan.

Securities and Mortgages

111. (1) A provincial company may invest or loan the company's own funds and its deposits and investment moneys in, or on the security of

- (a) bonds, debentures, notes or other evidences of indebtedness

108. (1) Definitions.

(2) Trustee Act not to apply to deposits and investment moneys. New.

109. New. Investment and loans to be otherwise reasonable and proper. This rule also applies to trustee investments: see Trustee Act, section 5.

110. Personal property as additional security for loan. Cf. section 123 (1).

111. Authorized securities. Cf. present section 122 (b) to (j).

- (i) issued or guaranteed as to payment of principal and interest by the Government of Canada or the government of any province of Canada,
or
- (ii) issued or guaranteed as to payment of principal and interest by any municipal corporation in any province of Canada or the Government of the United States of America, or
- (iii) issued by a corporation and secured by the assignment to a trustee of payments that the Government of Canada or the government of any province of Canada has agreed to make, if such payments are sufficient
 - (A) to meet the interest on all such bonds, debentures, notes or other evidences of indebtedness outstanding as it falls due, and
 - (B) to meet the principal amount of all such bonds, debentures, notes or other evidences of indebtedness upon maturity,
 or
- (iv) 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 Agreements Act, 1945* (Canada), but only if the principal and interest thereunder are payable in the currency of Canada or the United States of America, or
- (v) issued by a corporation incorporated in Canada if the bonds, debentures, notes or other evidences of indebtedness are fully secured by a first mortgage to a trustee upon any, or any combination of, the following assets:
 - (A) improved real estate; or
 - (B) the plant or equipment that is used in carrying on its business; or
 - (C) bonds, debentures, notes or other evidences of indebtedness or preferred or common shares authorized as investments by this section,
 or
- (vi) issued by a corporation incorporated in Canada if at the date of the investment or loan the preferred shares or common shares of that corporation are authorized investments under clause (f) or (g),
- (b) obligations or certificates issued by a trustee to finance the purchase of transportation equipment for a corporation incorporated in Canada or the United States of America to be used on railways or public highways, if the obligations or certificates are fully secured by

- (i) an assignment of the transportation equipment to, or the ownership thereof by, the trustee, and
 - (ii) a lease or conditional sale thereof by the trustee to the corporation,
 - (c) investment certificates issued by another registered trust company if
 - (i) that other company is an approved corporation under *The Trustee Act*, and
 - (ii) at the date of the investment or loan the preferred shares or common shares of that other company would, in the absence of clause (a) of section 119, be an authorized investment under clause (f) or (g),
 - (d) investment contracts within the meaning of *The Investment Contracts Act* issued by a corporation registered as an issuer under that Act, if
 - (i) the corporation is also an approved corporation under *The Trustee Act*, and
 - (ii) at the date of the investment or loan the preferred shares or common shares of the corporation are authorized investments under clause (f) or (g),
 - (e) notes or deposit receipts of chartered banks or treasury branches,
 - (f) preferred shares of a corporation incorporated in Canada if
 - (i) the corporation has paid a dividend upon any class of its preferred shares in each of the five years immediately preceding the date of the investment or loan at least equal to the specified annual rate for that class, or
 - (ii) the common shares of the corporation are, at the date of the investment or loan, authorized investments under clause (g),
 and
 - (g) fully paid common shares of a corporation incorporated in Canada or the United States of America that, during a period of five years that ended less than one year before the date of the investment or loan, earned profits in each such year available for the payment of a dividend upon its common shares of at least 4 per cent of the average value at which the shares were carried in the capital stock account of the corporation during each such year, whether a dividend was or was not paid in any such year.
- (2) A company may loan the company's own funds and its deposits and investment moneys upon the security of
- (a) an investment certificate issued by the company, or
 - (b) an assignment by the borrower of a life insurance policy owned by him, if the loan is at all times fully

secured thereby and the policy has, on the date the loan is made, a cash surrender value admitted by the insurer.

112. A provincial company may with the company's own funds and its deposits and investment moneys

- (a) invest in first mortgages on improved real estate in Alberta or elsewhere where the company is registered or licensed to carry on business as a trust company, or
- (b) make loans under mortgages executed in favour of the company, if the mortgage in such case is a first mortgage of improved real estate in Alberta or elsewhere where the company is registered or licensed to carry on business as a trust company,

if the amount to be paid or loaned in each case does not exceed 75 per cent of the value of the property at the time of the investment or loan as established by a report as to the value of the property made by a person whom the company reasonably believed to be a competent valuator, instructed and employed independently of any owner of the improved real estate.

113. (1) In this section,

- (a) "approved lender", "approved loan" and "insured loan" have the meanings given them by the *National Housing Act, 1954* (Canada);
- (b) "Corporation" means the Central Mortgage and Housing Corporation under the *Central Mortgage and Housing Corporation Act* (Canada).

(2) A company may, with the company's own funds and its deposits and investment moneys,

- (a) if it is an approved lender, make approved loans on the security of a first mortgage in favour of the lender in accordance with the *National Housing Act* (Canada) or the *National Housing Act, 1954* (Canada), or any amendments thereto,
- (b) purchase from the Corporation any obligation to the Corporation that is secured by a first mortgage and is insured by the Corporation,
- (c) sell or purchase insured loans together with the security taken in respect thereof, and
- (d) pledge with the Corporation or an approved lender an insured loan to secure the repayment of money borrowed, and borrow money from the Corporation or an approved lender on the security of an insured loan.

(3) A company may, upon such terms and conditions as are agreed upon by the Corporation and the company, act as agent for the Corporation in the making or administration of loans that the Corporation is authorized to make.

112. First mortgages upon improved real estate. Cf. section 122
(1) (a).

113. NHA mortgages and securities. Cf. section 121.

*Limitations and Prohibitions
respecting Securities and Mortgages*

114. (1) Subject to section 115, the amount of a company's investments and loans in or upon any one security or mortgage shall not exceed 15 per cent of the company's unimpaired paid-up capital and reserve.

(2) This section does not apply in respect of a security issued or guaranteed by the Government of Canada or the government of any province of Canada.

115. (1) In this section "debt securities", with reference to a corporation, means

- (a) bonds, debentures, notes, obligations or other evidences of indebtedness issued by the corporation, and
- (b) mortgages under which the corporation is the mortgagor,

but does not include a security issued by a corporation and guaranteed by the Government of Canada or the government of a province of Canada.

(2) Subject to subsection (3), the market value of

- (a) all debt securities, regardless of maturity date, of any one corporation or of any corporations that to the knowledge of the company are associated, and
- (b) the common and preferred shares of that corporation or those associated corporations,

held by a company as an investment or as security for a loan, shall not exceed the aggregate of

- (c) 20 per cent of the company's paid in capital stock and reserve, and
- (d) 5 per cent of the company's deposits and investment moneys.

(3) The market value of

- (a) all debt securities maturing in more than one year of any one corporation or of any corporations that to the knowledge of the company are associated, and
- (b) the common and preferred shares of that corporation or those associated corporations,

held by the company as an investment or as security for a loan shall not exceed 15 per cent of the company's paid in capital stock and reserve.

116. The amount of a company's investments and loans in or upon the shares, bonds, debentures, notes and other evidences of indebtedness of any one corporation shall not exceed in the aggregate 20 per cent of the market value of all of the shares, bonds, debentures, notes and other evidences of indebtedness issued by that corporation.

114. Limit as to one security or moregage. Cf. section 124 (1) (a) (i).

115. Limits re debt securities of any one corporation or associated corporations. Cf. section 124 (1) (a) (ii) and (iii).

116. Limit as to shares, bonds, etc. of any one corporation. Cf. sections 120 (3) (b) (ii) and 124 (1) (b).

117. The book value of a company's investments and loans in or upon the security of common shares

- (a) in the case of the company's own funds, shall not exceed in the aggregate 25 per cent of the company's unimpaired paid-up capital and reserve, or
- (b) in the case of the company's deposits and investment moneys, shall not exceed in the aggregate 25 per cent of the total of its deposits and investment moneys.

