1969 Bill 116

Second Session, 16th Legislature, 18 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 116

An Act to amend The Trust Companies Act, 1967

THE ATTORNEY GENERAL

First Reading . . . . . .

Second Reading . . . . . .

Third Reading . . . . . .

Printed by L. S. Wall, Queen's Printer, Edmonton

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1969

An Act to amend The Trust Companies Act, 1967

(*Assented to* , *1969*)

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

1. *The Trust Companies Act, 1967* is hereby amended.

2. Section 7 is amended by adding the following subsection:

(3) Where a petition is made to the Legislature for a special Act, the petitioners shall furnish to the Private Bills Committee of the Legislative Assembly, satisfactory evidence that, in the locality in which the head office of the proposed company is to be situated, there exists a public necessity for a trust company or for an additional trust company.

3. Section 10, subsection (1) is amended by striking out the words "section 66" and by substituting the words "section 68".

4. Section 28 is amended by striking out the words "for or".

5. Section 48, subsection (3), clause (*a*) is amended by adding after the word "company" the words "held by those shareholders entitled to vote on the question of the approval at the time the vote is taken".

Explanatory Notes

1. This Bill amends chapter 87 of the Statutes of Alberta, 1967.

2. Section 7 deals with the incorporation of trust companies by special Act.

3. The re-enactment of section 66 as section 68 (3) necessitates the amendment to section 10 (1): See note to clause 8 of this Bill.

4. Section 28 presently reads:

> 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 gorup of matters unless a poll is demanded at the meeting.

The same amendment is being made in section 105 of The Securities Act, 1967 in order to have the section conform to the original recommendation in the part of the "Kimber Report" dealing with proxy solicitation. See clause 13 of Bill 57 to amend The Securities Act, 1967.

5. Section 48 (3) presently reads:

> (3) 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.

Section 48 deals with the creation of preferred shares and subsection (3) states the requirements to be met before the by-law of the directors under that section is valid. The amendment is similar to one being proposed for section 49 (6) (b): see note to clause 6 of this Bill.

6. Section 49, subsection (6), clause (*a*) is amended by adding after the word "company" the words "held by those shareholders entitled to vote on the question of the approval at the time the vote is taken".

7. The following section is added after section 63:

63*a*. (1) In this section,

(*a*) "major shareholder" means

(i) a person who is the registered shareholder of 10 per cent or more of the voting shares of a provincial company, or

(ii) any person who is designated by the Director as a major shareholder of a provincial company pursuant to subsection (3) and who has been notified in writing of the designation;

(*b*) "voting share" means

(i) an issued and subscribed common share, or

(ii) an issued and subscribed preferred share carrying, at a material time under this section, full or limited voting rights.

(2) For the purposes only of this section, in calculating the number of shares held or proposed to be held

(*a*) where voting shares are owned by two or more persons, each of those persons shall be deemed to own the shares, and

(*b*) where a transfer of voting shares is in favour of two or more persons, each of those persons shall be deemed to be the transferee.

(3) The Director may designate a person as a major shareholder of a provincial company for the purposes of this section where that person

(*a*) is the registered shareholder of less than 10 per cent of the voting shares of the company, and

(*b*) in the opinion of the Director, exercises a significant degree of control, either alone or in concert with others, over the business and affairs of the company.

(4) Where the Director makes a designation under subsection (3) or revokes such a designation, he shall immediately give written notice of that fact to the company and to the shareholder concerned.

(5) A designation by the Director under subsection (3) is not affected by a transmission of the shares held by the major shareholder referred to in the designation, and extends to the person who becomes the registered owner of the shares on the transmission until the Director revokes the designation.

6. Section 49 (6) presently reads:

(6) 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.