118. A company shall not make a loan secured by any securities unless under the terms upon which the loan is made the outstanding amount of the loan will not at any time exceed

- (a) their market value, in the case of Canada Savings Bonds issued by the Government of Canada, or
- (b) 95 per cent of their market value, in the case of securities other than Canada Savings Bonds issued by the Government of Canada, investment certificates issued by the company and common shares, or
- (c) 90 per cent of their face value, in the case of investment certificates issued by the company, or
- (d) 50 per cent of their market value, in the case of common shares.

119. No company shall make investments or loans in or upon the security of

- (a) preferred shares or common shares issued by another trust company, or
- (b) preferred shares or common shares of its own capital stock, or
- (c) any security issued or guaranteed by any government, municipal corporation or other corporation that has defaulted on the payment of principal or interest under any security issued or guaranteed by it within the period of five years immediately preceding, or
- (d) any security the market value of which cannot be readily ascertained either
 - (i) by reference to published quotations of its price on a stock exchange in Canada or the United States of America, or
 - (ii) by inquiry to a person registered as a broker-dealer or investment dealer under *The Securities Act, 1955* or *The Securities Act, 1967* or registered in a corresponding capacity under the securities legislation of the jurisdiction where the investment or loan is intended to be made.

117. Limits as to common shares. New.

118. Limit as to loans upon securities. Cf. section 120 (3) (b) (i).

119. Prohibited investments and loans. New. As to clause (b), see sections 74 and 75 of present Act, which permit lending on the security of the company's shares in certain circumstances.

120. (1) The aggregate amount of all outstanding investments and loans in or upon mortgages under sections 112 and 113 shall not at any time exceed

- (a) in the case of investments and loans made with the company's own funds, 65 per cent of those funds, or
- (b) in the case of investments and loans made with the company's deposits and investment moneys, 65 per cent of those deposits and investment moneys.

(2) A company shall not make any investment or loan in or upon a mortgage where the only security under that mortgage is the title to any mines or minerals, notwithstanding that the mines or minerals are within, upon or under improved real estate.

(3) A company shall not make any investment or loan in or upon a mortgage under section 112 or 113 where the title to the real estate concerned is subject to

- (a) any encumbrance or notification, or
- (b) any lease or tenancy that, according to its terms, does not expire within one year or cannot be terminated by the lessor within one year, or
- (c) any agreement for sale or option to purchase or lease.

Real Estate

121. (1) Subject to subsections (2) and (3), a company may invest its own funds and its deposits and investment moneys in real estate for the production of income, either alone or jointly with any other registered trust company,

- (a) if the real estate is situated in Alberta or elsewhere where the company is registered or licensed to carry on business as a trust company,
- (b) if at the time of the investment the real estate is subject to a lease made to, or guaranteed by, a corporation the preferred or common shares of which are authorized for investment under section 111, and
- (c) if the lease provides for a net revenue sufficient to yield a reasonable interest return during the unexpired term of the lease and to repay at least 85 per cent of the amount invested by the company in the real estate within the term of the lease, but not exceeding 30 years from the date of investment,

and the company may hold, maintain, improve, sell or otherwise deal with or dispose of the real estate.

(2) The total book value of investments by a company in real estate for the production of income under this section shall not exceed

- (a) in the case of any one parcel of real estate, 1 per cent of the book value of the aggregate of the company's own funds and its deposits and investment moneys, or

120. Limits and prohibitions as to land mortgages. Subsection (1) is derived from the present section 124 (1) (c).

121. Real estate for the production of income. Cf. sections 120 (2) and 122 (1) (k).

- (b) in the case of the investment of the company's own funds, 5 per cent of the book value of those funds, or
- (c) in the case of the investment of its deposits and investment moneys, 5 per cent of the total of those moneys.

(3) A company shall not make any investment under this section in respect of real estate that is subject to

- (a) any encumbrance or notification, or
- (b) any lease or tenancy other than a lease in compliance with subsection (1), or
- (c) any agreement for sale or option to purchase or lease.

122. (1) Subject to subsections (2) to (5), a company may, with the company's own funds,

- (a) purchase real estate or lease or sublet any real estate or premises, and
- (b) construct a building on real estate so purchased, for the purpose of its offices or for the transaction of its business.

(2) Where a company purchases real estate pursuant to subsection (1) on which a building exists or constructs a building pursuant to subsection (1), the building may be larger than is required for the purposes of its offices and for the transaction of its business and may lease that part of the real estate and building not so required, but the company may hold real estate under this section only for so long as it continues to use it for its offices and for the transaction of its business unless the real estate qualifies as an investment under section 121.

(3) The book value of a company's investments under subsection (1) shall not exceed 35 per cent of its unimpaired paid-up capital and reserve.

(4) A company may purchase, lease or sublet or hold any real estate or premises under this section only as the sole owner, lessee or sublessee, as the case may be, and not jointly with any other person.

(5) A company shall not purchase any real estate under this section where the real estate is subject to

- (a) any encumbrance or notification,
- (b) any lease, or
- (c) any agreement for sale or option to purchase or lease.

123. (1) A 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 it.

122. Purchase or lease of land for offices of company. Cf. section 127 (2).

123. Real estate acquired on foreclosure, etc. Cf. section 126.

(2) The company shall, subject to section 122, sell any real estate acquired by it under any mortgage, charge or hypothec, or in satisfaction of any debt, within 12 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 by the Director 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 instruments as are necessary for carrying any such holding, purchase, exchange or resale 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.

124. Except as authorized by this Division or any other Act or when acting in a trust or representative capacity, no provincial company shall acquire or hold any estate or interest in land.

Prohibited Transactions

125. (1) Notwithstanding anything in this Division, a company shall not directly or indirectly make any loan to, or purchase any mortgage, loan, securities or real estate from,

- (a) any director or officer of the company, or
- (b) the spouse, child, parent, brother or sister of any director or officer of the company, or
- (c) a person who is to the knowledge of the company the father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law of any officer or director of the company, or
- (d) a person who is to the knowledge of the company either a member of the firm of chartered accountants appointed as the auditors of the company or a chartered accountant employed by that firm or the spouse of either of them, or
- (e) a partnership of which any person referred to in clause (a) or (b) is a partner, or
- (f) a partnership of which any person referred to in clause (c) or (d) is, to the knowledge of the company, a partner, or
- (g) any corporation, if more than 10 per cent of its shares having full or limited voting rights are owned directly or indirectly by any of, or any combination of, the persons referred to in clauses (a) and (b), or

124. Prohibitions as to investing in real estate. Cf. section 127 (1).

125. Prohibited loans and purchases. Cf. section 129.

- (h) any corporation, if more than 10 per cent of its shares carrying full or limited voting rights are owned, to the knowledge of the company, by
 - (i) any of the persons referred to in clauses (c) and (d) or any combination of them, or
 - (ii) any combination of the persons referred to in clauses (a), (b), (c) and (d),
 or
 - (i) any other corporation associated with the company.
- (2) No company shall make a loan upon the security of or purchase any securities issued by any corporation referred to in clause (g), (h) or (i) of subsection (1).
- (3) For the purposes of this section, a company shall be deemed to have knowledge of any fact only where one or more of the directors present at the meeting of the board of directors or of the executive committee at which the loan or purchase was approved or authorized were aware of that fact or ought reasonably to have been aware of that fact.

126. (1) A company shall not

- (a) sell any mortgage, loan, securities or real estate to a corporation associated with it, or
 - (b) engage, or pay a fee or other consideration to, any other person to negotiate, make, deal with, administer, collect or settle on behalf of the company any loans made or held by the company.
- (2) Clause (b) of subsection (1) does not apply where the company engages legal counsel to collect or settle any loan on behalf of the company.
- (3) A company is liable to a penalty of \$100 for each mortgage, loan, security or parcel of real estate sold in contravention of clause (a) of subsection (1).
- (4) A company that contravenes clause (b) of subsection (1) is guilty of an offence.

Liability for Unauthorized Investments and Loans

127. (1) In this section and section 128 "approved" includes authorized, directed or ratified.

- (2) Where, after the commencement of this Act, a company makes an unauthorized investment or loan, every person who, as a director of the company,
- (a) is present at a meeting of its board of directors or the executive committee thereof when an unauthorized investment or loan is approved by the board or the committee, and
 - (b) does not protest the approval orally or in writing at that meeting and notify the Director in writing

126. Penalties as to certain dealings with other corporations.
New.

127. Penalties for making unauthorized investment or loan.
New.

of his protest within eight days after the date of that meeting,
is liable to a penalty of \$100 in respect of each unauthorized investment or loan so made.

(3) Every person who, as a director or officer of a company, either by himself or together with one or more other directors or officers of the company, after the commencement of this Act,

- (a) authorizes or directs the making of an unauthorized investment or loan that is subsequently made, otherwise than by way of voting in favour of approving it at the meeting of the board of directors or the executive committee at which it was approved, or
- (b) makes an unauthorized investment or loan on behalf of the company without being previously authorized or directed to do so by the board of directors or the executive committee,

is liable to a penalty of \$100 in respect of each unauthorized investment or loan so made.

128. (1) Where a company makes an unauthorized investment or loan and where the amount realized from the disposition of the unauthorized investment or loan is less than the amount paid by the company or the unpaid balance of the loan, as the case may be, then whether or not they are still directors, the persons who were directors of the company at the time the unauthorized investment or loan was approved are jointly and severally liable for the payment to the company of the amount of the deficiency.

(2) A person is not liable under subsection (1)

- (a) if, being a director when the unauthorized investment was approved and being present at the meeting of the board of directors or a committee thereof at the time when it was approved, he
 - (i) protested the unauthorized investment or loan at that meeting orally or in writing, and
 - (ii) notified the Director in writing, of his protest within eight days after the date of that meeting,or
- (b) if, being a director when the unauthorized investment or loan was approved but not being present at the meeting of the board of directors or a committee thereof at the time when it was approved, he
 - (i) filed his written protest against the unauthorized investment or loan with the company, and
 - (ii) notified the Director in writing, of that protest, within 30 days after the date when the unauthorized investment or loan was so approved.

128. Liability of directors for loss to the company upon disposition of unauthorized investment or loan. Cf. section 129a.

129. (1) Upon the application to the Supreme Court by way of originating notice of motion by any shareholder of the company, a judge of the Court may, if he is satisfied that

- (a) the shareholder has reasonable grounds for believing that the company has a cause of action under section 128, and
- (b) either
 - (i) the company has refused or failed to commence an action under section 128 within 60 days after receipt of a written request from that shareholder to do so, or
 - (ii) the company has failed to prosecute diligently an action commenced by it under section 128,

make an order, upon such terms as to security for costs and otherwise as to the judge seems fit, requiring the Attorney General to commence or continue an action in the name of and on behalf of the company to enforce the liability created by section 128.

(2) The company and the Attorney General shall be given notice of any application under subsection (1) and shall have the right to appear and be heard thereon.

(3) Every order made under subsection (1) shall provide that the company shall co-operate fully with the Attorney General in the institution and prosecution of the action and shall make available to the Attorney General all books, records, documents and other material or information known to the company or reasonably ascertainable by the company relevant to the action.

(4) An appeal lies to the Appellate Division from an order made under subsection (1).

130. (1) The Director may by order direct a company to dispose of

- (a) any unauthorized investment or loan held by the company, or
- (b) any investment or loan held by the company that is in the opinion of the Director unreasonable or improper, notwithstanding that it is technically not an unauthorized investment or loan,

and the Director shall in the order set out his reasons for making it.

(2) Subject to subsection (7), the company shall dispose of the investment or loan referred to in the order within 60 days after being served with the order.

(3) The company may appeal an order under this section to the Supreme Court by way of originating notice of motion if the originating notice is returnable within 30 days after the date on which the company was served with the Director's order.

129. Order to commence or continue action under section 128.
New.

130. Order by Director to dispose of an investment or loan,
and appeal to Supreme Court. Cf. section 130. The appeal provisions
are new.

(4) The filing of an originating notice of motion under this section operates as a suspension of the Director's order until the order of the judge under subsection (5) is entered with the clerk of the Court.

(5) The judge hearing the motion shall either

- (a) confirm the Director's order, where he determines that the investment or loan concerned is an unauthorized investment or loan or is unreasonable or improper, as the case may be, or
- (b) declare the Director's order void, whether he determines that the investment or loan concerned is not an unauthorized investment or loan or is reasonable and proper, as the case may be,

and shall make an order accordingly.

(6) There is no appeal from an order made under subsection (5).

(7) Where the Director's order is confirmed, the company shall dispose of the investment or loan concerned within 60 days after the date the judge's order is entered with the clerk of the Court.

(8) A declaration by the judge that the Director's order is void does not preclude the Director from making another order under this section in respect of the same investment or loan if there is a material change in circumstances subsequent to the date of the Director's previous order, but the Director shall, in the later order, set out the change in circumstances upon which he relies.

(9) Where a company fails to comply with an order of the Director under this section within the 60-day period referred to in subsection (2) or (7), as the case may be, the company is liable to a penalty of \$100 for each day during which the failure to so comply continues, commencing with the day immediately following the expiry of that period.

Miscellaneous

131. (1) No company, and no shareholder, director, officer, employee or agent thereof, either personally or on behalf of such company, and no other corporation associated with the company or any shareholder, director, officer, employee or agent of that corporation shall coerce or exercise pressure upon any person borrowing money from the company to place insurance for the security of the company, with or through any particular agency, brokerage office or insurance company, but nothing in this section prevents the company from stipulating in its contract of loan that the borrower shall not effect the required insurance with an insurer that the company, on reasonable grounds, objects to as being unacceptable to it.

(2) Every person who contravenes subsection (1) is guilty of an offence.

131. Offence re coercing borrower to insure with particular agency, etc. Cf. section 76.

132. (1) Where a registered company proposes to make a loan that is subject to a bonus in favour of the company, the company shall deliver to the borrower a statement at least 24 hours before the time the loan contract is signed by the borrower showing the information prescribed by the regulations.

(2) The statement referred to in subsection (1) shall be in duplicate and the company shall

- (a) obtain proof of delivery of the statement by way of of an acknowledgment of delivery signed by the borrower on the duplicate copy retained by the company, and
- (b) keep and maintain the duplicate copy so signed for its records.

(3) The statement shall be in the form prescribed in the regulations.

(4) Every company that contravenes this section is guilty of an offence.

133. Where a company makes any loan, the company may do all acts that are necessary for advancing sums of money, for receiving and obtaining repayment thereof, 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.

134. (1) The Lieutenant Governor in Council may authorize the acceptance by a company of bonds, notes, debentures, shares or other assets not fulfilling the requirements of this Act

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

but the bonds, notes, debentures, shares or other assets so accepted 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, debentures, shares or other assets so accepted

132. Loan statement to borrower where company receives bonus. New. This requirement is similar to that in section 10 of The Mortgage Brokers Regulation Act.

133. Incidental powers re loans. Cf. section 123 (2).

134. Bonds, notes, debentures, shares or other assets. Cf. section 125.

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 or as security for loans under this Act of the preferred or common shares of any corporation that has been voluntarily reorganized without the impairment of the status or value of its securities, dividends paid on the preferred and common shares of the corporation before such reorganization may be counted as dividends paid on such shares respectively of the reorganized corporation.

DIVISION 8

Amalgamation and Purchase and Sale of Assets

Amalgamation

135. A provincial company shall not amalgamate with another provincial company or with an extra-provincial company except under the authority of an Act of the Legislature.

Purchase of Assets by Provincial Company

136. (1) A provincial company may acquire the assets of another provincial company or an extra-provincial company upon the assumption of the duties, obligations and liabilities of the other company as are not performed or discharged by the other company, but no agreement therefor takes effect until it has been approved by the Lieutenant Governor in Council.

(2) Without limiting its powers under subsection (1), a provincial company may, for the purpose of acquiring the assets of another company pursuant to subsection (1), purchase not less than 67 per cent of the outstanding shares of that 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 Director, supported by evidence that
 - (i) an offer to purchase has been accepted by the holders of at least 67 per cent of the outstanding shares of such company, the evidence of acceptance being in the form of written 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 the 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 repre-

135. Amalgamation only by special Act. New.

136. Purchase by provincial company of assets and shares of another trust company. Cf. sections 81 and 92.

sented in person or by proxy at a meeting of the shareholders duly called to consider the purchase, if those shares also represent at least 50 per cent of the issued capital stock of the purchasing company.