Section 49 deals with the increase or decrease of capital stock and reorganization of a provincial trust company's capital stock. Subsection (6) (a) on a literal interpretation, requires that the vote of the shareholders for the approval of the by-law must represent two-thirds of the issued stock. A difficulty in interpretation of this provision arises in the case where more than one-third of the capital stock of the company consists of non-voting preferred shares. In such a case, the company, on the literal interpretation, can never approve a by-law under the section because the voting shares (i.e., the common shares) can never represent two-thirds of the issued capital stock. Section 49 (6) was carried forward from the previous Trust Companies Act, 1960 which did not contemplate the issue of preferred shares of any kind. This anomolous result was not intended in the 1967 Act and an amendment to the Trust Companies Regulations was filed as Alberta Regulation 385/68 in order to cure the difficulty. It is felt such a provision should be included in the Act itself and so section 49 (6) as amended will permit the by-law to be approved by a two-thirds vote of those entitled to vote. A similar problem occurs in sections 48 (3), 135 (4), 136 (2) and 137 (2) and these provisions are being amended accordingly. The amendment to section 49 (6) and these other provisions is made effective as of December 2, 1968, the date on which Alberta Regulation 385/68 was filed.

7. The new section 63a is intended to regulate changes in share control in a provincial trust company.

(6) Notwithstanding anything in this Part, a company shall not, except with the consent of the Director, record in the share transfer register of the company

(*a*) a transfer of any shares held by a major shareholder, or

(*b*) a transfer of shares in favour of a person who is already a major shareholder, or

(*c*) a transfer of shares which, upon recording, would result in any person becoming the owner of 10 percent or more of the voting shares of the company.

(7) The Director may refuse his consent to a transfer under this section in any case where he is satisfied

(*a*) in the case of a transfer in favour of a natural person, that the transferee is not a fit and proper person to discharge the duties of a director of the company, having regard to his character and business experience, or

(*b*) that the result of the recording of the transfer could materially affect the operations, management or financial condition of the company in a manner prejudicial to the interests of the company's depositors and investment certificate holders or its creditors.

(8) Every director of a company who knowingly authorizes or permits a contravention of this section 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.

(9) A transfer recorded in contravention of subsection (6) is not thereby invalid if the Director is notified of the transfer by the company and does not, within 30 days of being so notified, inform the company in writing that he refuses his consent to the transfer, but if the Director, within that 30-day period, informs the company that he refuses his consent to the transfer,

(*a*) the company shall cancel the entries in its share transfer register and the shareholders register made by reason of the transfer and shall restore the entries showing the transferor as shareholders,

(*b*) the company shall cancel any share certificate issued as a result of recording the transfer, if the certificate is in its possession,

(*c*) the transferee shall, on demand, return the share certificate to the company, and

(*d*) upon compliance with clause (*a*), the transfer shall be deemed never to have been recorded.

8. Sections 64 to 69 are struck out and the following are substituted:

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 subclause (i) or (ii), or

(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 section 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

8. The new sections 64 to 67 deal with restrictions on shareholdings in provincial trust companies by persons or corporations not resident in Canada. These sections are modelled on the equivalent provisions in the Trust Companies Act of Canada.

The present sections 64, 65, 66, 68 and 69 are re-enacted as sections 68 and 69. The present section 67 is omitted as it is now a spent provision. Sections 64 to 69 presently read:

64. A company shall at all times have recorded in its register of shareholders at least 25 shareholders.

65. 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.

66. In determining the number of shareholders of the company for the purposes of sections 64 and 65, 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).

67. Where at the commencement of this Act a company does not have at least 25 shareholders, sections 64 and 65 do not apply to the company until May 1, 1968.

68. Where the register of shareholders does not, on May 1, 1968, comply with section 64, the company is liable to a penalty of $100 for each day, commencing on May 1, 1968, that the default continues.

69. Every director of a company who knowingly authorizes or permits a contravention of section 65 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.

64. Interpretation provisions re sections 65 to 67.

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 section 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 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*) 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, exceeds 10 per cent of the total number of issued and outstanding shares of such stock, and the recording of the transfer would increase the percentage of such shares held by the non-resident and by other shareholders associated with him, if any, 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 trans-

65. Limitations as to non-resident shareholdings.

fer 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 section 47, subsection (2), 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

(*a*) any shareholders associated with the non-resident, or

(*b*) any persons who would, under section 64, subsection (2), 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,

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

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

(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) wheher 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.