3. The power to purchase shares under this section is in addition to the powers that a provincial company has under Division 7, and the limitations and prohibitions contained in that Division do not apply to any such purchase of shares.
4. Where a company has purchased shares under this section, it shall, in accordance with the provisions of subsection (1), 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, those shares shall not be allowed as assets of the purchasing company in the annual report prepared by the Director for the Minister and the Director may direct the company to dispose of the shares pursuant to section 130 as being an unauthorized investment.

(3) 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.

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

137. (1) A provincial company may sell and dispose of its assets to another trust company for such consideration as the company considers reasonable.

(2) No sale or disposal under this section shall be made until it is 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 for that purpose, if those shares also represent at least 50 per cent of the issued capital stock of the company.

(3) No sale or disposal under this section takes effect until it has been approved by the Lieutenant Governor in Council.

(4) The consideration for any sale or disposal under this section may, notwithstanding anything in this Act, be fully paid shares in the capital stock of the purchasing company or in part cash and in part fully paid shares of such purchasing company or such other consideration as may be agreed upon.

137. Sale of assets by a provincial company to another trust company.

138. (1) In this section,

- (a) "approval" means the approval of the Lieutenant Governor in Council under subsection (1) of section 136 or subsection (3) of section 137;
- (b) "fiduciary" includes trustee, executor, administrator, bailee, assignee, guardian, committee, receiver, liquidator or agent;
- (c) "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;
- (d) "purchasing company" means the company that is the purchasing company under section 136 or 137;
- (e) "selling company" means the company that is the selling company under section 136 or 137.

(2) On and from the effective date of the approval, all trusts of every kind and description, including incomplete or inchoate trusts, and every duty assumed by or binding upon either the selling company or the purchasing company are vested in and bind and may be enforced against the purchasing 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 as the fiduciary, then, on and from the effective date of the approval, the name of the purchasing company shall be deemed to be substituted for the name of the selling company, and such instrument vests the subject matter therein described in the purchasing company according to the tenor of, and at the time indicated or intended by, the instrument, and the purchasing company shall be deemed to stand in the place and stead of the selling company.

(4) Where the name of the selling company appears as executor, trustee, guardian, or curator in a will or codicil, the will or codicil shall on and from the effective date of the approval be read, construed and enforced as if the purchasing company was so named therein, and it then has in respect of the will or codicil, the same status and rights as the selling 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, from which at the effective date of the approval it had not been finally discharged, the purchasing company shall *ipso facto* be substituted therefor.

138. Trusts, etc. to pass to purchasing company upon approval of Lieutenant Governor in Council. Cf. section 91.

DIVISION 9

Regulations

139. The Lieutenant Governor in Council may make regulations

- (a) prescribing the provisions of *The Companies Act* that apply to provincial companies incorporated in Alberta under the *Companies Ordinance* before October 1, 1929,
- (b) requiring any statements as to a company's affairs to be included in the comparative financial statements prepared by it under section 91 in addition to the statements mentioned in clauses (c), (d) and (e) of subsection (1) of that section,
- (c) prescribing the information to be contained in the comparative financial statements required to be prepared by a company under section 91,
- (d) prescribing the form of loan statement referred to in section 132 and the information to be shown in it,
- (e) authorizing provincial companies to apply for and obtain a policy of insurance issued under the *Canada Deposit Insurance Corporation Act*, and empowering those companies to do any thing that they are required or permitted to do under that Act, and
- (f) generally, for the carrying out of the provisions of this Part or to meet cases that may arise and for which no provision is made by this Part.

139. Regulations. New. Clause (e) anticipated the enactment of federal legislation setting up a deposit insurance scheme.

PART 2

REGISTERED TRUST COMPANIES

DIVISION 1

Registration of Trust Companies

140. The Director shall keep a register called the "Trust Companies Register".

141. (1) An application for registration shall be made to the Director, and the form of application shall be duly completed, together with such information, material and evidence as the form requires.

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

142. No company shall be registered under this Act unless it is a provincial company or an extra-provincial company incorporated in Canada or in any part of Canada before or after it became part of Canada.

143. (1) A company, other than a federal company, shall not be registered if its name

- (a) does not contain the word "Trust" or "Trusts", or
- (b) is known by the Director to be the same as the name of an existing corporation or a dissolved corporation, or
- (c) is known to the Director to be similar to the name of any other corporation if the use of that name by the company would be likely to deceive, or
- (d) is known to the Director to be the same as or similar to the name of a business or association if the use of that name by the company would be likely to deceive.

(2) In subsection (1) "business or association" means an individual carrying on business, an association or a partnership.

(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 Director, 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 provincial company to some other name to be stated in the order in council.

(4) Such public notice shall be given of any change of name, and of any application for such change in the *Gazette* and otherwise as the Director may direct.

140. Register of trust companies. Section 94.

141. Application for registration. Section 102 (1) (2).

142. Registration restricted to companies incorporated in Canada. New.

143. Company names. Section 105.

144. (1) The Director shall cause to be entered in the Register of Trust Companies

- (a) the name of every company registered under this Act and the date of the commencement of the registration,
- (b) the place where the head office is located and, in the case of an extra-provincial company, the location of its chief agency, if any, and the name and address of the agent or agents appointed under section 150, and
- (c) the date of and authority for any suspension, reinstatement or cancellation of a company's registration.

(2) Upon the registration of a company, the Director shall issue under his seal to the company a certificate of registration.

(3) The Director's certificate shall be admitted 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 issue thereof.

Registration of Provincial Companies

145. (1) No application by a provincial company for registration shall be granted and no registration shall be made unless it is shown to the satisfaction of the Director by affidavit or otherwise that, at the time the application for registration is made,

- (a) the board of directors has been duly elected,
- (b) not less than 25 persons have subscribed for shares of the company, reckoned in accordance with section 68,
- (c) all subscribers have paid in cash not less in each case than 50 per cent of the amount of shares subscribed for by them,
- (d) the company has an unimpaired paid-up capital of at least \$1,000,000 on deposit in a chartered bank or treasury branch,
- (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 Director at the time the application for registration is made.

(3) The applicant shall file with the application

- (a) a statement or statements in such form as may be required by the Director of the financial condition and affairs of the company on the last day of the month next preceding the month in which the ap-

144. Entry and certificate of registration. Section 104.

145. Evidence and financial information on application. Sections 14 and 102 (3). The capital requirement in clause (d) of subsection (1) is an increase from the present \$500,000.

plication is made and certified in the manner prescribed by subsection (3) of section 91, and

- (b) a report of the auditors of the company pertaining to the period ending on the day referred to in clause (a) and complying with clauses (b) to (h) of subsection (5) and subsection (6) of section 90.

146. (1) A provincial company applying for registration shall submit to the Director a certified copy of its by-laws.

(2) If the Director finds in the by-laws of the applicant anything repugnant to this Act or to the law in force in Alberta, he may direct an amendment of the by-laws, and, upon their being amended as directed and returned certified as having been so amended, the application may be proceeded with.

147. (1) Where the Director decides that a provincial company is not entitled to registration, he shall give his decision in writing and cause a certified copy thereof to be served on the company.

(2) Any company affected by a decision of the Director under subsection (1) may, by notice in writing served upon the Director within 30 days after the delivery of the certified copy of the decision, request a hearing and review of the matter by the Director.

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

(4) Upon a review the Director shall hear such evidence as may be submitted to him that is relevant to the matters in dispute, but he is not bound by the rules of law concerning evidence applicable in judicial proceedings, 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 Director shall form the record.

(5) Upon a review the Director may confirm, vary or revoke his former decision.

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

(7) Where the Director has reviewed a decision and given his decision upon the review, the company that requested the review may appeal therefrom to the Supreme Court.

(8) Every appeal shall be made by way of originating notice of motion returnable within 30 days after the delivery of the decision under subsection (6) and showing the Director as the respondent.

(9) The Director shall certify to the Clerk of the Supreme Court,

146. Filing of by-laws. New.

147. Review and appeal of Director's refusal to register a provincial company. Sections 108 and 109.

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

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

(11) Where an appeal is taken under this section, the judge shall by his order either confirm the Director's decision or direct the Director to make such decision as he is authorized to make under this Division and as the judge considers proper and the Director shall act accordingly.

(12) The order of the judge is final and there is no appeal therefrom, but notwithstanding the order the Director may 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.

148. (1) The Director may, with the approval of the Lieutenant Governor in Council, refuse to register a provincial company incorporated before or after the commencement of this Act where at the time of the application for registration

- (a) the directors of the company are not the same persons or are not substantially the same persons as the provisional directors named in the company's special Act, or
- (b) the original promoters of the company no longer control the company, in the opinion of the Director, unless in the opinion of the Director the company is otherwise suitable for registration having regard to the character and business experience of the directors.

(2) A decision of the Director under this section is not subject to review or appeal.

Registration of Extra-provincial Companies

149. (1) No application by an extra-provincial company shall be granted and no registration of the company shall be made until it has been shown to the satisfaction of the Director by affidavit or otherwise that

- (a) the company has an unimpaired paid-up capital of at least \$1,000,000, and
- (b) it is registered or otherwise entitled to carry on business in the province in which it is incorporated, or, in the case of a federal company, it is licensed under the *Trust Companies Act* (Canada).

148. New. This section is aimed at preventing trafficking in provincial trust company charters.

149. Evidence and financial information in application. Section 114, in part, and section 102 (3). The capital requirement in clause (a) of subsection (1) is increased from the present \$500,000.

(2) An application for registration by an extra-provincial company shall be accompanied by the company's most recent financial statement and such other statements pertaining to the financial condition and affairs as the Director may require.

150. (1) Where an extra-provincial company applying for registration 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 having knowledge of the facts.

(4) The power of attorney

(a) shall declare at what place in Alberta the chief agency of the company is, or is to be established,

(b) 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 by the company therein all orders, notices or other documents that are required or permitted by law to be given to the company by the Director, and

(c) shall declare that service of process for or in respect of any 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 may confer upon the agent or agents any further or other powers that the company may consider advisable.

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

(7) The production of a copy of the power of attorney filed with the Director under this section and certified by him as a true copy thereof 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) 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

150. Power of attorney to be filed with Director. Section 103.

at its chief agency, but nothing in this section renders invalid service in any other mode in which a company may be lawfully served.

151. (1) Upon complying with the requirements of this Division

- (a) a federal company is entitled to be registered, and
- (b) an extra-provincial company, other than a federal company, may, subject to subsection (2) and section 152, be registered.

(2) Nothing in this Division shall be construed to prevent the Director from refusing to register any extra-provincial company other than a federal company.

152. (1) The Director may, with respect to an extra-provincial company other than a federal company, make the registration of that company subject to any of the following conditions, namely,

- (a) that any specified powers of that company under its Act of incorporation or the law of the province in which it is incorporated (in this section called "its own laws") shall not be exercised in Alberta or shall be exercised only subject to such restrictions or conditions as the Director may specify in the register, or
- (b) that the company, in respect of the conduct of its business in Alberta, shall, in lieu of exercising any of its powers under its own laws, be permitted to exercise those powers of a provincial company under Part 1 specified by the Director, subject to the laws in force in Alberta, or
- (c) that the company be permitted to exercise in Alberta, subject to the laws in force in Alberta, any powers of a provincial company under Part 1 specified by the Director, where under its own laws, it does not have a similar power, or
- (d) without restricting the generality of clause (b) or (c), that the company, in respect of its deposits and investment moneys received in Alberta, shall be subject to Division 6 of Part 1 and shall maintain its guaranteed fund in Alberta for those deposits and investment moneys at all times, or
- (e) any other condition pertaining to the conduct of its business in Alberta.

(2) Where the Director makes registration subject to any conditions under subsection (1), the conditions shall be entered in the register and included in its certificate of registration.

(3) The Director may from time to time exercise his powers under subsection (1) also in respect of any extra-

151. Registration of extra-provincial company. New.

152. Conditions of registration for a company incorporated in another province. New.

provincial company, other than a federal company, subsequent to its registration, whether the company obtained registration before or after the commencement of this Act.

(4) The Director shall exercise his powers under this section only after giving the company notice of his intention to do so and after consultation with the company.

153. (1) Unless it is registered under this Act, no extra-provincial company is capable of acquiring or holding any estate or interest in land in Alberta or of registering any title thereto under *The Land Titles Act*.

(2) Nothing in subsection (1) affects

- (a) the power of any extra-provincial trust company to hold any estate or interest in land in Alberta as trustee under any mortgage or trust deeds given to secure any securities guaranteed by the Province, or to hold any estate or interest in lands received in consequence of the mortgage or trust deed, or
- (b) any mortgage or trust deed so given.

(3) This section does not apply to an unregistered extra-provincial company in respect of land held by it under a grant of probate or administration that is granted or resealed in Alberta.

DIVISION 2

Returns and Statements to the Director

154. (1) Every registered company shall within 60 days after the end of its fiscal year file with the Director a statement of its financial condition and affairs for the preceding fiscal year.

(2) The statement to the Director shall be verified by the affidavits

- (a) of the chairman or the vice-chairman of the board of directors or of the president or a vice-president who is a director, or of two other directors, and
- (b) of the general manager or a person duly authorized to sign in the place of the general manager.

(3) The statement to the Director shall be verified by the auditors of the company by an affidavit stating

- (a) that they have examined the books for the fiscal year covered by the statement,
- (b) that they have verified the cash and securities of the company,
- (c) whether or not their requirements as auditors have been complied with,
- (d) that they have examined the statement to the Director and that it agrees with the books of the company,

153. Capacity of extra-provincial company to hold land. New.
A similar provision is found in section 162 of The Companies Act
as to foreign companies.

154. Annual financial statement to the Director. Section 132.

- (e) that their examination includes a general review of the accounting procedures and such tests of accounting records and other supporting evidence as they consider necessary in the circumstances,
 - (f) that after due consideration they have formed an independent opinion as to the position of the company,
 - (g) 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 the state of the affairs of the company and the results of its operations in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding fiscal year, and
 - (h) that all transactions of the company that have come within their notice have been within the powers of the company, except as otherwise specified.
- (4) In the affidavit referred to in subsection (3), the auditors shall make such statements as they consider necessary in any case where
- (a) the statement of the company to the Director is not in agreement with the accounting records, or
 - (b) they have not received all the information and explanations that have been required, or
 - (c) proper accounting records have not been kept, so far as appears from their examination, or
 - (d) it has come to their attention that the company, at any time during the fiscal year under review, made, held or disposed of any investment or loan that is, in their opinion, an unauthorized investment or loan.
- (5) On sufficient cause shown and upon payment of the prescribed fee, the Director may, before the expiry of the 60-day period referred to in subsection (1), extend the time for filing the statement for an additional period not exceeding in any event 30 days after the expiry of that 60-day period.
- (6) Any company that does not
- (a) file its statement duly completed, executed and verified as required by this section, or
 - (b) make prompt and explicit answer to any inquiries then or at any time made by the Director touching its contracts, finances, stock, shares, securities, obligations, by-laws or books, or
 - (c) if required by the Director, produce for examination its registers, books of account, accounting records, documents, minutes, files, records, moneys, securities or other property of the company,
- is liable to a penalty of \$100 for each day of default.

(7) A registered provincial company shall file with the Director a certified copy of

- (a) the comparative financial statements required to be prepared under section 91, and covering the same fiscal year as the statement to the Director, and
- (b) the certificate under subsection (3) of section 81 and the auditors' report under section 90 made with respect to those financial statements

within five days after copies thereof are first mailed or delivered to its shareholders.

(8) A registered extra-provincial company shall file with the Director a certified copy of its most recent financial statement prepared for distribution to its shareholders and the auditors' report thereon, within five days after they are first mailed or delivered to its shareholders.

155. (1) Every registered provincial company shall file with the Director on or before the last day of January, April, July and October in each year a return showing, as of the end of the preceding month,

- (a) the classes of deposits maintained by the company and the amounts of the deposit in each class,
- (b) the classes of investment certificates issued by the company and the amounts received by the company under each class,
- (c) the total amount of its deposits and investment moneys,
- (d) a schedule of the assets comprising its guaranteed fund, classified in accordance with the form, and
- (e) any other information required by the form with respect to the requirements of Division 6.

(2) A return under this section shall be verified by affidavit or otherwise in such manner as the form requires.

(3) A company that does not file a return as required by this section is liable to a penalty of \$100 for each day of default.