(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:

68. No transfer shall reduce the number of shareholders to less than 25. The present sections 64 to 66.

(*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*).

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 imprisonment 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.

9. Section 70, subsection (1), clause (*f*) is amended by adding the word "or" at the end of subclause (ii) and by adding the following:

(iii) any person who exercises control or direction over the 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;

10. Section 71 is amended

(a) by adding the following subsection after subsection (1):

(1*a*) A person who is an insider of a provincial company under section 70, subsection (1), clause (*f*), subclause (iii) shall, within 10 days after the end of the month in which this subsection comes into force, file with the Commission a report, as of such day, of the direction or control he exercises over the capital shares of the company.

69. Offences re prohibited share transfers and minimum requirement of 25 shareholders. The present sections 68 and 69.

9. Section 70 (1) (f) presently reads:

(f) "insider" or "insider of a provincial company" means

(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;

Subclause (ii) of the definition refers only to the beneficial owner of equity shares of the provincial company. The new subclause (iii) will extend the definition of "insider" to include a person who is not the beneficial owner but exercises control and direction over equity shares carrying more than 10 per cent of the voting rights attached to all equity shares of the company for the time being outstanding. The change in the definition necessitates amendment to section 71 so as to include reference to persons who exercise control or direction over equity shares. This follows the equivalent amendment being made to the definition of "insider" in section 108 of The Securities Act, 1967: see clause 14 of Bill 57.

10. Section 71 presently reads:

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.

(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.

See note to clause 9 of this Bill and clause 15 of Bill 57 which amends section 109 of The Securities Act, 1967 in the same way.

(b) by striking out subsections (2), (3) and (4) and by substituting the following:

(2) A person who 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 or control or direction over 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 or control or direction over capital shares of the company, acquires direct or indirect beneficial ownership of or control or direction over any such capital shares he shall, within 10 days after the end of the month in which he acquired such direct or indirect beneficial ownership or such control or direction, file with the Commission a report, as of the date of such acquisition, of his direct or indirect beneficial ownership of or control or direction over capital shares of the company.

(4) A person who has filed or is required to file a report under subsection (1), (1*a*), (2) or (3) and whose direct or indirect beneficial ownership of or control or direction over 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, provided that 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 or his control or direction over capital shares of the company at the end of such month and the change or changes therein that occurred during the month giving such details of each transaction as may be required by the regulations.

11. Section 92 is amended by striking out the word "and" at the end of clause (*i*), by adding the word "and" at the end of clause (*j*) and by adding the following clause:

(*k*) act as a real estate agent.

12. Section 93 is amended

(*a*) by renumbering the section as subsection (1),

(*b*) by adding the following subsection:

(2) Notwithstanding subsection (1), where a provincial company is permitted by the laws of any

11. Section 92 enumerates the general powers of provincial trust companies. The amendment is intended to remove doubt as to whether a trust company may act as a real estate agent.

12. Section 93 presently reads:

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.

jurisdiction outside Alberta to become registered or licensed to carry on any business in that other jurisdiction, a provincial company shall not apply for or obtain such registration or licence except with the prior approval of the Director, and then only on such conditions as the Director prescribes.

13. Section 103 is amended by striking out the words "15 times" and by substituting the words "20 times".

14. Section 104 is amended by adding the following subsection:

(6) Where the valuation of the company's guaranteed fund at any time is less than the amount of the company's liability to its depositors and investment certificate holders, a portion of the company's own property equal in value to the deficiency at that time shall be deemed to be held by the company in trust for the benefit of those depositors and investment certificate holders, notwithstanding that such property has not been ear-marked and definitely set aside under this section and does not form part of the guaranteed fund.

15. Section 117 is amended by renumbering the section as subsection (1) and by adding the following subsections:

(2) Notwithstanding subsection (1), the Director may, with respect to any company by a direction to the company concerned, from time to time decrease either or both of the percentage limits referred to in subsection (1).