156. (1) Every registered extra-provincial company shall, on or before the last day of January, April, July and October in each year, make a return to the Director in the form prescribed by him, showing as of the end of the preceding month,

- (a) the total amount of its deposits and investment moneys and the amount of those deposits and investment moneys received in Alberta and outstanding, and
- (b) a schedule of the assets comprising its guaranteed fund classified in accordance with the form and showing as to each class, the portion thereof located in Alberta.

155. Quarterly returns as to deposits and investment moneys by provincial companies. Section 131.

156. Return by extra-provincial companies as to deposits and investment moneys. Section 131.

(2) A return under this section shall be verified by affidavit or otherwise in such manner as the form requires.

(3) A company that does not file a return as required by this section is liable to a penalty of \$100 for each day of default.

157. (1) The Director may, by notice in writing, require a registered company to make, in addition to its statement and other returns required to be filed by this Division, a return verified by affidavit of any two of its officers or directors, 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 prescribed in the notice requiring the return.

(2) The notice may be given to the company's president, secretary, general manager, managing director or any officer employed at its chief agency or any agent of the company appointed under section 150.

(3) Every registered company that fails to comply with a notice given under this section is liable to a penalty of \$100 for each day of default.

DIVISION 3

Inspection and Report by the Director

158. (1) The Director from time to time may, but not less frequently than once in each year shall, make or cause to be made at the head office of every registered provincial company an inspection and examination of the affairs and condition of the company.

(2) The Director from time to time may make or cause to be made

- (a) at any branch office of a provincial company inside or outside Alberta, an inspection and examination of the affairs of that office, or
- (b) at the head office of any registered extra-provincial company, an inspection and examination as to the affairs and condition of the company, or
- (c) at the chief agency or any branch office in Alberta of a registered extra-provincial company, an inspection and examination of the affairs of that chief agency or office.

(3) The Director may, with respect to any extra-provincial company, adopt a report of another government of an inspection or examination of that company's affairs.

159. (1) An inspection and examination under section 158 may be made by examiners, inspectors or auditors of the Director's staff or, where he considers it necessary in any case, the Director may engage any firm of chartered accountants to conduct the whole or any part of the inspection and examination, if that firm would be eligible to be appointed as the company's auditors.

157. Notice to file additional returns. Section 133.

158. Director may conduct inspection and examination of companies. Section 101 (1).

159. Powers on inspection and examination. Cf. section 101 (2) to (10).

(2) The Director or any person or firm of chartered accountants authorized to make an inspection and examination under section 158 may make any inquiries into the business and affairs of the company as are necessary to ascertain its condition, its ability to provide for the payment of its liabilities when they become due and whether the provisions of this Act and the regulations have been or are being complied with.

(3) For the purpose of an inspection and examination, the company shall prepare and submit to the Director or the person or firm authorized to make it, such statements with respect to its business, finances or other affairs, in addition to the financial statements mentioned in section 91, as the Director or person or firm may require, and the directors, officers, employees and agents of the company shall cause the registers, books of account, accounting records, minutes, documents, files, records, cash, securities and other property of the company to be open or available for inspection and shall otherwise facilitate the inspection and examination.

(4) Where any documents, files, records or other property of the company are in the possession of a solicitor or any person for the time being entitled to possession of them, the company shall, if it is unable to make them available for inspection and examination under this section, cause reproduced copies of them to be made so available.

(5) The Director, or any person or firm of chartered accountants authorized to make the inspection and examination may examine under oath the officers, employees and agents of the company for the purpose of obtaining any information that he or they consider necessary for the purpose of the inspection and examination.

(6) A company shall pay to the Director

- (a) for each inspection and examination made with respect to the company, the appropriate fee prescribed in the regulations,
- (b) in any case where all or part of an inspection and examination has been made by a firm of chartered accountants engaged by the Director, the cost of their services as certified by the Director, and
- (c) in the case of an inspection and examination of a branch office of a provincial company outside Alberta, the living and travelling expenses of the persons conducting the inspection and examination, as certified by the Director.

(7) The suspension or cancellation of a company's registration does not affect the powers of inspection and examination of that company that were conferred by this Act on the Director or other person or firm authorized for the purpose by this section.

160. The Director, or any person or firm authorized under section 159, is entitled, at any time within business hours, to access to the registers, books of account, accounting records, minutes, documents, files, records, cash, securities or other property of the company for the purpose of inspection and examination and of taking extracts therefrom.

161. Every director, officer, employee or agent of a company

- (a) who refuses or neglects to make any entry in any register, book of account or other book or record of the company that he is required to make by this Act or the regulations or the by-laws of the company, or
- (b) who refuses or fails to make available any register, book of account, accounting record, minutes, documents, files, records, cash, securities or other property of the company under his control or in his possession for inspection or auditing for the general purposes of the company or for the purposes of inspection and examination under this Act or the regulations, or to permit extracts to be taken therefrom, or
- (c) who hinders or obstructs the Director or any person or firm authorized under section 159 from making an inspection and examination under this Part,

is guilty of an offence.

162. (1) The Director may address any inquiries to a registered company or to the president, manager or secretary thereof for the purpose of obtaining information as to its affairs, its condition or its ability to meet its obligations, and the company shall promptly reply in writing to any such inquiries.

(2) The Director may embody in his annual report to the Minister any inquiries made by him under this section and the answers thereto.

163. (1) The Director shall prepare and submit to the Minister an annual report on all registered provincial companies based on the statements, returns and other documents filed by those companies and from any inspections, examinations and inquiries made under this Part.

(2) The report may be printed and published after being submitted to the Minister.

164. (1) In his annual report to the Minister the Director

- (a) shall disallow as assets of a company any unauthorized investments or loans made after the commencement of this Act,

160. Access to books, records, etc. Section 97.

161. Offences as to inspection and examination. Section 139.

162. Inquiries by Director for financial information. New.

163. Annual report as to provincial companies. Section 96 (1).

164. Disallowance and revaluation of assets by Director. Section 96 (2) to (4). Subsection (3) is new.

- (b) may indicate by way of a note to the company's annual statement any unauthorized investment or loan held by the company and made before the commencement of this Act,
- (c) may make all necessary corrections in the annual statements made by the companies to him, and
- (d) may increase or diminish the assets or liabilities of such companies to the true and correct amounts thereof as ascertained by him in the inspection and examination of their affairs, or otherwise.

(2) If it appears to the Director or if he has any reason to suppose, from the statements, returns or other documents filed with or delivered to him by a company or otherwise,

- (a) that the value placed by the company upon any real estate owned by it is too great, or
- (b) that the value of any of the company's investments shown in the books of the company is too great, or
- (c) that the value shown on the company's books of any real estate, securities or other property that is the security under a mortgage owned by the company is too great,

he may secure an appraisal of such real estate, investment, securities or other property by one or more competent valuers at the company's expense, and, if it appears from the appraisal that the value thereof is less than the amount at which it is carried on the books of the company, he may write off such real estate, investment, securities or other property, a sum sufficient to reduce its book value to such amount as may be fairly realizable therefrom but in no case to exceed the appraised value, and may insert such reduced amount in his annual report to the Minister.

(3) Where a company has purchased a mortgage at a discount or has made a loan subject to a bonus to the company,

- (a) the unearned portion of the discount or bonus shall be amortized either in equal annual amounts over the unexpired term of the mortgage or loan or on any other basis acceptable to the Director, and
- (b) the Director shall, if the company has not done so, reduce the valuation of that mortgage or loan on the company's books by the amount of the unearned portion of the discount or bonus and may insert such reduced amount in his annual report to the Minister and make any other correction in the annual statement of the company resulting from the reduction.

165. (1) Where the Director makes any decision affecting a company under section 164, he shall give his decision and the reasons therefor in writing and cause a certified copy thereof to be served on the company.

165. Appeal from Director's decision under section 164. New.

(2) The company may appeal the decision of the Director to the Supreme Court by way of originating notice returnable within 30 days after the date of service of the copy of the decision on the company and showing the Director as the respondent.

(3) The judge determining an appeal under this section shall by his order confirm, vary or revoke the Director's decision.

(4) While an appeal is pending under this section, the decision of the Director being appealed is suspended but if judgment has not been given before the Director's annual report is submitted to the Minister the Director may set out in the report the decision appealed from if he also shows that it is being appealed.

(5) The order of the judge is final and there is no appeal therefrom, but notwithstanding the order the Director may 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.

DIVISION 4

Suspension and Cancellation of Registration, Receivership and Liquidation

166. (1) The Director may make a special report to the Minister with respect to any registered company, where the Director is satisfied, on the basis of an examination and inspection of that company's affairs on the basis of any other source of information available to him, that

- (a) the company has defaulted on the payment of any of its liabilities, or
- (b) the company is not complying with this Act or the regulations and that the failure or the continuance of the failure to so comply is or may be prejudicial to the interests of the company's depositors, investment certificate holders, creditors or shareholders,
or
- (c) the unimpaired paid-up capital of the company is less than
 - (i) \$500,000, in the case of a company registered before the commencement of this Act, or
 - (ii) \$1,000,000, in the case of a company registered after the commencement of this Act,or
- (d) there exists any state of affairs within the company of a serious nature that is or may be prejudicial to the interests of the company's depositors, investment certificate holders, creditors or shareholders,
or
- (e) the company has ceased to carry on business in Alberta.

166. Special report by the Director to the Minister. New.

(2) The Director may make a special report to the Minister with respect to any registered company where the company refuses to permit an inspection and examination of its affairs or condition under Division 3 of this Part or hinders or obstructs any part of the inspection and examination.

(3) The Director may, in a special report to the Minister, recommend

- (a) that the registration of the company be suspended or cancelled, or
- (b) in the case of a provincial company, that a receiver and manager be appointed for the company, or, if he considers that the circumstances warrant it, that a liquidator be appointed to wind up the company, or
- (c) in the case of an extra-provincial company other than a federal company, that a receiver and manager be appointed for that company in respect of its branch offices, assets and affairs within Alberta.

Receiver and Manager

167. Where the Director makes a special report to the Minister and recommends the appointment of a receiver and manager, the Minister may recommend to the Lieutenant Governor in Council that a receiver and manager be appointed

- (a) for the provincial company, or
- (b) for the extra-provincial company in respect of its branch offices, assets and affairs within Alberta,

as the case may be, and the Lieutenant Governor in Council may make an order accordingly.

168. (1) A receiver and manager appointed under section 167

- (a) shall be another registered trust company, and
- (b) has the powers given to it by the order and, except as otherwise provided in the order, has the powers and duties that are given or imposed on a receiver and manager appointed by the Supreme Court by law.

(2) An order under section 167 may provide for any matter or thing relating to the business and affairs of the company during the appointment of the receiver and manager.

(3) The Lieutenant Governor in Council may at any time revoke the appointment of the receiver and manager and appoint another registered company as receiver and manager in its stead.

(4) A receiver and manager appointed under section 167 or under subsection (3) remains in office until he is removed from office or until a liquidator is appointed to wind up the company.

167. Appointment of receiver and manager. New.

168. Powers, etc. of receiver and manager. New.

(5) The remuneration of the receiver and manager for its services, and its expenses and disbursements in connection with the discharge of its duties, shall be fixed and determined by a judge of the Supreme Court upon petition, and shall be paid out of the assets of the company, and, in case of the winding-up of the company, shall rank on the estate equally with the remuneration of the liquidator.

Winding-up

169. Where the Director makes a special report to the Minister and recommends that a liquidator be appointed to wind up a provincial company, the Minister may recommend to the Lieutenant Governor in Council that a liquidator be appointed to wind up the company, and the Lieutenant Governor in Council may order that the company be wound up and appoint a liquidator.

170. Where a provincial company is voluntarily wound up or where the Lieutenant Governor in Council orders under section 169 that it be wound up, Divisions (3) to (7) of Part X of *The Companies Act* apply to the winding-up of the company, substituting for the Registrar of Companies under that Act the Director of Trust Companies under this Act.

Suspension and Cancellation of Registration

171. (1) Upon the submission to him of a special report under section 166, the Minister may direct the Director to suspend or cancel the registration of the company concerned and the Director shall forthwith make an order accordingly.

(2) Where the Director has suspended the registration of a company under this section, he may, with the approval of the Minister, subsequently cancel that registration.

172. (1) The Director may, with the approval of the Minister, cancel the registration of any company where

- (a) he is satisfied that the registration was obtained by fraud, or
- (b) the company has requested the cancellation and the Director is satisfied that the cancellation will not prejudicially affect the interests of any of the company's depositors, investment certificate holders, creditors or shareholders.

(2) The Director, upon proof satisfactory to him, shall cancel the registration of a company

- (a) that is bankrupt or insolvent, or
- (b) that has been dissolved, or
- (c) where a liquidator has been appointed to wind up the company.

169. Appointment of liquidator to wind up provincial company.
New.

170. Companies Act provisions to apply to liquidation. Section
138.

171. Suspension or cancellation of registration at the direction
of the Minister. New.

172. Suspension and cancellation of registration in specified
circumstances. Sections 107 and 110. Subsection (3) is new.

(3) The Director shall suspend or cancel the registration of an extra-provincial company where he is requested to do so

- (a) by the Superintendent of Insurance for Canada, in the case of a federal company, or
- (b) in any other case, by the member of the Executive Council of the province in which the company is incorporated who is charged with the administration of the statute of that province pertaining to the regulation, registration or licensing of trust companies,

and the Director may terminate a suspension made under this subsection at the request of the person who requested the suspension or his successor in office.

173. (1) Where the registration of a provincial company is suspended or cancelled but no appointment has been made of either a receiver and manager or a liquidator,

- (a) the company shall not, except with the consent of the Director and then only upon such terms and conditions as he may prescribe,
 - (i) transact any further business in Alberta or elsewhere, or
 - (ii) sell, dispose of or in any way deal with any part of the company's own property, its guaranteed fund or any property held by it in a trust or representative capacity, or
 - (iii) withdraw moneys from any deposit account, or
 - (iv) remove any books, records or documents in the company's possession from the place where they are located at the time of the suspension or cancellation,
- and
- (b) the Director may take possession of all or part of the assets, property, books, records and documents referred to in clause (a) in Alberta or elsewhere.

(2) Where the registration of an extra-provincial company, other than a federal company, is suspended or cancelled but no appointment has been made of a receiver and manager for the company in respect of its offices, assets and affairs in Alberta or of a liquidator,

- (a) the company shall not, except with the consent of the Director and then only upon such terms and conditions as he may prescribe,
 - (i) transact any further business in Alberta, or
 - (ii) sell, dispose of or in any way deal with any part of the company's own property, guaranteed fund or property held by it in a trust or representative capacity, that is located in Alberta, or

173. Consequences of suspension and cancellation of registration. New.

- (iii) withdraw moneys from any deposit account in Alberta, or
 - (iv) remove any books, records or documents of the company located in Alberta from the place where they are located at the time of the suspension or cancellation,
 - and
 - (b) the Director may take possession of all or any of the property, books, documents or records referred to in clause (a).
- (3) Every company that does any act in contravention of this section, and every director, officer, employee or agent who does that act on behalf of the company, is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000.

174. (1) The Director may, with the approval of the Minister, terminate the suspension of the registration of a company and reinstate its registration

- (a) where he is satisfied that the circumstances that gave rise to the suspension no longer exist and that it is otherwise proper to do so, or
- (b) where a receiver and manager is subsequently appointed for the company.

(2) Where the registration of a company is cancelled, the Director may reinstate its registration only with the approval of the Lieutenant Governor in Council.

DIVISION 5

Regulations and Forms

175. The Lieutenant Governor in Council may make regulations

- (a) prescribing fees payable to the Director for or in connection with
 - (i) applications for registration and for registration,
 - (ii) filing of returns, statements or other documents required or permitted to be filed under this Act,
 - (iii) inspections and examinations of companies, and
 - (iv) any other services performed by the Director or his staff in connection with the administration of this Act and the regulations,
- (b) authorizing the Director to require any additional information by a company applying for registration as to the character and business experience of its directors and officers and the company's affairs generally,

174. (1) Termination of suspension. New.

(2) Reinstatement of registration after cancellation. New.

175. Regulations. New. Cf. section 142.

- (c) prohibiting or otherwise regulating the distribution or publication of advertising material by registered companies, and any advertising or promotional practices of registered companies,
- (d) requiring registered companies to file with the Director all or any class or kind of advertising material before or after its distribution or publication and authorizing the Director to prohibit the use, distribution or publication of any advertisement or advertising material that, in his opinion, contains any false or misleading statement,
- (e) providing for the procedure for any proceedings before the Director under this Act, or procedure on an appeal to the Supreme Court under this Act, and
- (f) generally, for the carrying out of the provisions of this Act or to meet cases that may arise and for which no provision is made by this Act.