(3) The Director may from time to time amend or revoke any direction given by him under subsection (2) by the giving of a further direction to that effect to the company.

16. Section 118 is amended by striking out clause (*b*) and by substituting the following:

(*b*) 95 per cent of their market value, in the case of securities other than those referred to in clauses (*a*), (*c*) and (*d*), or

13. Section 103 presently reads:

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

This amendment will come into force on Proclamation.

14. Section 104 requires the company to ear-mark assets to form a "guaranteed fund" of sufficient value to meet all its liabilities to its depositors and investment certificate holders. As the guaranteed fund assets may decrease in value and sufficient company assets may not be ear-marked for the fund at any given time, there could be a deficiency. The new subsection (6) is intended to impose a trust on the company's own assets sufficient to offset such a deficiency.

15. Section 117 presently reads:

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

16. Section 118 presently reads:

> **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
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> (a) their market vaue, 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 isued 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.

Clause (b) is rewritten as its present wording has caused some difficulty in interpretation.

17. Section 120 is amended

(a) as to subsection (1) by striking out the figure "65" where it occurs in clauses (*a*) and (*b*) and by substituting the figure "75",

(b) as to subsection (3) by striking out clause (*c*) and by substituting the following:

(*c*) any agreement for sale or option to purchase, or

(*d*) any option to lease unless, under the lease or tenancy to be granted pursuant to the option,

(i) the company holds as additional security, at the time of the investment or loan and at all times thereafter, an assignment in its favour of the rents payable under that lease or tenancy and all subsequent leases and tenancies of that real estate, or

(ii) that lease or tenancy, according to its terms, will expire within one year or can be terminated by the lessor within one year.

18. Section 125, subsection (1) is amended by adding the word "or" at the end of clause (*i*) and by adding the following clause:

(*j*) any shareholder of the company who holds

(i) 10 per cent or more of the subscribed and issued common shares of the company, or

(ii) 10 per cent or more of the subscribed and issued preferred shares of the company having, at that time, full or limited voting rights, or

(iii) both common shares and preferred shares of the company having, at that time, full or limited voting rights and the number so held is equal to or exceeds 10 per cent of the total number of the subscribed and issued common and preferred shares of the company,

or

(*k*) any director or officer of a corporation that is a shareholder to which clause (*j*) applies, or any person who holds 10 per cent or more of the voting shares of that corporation.

19. Section 130, subsection (5), clause (*b*) is amended by striking out the word "whether" and by substituting the word "where".

17. Section 120 (1) and (3) presently read:

120. (1) The aggregate amount of all outstanding investments and loans in or upon mortgages under sections 112 and 113 and the book value of foreclosed mortgages of real estate and of real estate acquired pursuant to subsection (2) of section 121 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.

(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 unless

(i) the company holds as additional security, at the time of the investment or loan and at all times thereafter, an assignment in its favour of the rents payable under that lease or tenancy and all subsequent leases and tenancies of that real estate, or

(ii) that lease or tenancy, according to its terms, will expire within one year or can be terminated by the lessor within one year,

or

(c) any agreement for sale or option to purchase or option to lease.

Subsection (3) (c) is the same except for the omission of the reference to options to lease. The new clause (d) deals with options to lease separately but is worded to make it consistent with clause (b). At present, a trust company cannot invest in mortgages where the land is subject to a lease unless the company also holds as security an assignment of future rents and the lease is terminable in one year or less: see subclauses (i) and (ii) of clause (b). However, the land cannot be subject to any kind of an option to lease. The amendment will now permit the land to be subject to the option if the same requirements will be met when the option is exercised, as in the case of a lease.

18. Section 125 commences:

125. (1) Notwithstanding anything in this Division, a company shall not directly or indirectly with the company's own funds or its deposits and investment moneys make any loan to, or purchase any mortgage, loan, securities or real estate from,

The new clauses (j) and (k) will prohibit a provincial trust company from making loans to or purchasing investments from shareholders having 10 per cent of the voting shares of the company, or in the case of corporate shareholders, from its directors, officers or shareholders having 10 per cent of its voting shares.