176. (1) The Director may prescribe the form of any returns, statements, affidavits or other documents required to be filed under this Act or the regulations or any other document used in connection with the administration of this Act or the regulations.

(2) The Director shall, at the request of a company, furnish to the company copies of the forms of returns, statements or other documents required to be filed by the company under this Act or the regulations.

DIVISION 6

Miscellaneous

177. (1) A certificate under the hand and seal of the Director

- (a) that on a stated day or during a stated period the company mentioned therein was or was not registered, or
- (b) that the registration of any company was on a stated day granted, or was suspended, cancelled or reinstated, or
- (c) that during a stated period the registration of a company was suspended,

shall be admitted in evidence as *prima facie* proof of the facts stated in the certificate.

(2) Copies of, or extracts from, the register of trust companies, any book, record, instrument or document in the office of the Director or of or from any official instrument or document issued under this Act shall, if certified by the Director under his seal to be true copies or extracts, be admitted in evidence as *prima facie* proof of the original.

176. Forms prescribed by Director. New.

177. Certificate of Director as evidence, etc. Section 100.

(3) All copies of returns, reports or other official publications of the Director purporting to be printed by the Queen's Printer, or to be printed by order of the Assembly, shall be admitted in evidence as proof of such publication and printing and as being true copies of the originals.

(4) A notice published in the *Gazette* over the name of the Director shall, without further proof, be admitted in evidence as *prima facie* proof of the facts set forth in the notice.

178. Any notice, order or other document required or permitted to be served by the Director on a company under this Act or the regulations may, where the manner of service is not otherwise expressly provided, be served

- (a) by delivery to its head office or chief agency, or
- (b) by mail addressed to the company at its head office or chief agency, or
- (c) where the head office or chief agency of the company is not in Edmonton, at any branch office of the company in Edmonton, or
- (d) in the case of an extra-provincial company, by delivery to an authorized agent of the company or by mail addressed to an authorized agent of the company.

179. (1) The liability of a company to persons interested in an estate or property held by the company in a trust or representative capacity is the same as if the estate or property were held by a natural person in the like capacity, and the company's powers are the same.

(2) A registered trust company is a trust company for the purposes of the Supreme Court, and every court or judge having authority to appoint a person to an office in a trust or representative capacity may, with the consent of the company, appoint the company to exercise that office in respect of any estate, property or person under the authority of the court or judge, or may grant to the company probate of any will in which the company is named as an executor.

(3) A company 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 may be appointed to any office in a trust or representative capacity jointly with another person.

(5) An appointment may be made under this section 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.

178. Service of notices, etc. on company. Section 137.

179. Any registered companies may be appointed as executors. etc. by a court or judge. Under the present section 69, appointments can only be made of companies approved for that purpose by the Lieutenant Governor in Council.

(6) Notwithstanding any rule or practice or any provision of any Act requiring security, it is not necessary for a registered trust company to give any security upon an appointment under this section.

180. A person not of the full age of 21 years may deposit money with a registered trust company in his own name, and the money deposited may be repaid to him, and he may give a valid discharge therefor, notwithstanding his minority.

181. *The Investment Contracts Act* does not apply, and shall be deemed never to have applied, to investment certificates issued or entered into by a registered company.

DIVISION 7

Offences and Penalties

182. (1) No trust company, other than a registered company, shall undertake or transact any business in Alberta.

(2) Every trust company that contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000.

(3) No promoter, organizer, manager, director, officer, collector, agent, employee or other person acting on behalf of a trust company that is not registered shall undertake or transact in Alberta any business on behalf of that trust company.

(4) Every person who contravenes subsection (3) is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000.

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

(6) This section and section 183 do not apply to an unregistered extra-provincial company in respect of the administration of property in Alberta under a grant to it of probate or administration granted or resealed in Alberta.

183. (1) No person or association of persons not being a registered trust company shall assume or use in Alberta a name that includes any of the words "Trust" or "Trusts" or "Trustee" in combination or connection with any of the words "Corporation", "Company", "Association" or "Society", or "Limited", or "Incorporated" or any abbreviation

180. Deposits by minors. Section 77.

181. Investment Contracts Act not to apply to investment certificates. New.

182. Offences by unregistered trust companies or agents. Section 116.

183. Offence re use of name implying incorporation as a trust company. Section 117.

thereof, or in combination or connection with any similar collective term, or assume or use in Alberta any similar name, or any name or combination of names that is likely to deceive or mislead the public.

(2) Every person or association of persons that contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000.

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

(2) Every director, officer or employee of a company and every member or employee of a firm of chartered accountants appointed as the company's auditors, who

- (a) prepares, signs, approves or concurs in any register, book of account, accounting record, minute, financial statement or other record or document respecting the affairs of a company, or any statement, return, report or reply to the Director, that is known by him to contain a false or deceptive statement, or
- (b) uses the same with intent to deceive or mislead any person,

is guilty of an offence and liable on summary conviction to imprisonment for a term of not more than five years and is civilly liable for damages sustained by any person in consequence thereof.

185. (1) A company shall, if requested to do so by the Director, furnish satisfactory evidence as to whether or not any by-law has been passed by it in accordance with this Act.

(2) A company refusing or failing to comply with a request made by the Director under this section within 15 days of being served with the request is liable to a penalty of \$100 for each day of default.

186. (1) Every registered company that makes, prints, publishes, circulates, authorizes or is 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 Government, the Minister or the Director or that the publication of its statement in the Director's annual report is a warranty or representation of the solvency of the company, or of the truth or accuracy of the statement in any particular, is guilty of an offence.

184. Offences re false or deceptive statements. Section 140.

185. Request to furnish proof of validity of by-law. Section 113.

186. Offence re representations as to warranty by Government, etc. as to solvency. New.

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

187. (1) No company and no director, officer, employee or agent of a company shall publish, distribute or make any statement that the repayment by the company of any deposits or investment moneys received by the company is guaranteed by the Crown in right of Alberta or the Government of Alberta, or any statement to a like effect.

(2) Every person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000.

188. (1) Where any person is convicted of an offence under this Act or the regulations for which no penalty is provided, the person convicted is,

- (a) for the first offence, liable to a fine of not more than \$500, and
- (b) for any subsequent offence, liable, in the case of a natural person, to imprisonment for a term of not more than 12 months, or in the case of a corporation to a fine of not more than \$5,000.

(2) A prosecution under this Act may be commenced within one year after the commission of the offence, but not thereafter.

189. Pecuniary penalties imposed on a company or person by this Act are recoverable and enforceable, with costs, at the suit of Her Majesty instituted by the Attorney General and such penalties belong to the Crown in right of Alberta.

190. The Supreme Court, on application by the Director, may grant an injunction to restrain any company or other person from contravening or continuing to contravene any provision of this Act, whether or not that company or person has been charged with or convicted of an offence for contravening that provision and whether or not that company or person is liable for or has paid any pecuniary penalty for contravening that provision.

PART 3

TRANSITIONAL AND REPEAL

191. Upon the commencement of this Act

- (a) all trust companies registered under the former Act shall be deemed to be registered under this Act,

187. Offence re statement that the Government guarantees repayment of deposits or investment moneys. New.

188. (1) General penalty. Section 141 (1).

(2) Limitation period as to prosecution. Section 141 (2).

189. Recovery of pecuniary penalties. New.

190. Court injunction to prevent contravention of Act. New.

- (b) the Register of Trust Companies under the former Act becomes the Register of Trust Companies under this Act, and
- (c) the person holding office as the Registrar of Trust Companies under the former Act becomes the Director of Trust Companies under this Act.

192. *The Trust Companies Act, 1960*, being chapter 110 of the Statutes of Alberta, 1960, is hereby repealed.

193. This Act comes into force on May 1, 1967.

SCHEDULE

(SECTION 7)

MODEL ACT

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 as a body corporate 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 \$....., divided into.....shares of \$.....each.
5. The head office of the company shall be in the.....ofin 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, 1967*.
7. This Act comes into force on the day upon which it is assented to.