19. Corrects a typographical error.

20. Section 135, subsection (4) is amended by adding after the words "subscribed and issued capital stock of the company" the words "held by those shareholders entitled to vote on the question of the adoption at the time the vote is taken".

21. Section 136, subsection (2) is amended

(a) as to clause 2, subclause (ii) by adding at the end thereof the words "held by those shareholders entitled to vote on the question of the approval at the time the vote is taken",

(b) by adding the following clause after clause 4:

5. Where a company purchases shares under this section, then, during the period from the effective date of the order of the Lieutenant Governor in Council under this subsection until the selling company is liquidated or otherwise distributes its assets to its shareholders or until the purchasing company holds less than 67 per cent of the outstanding shares of the selling company, whichever occurs first,

(i) the directors of the purchasing company may by by-law order that the persons who are the directors of the purchasing company from time to time are the directors of the selling company, in which case section 30, subsection (2) and sections 31 to 33 do not apply,

(ii) section 63*a* does not apply to the purchasing company in respect of its shares in the selling company, and

(iii) section 68 does not apply to the selling company.

22. Section 137, subsection (2) is amended by adding at the end thereof the words "held by those shareholders entitled to vote on the question of the approval at the time the vote is taken".

20. Section 135 (4) presently reads:

(4) The amalgamation agreement shall be submitted to the shareholders of each of the amalgamating companies at special general meetings thereof called for the purpose of considering the adoption of the agreement and if at each meeting the shares voted in favour of adopting the amalgamation agreement represent at least two-thirds of the subscribed and issued capital stock of the company,

(a) the secretary of each of the amalgamating companies shall certify that fact under the corporate seal thereof, and

(b) the amalgamation agreement shall be deemed to have been adopted by each of the amalgamating companies.

Section 135 deals with the amalgamation of provincial trust companies. As to the reasons for the change, see the note to clause 6 of this Bill.

21. Section 136 (2)/2(ii) presently reads:

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 represented 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.

Section 136 deals with the acquisition by a provincial trust company of the assets of another trust company and subsection (2) deals with the purchase of at least 67 per cent of the shares of the selling company. As to the reasons for the amendment to clause 2 (ii), see clause 6 of this Bill.

The new clause 5 is aimed at resolving possible conflicts between section 136 (2) and other provisions of the Act, e.g., where one company buys 100 per cent of the shares of the other, it will not be necessary for the directors of the selling company to hold qualifying shares required by section 30 (2) or that there be at least 25 shareholders as required by section 68 (as enacted in clause 8 of this Bill). As to the reference to section 63a, see clause 7 of this Bill.

22. Section 137 (2) presently reads:

(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.

Section 137 permits a provincial trust company to sell its assets to another trust company. As to the reasons for the amendment, see clause 6 of this Bill.

23. Section 138 is struck out and the following is substituted:

138. (1) In this section,

(*a*) "approval" means the approval of the Lieutenant Governor in Council under section 136, subsection (1) or section 137, subsection (3);

(*b*) "instrument" includes

(i) any will, codicil or other document having effect on the death of any person,

(ii) a settlement, trust deed or any other document creating a trust,

(iii) an agreement, transfer, assignment, mortgage, encumbrance, charge or certificate of title, or certificate of registration,

(iv) letters probate, letters of administration of any kind, a judgment, order, direction or appointment of any court, judge or other constituted authority,

(v) any pleading, notice or document in an action or other proceeding in a court, and

(vi) any document registered, filed, lodged or deposited by or with a registrar;

(*c*) "purchasing company" means the company that is the purchasing company under section 136 or 137;

(*d*) "registrar" means a Registrar of Titles under *The Land Titles Act*, the registrar of the Central Registry, the registration clerk of the Motor Vehicle Branch of the Department of Highways, a mining recorder, a Minister of the Crown, a clerk of the court or the chief officer of any registry established by or pursuant to an Act of the Legislature;

(*e*) "selling company" means the company that is the selling company under section 136 or 137.

(2) On and from the effective date of an approval

(*a*) an instrument naming or appointing the selling company in a trust or representative capacity shall be read, construed and enforced as if the purchasing company was so named or appointed therein, and the purchasing company has, in respect of the instrument, the same rights, obligations and status as the selling company had,

(*b*) all trusts of every kind and description, including incomplete or inchoate trusts, and every duty assumed by or binding upon the selling company is vested in and binds and may be enforced against the purchasing company as fully and effectively as if it had been originally named or appointed in a trust or representative capacity in the instrument creating the trust, and

23. Section 138 presently reads:

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.

The section is rewritten so as to conform to the equivalent provisions in section 135 (14) and (15) regarding amalgamations of provincial trust companies. The new section 138 does not involve any substantial change apart from the inclusion of the definition of "registrar" and subsection (2), clause (c). These are presently contained in section 18 of the Trust Companies Regulations (added by Alberta Regulation 373/68) and are now being brought into the Act. The new section 138 is therefore being made effective on November 13, 1968, the date of filing of Alberta Regulation 373/68.

(*c*) where the selling company is referred to in a document registered, filed, lodged or deposited by or with a registrar and being uncancelled or undischarged as of the effective date of the approval, the document shall thereafter be dealt with by the registrar as though the document named the purchasing company instead of the selling company, without the necessity of filing a copy of the approval or any other document, or of making any entry in the registrar's records or of paying any fees to the registrar, or of filing any document with the registrar other than a certified copy of the approval and the agreement between the selling company and the purchasing company made pursuant to section 136 or 137, as the case may be.

24. Section 139 is amended by adding the following after clause (*c*) :

(*c*1) providing for the methods of valuation to be used with respect to assets comprising a company's guaranteed fund under section 104,

25. Section 145, subsection (1) is amended

(a) as to clause (*b*) by striking out the words "section 66" and by substituting the words "section 68",

(b) by adding the following after subsection (3) :

(4) A provincial company is not entitled to registration unless the company becomes the holder of a policy of deposit insurance under the *Canada Deposit Insurance Corporation Act* after it has made its application for registration, unless provincial companies are not then authorized by the regulations to obtain such policies.

26. Section 149, subsection (1) is amended by striking out the word "and" at the end of clause (*a*), by adding the word "and" at the end of clause (*b*) and by adding the following clause:

(*c*) except in the case of a federal company, it is the holder of a policy of deposit insurance under the *Canada Deposit Insurance Corporation Act.*

27. Section 166, subsection (1) is amended by adding after the words "examination and inspection of that company's affairs" the word "or".

28. Section 168, subsection (5) is amended by striking out the words "a judge of the Supreme Court upon petition" and by substituting the words "the Lieutenant Governor in Council".

24. Section 139 empowers the Lieutenant Governor in Council to make regulations respecting provincial trust companies. Section 104 (4) refers in a general way to regulations and the new clause will be an express authority for regulations for the purposes of section 104 (4).

25. (a) The change in the section reference is necessitated by the re-enactment of section 66 as section 68 (3): see note to clause 8 of this Bill.

(b) The new subsection (4) will require a provincial company applying for registration to have a policy of deposit insurance from the Canada Deposit Insurance Corporation.

26. Section 149 deals with application for registration by extra-provincial trust companies. The new clause (c) will require a company incorporated in another province to show that it is the holder of a policy of deposit insurance from the Canada Deposit Insurance Corporation.

27. Corrects a typographical omission.

28. Section 168 (5) presently reads:

> (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.

Corrects a drafting oversight. As an appointment under section 168 would be made by the Lieutenant Governor in Council, it is appropriate that remuneration should also be fixed by him.

29. The following heading and section are added after section 170:

Dissolution After Distribution of Assets

170*a*. (1) The directors of a provincial company may make a by-law providing for the distribution of the assets of the company in specie to its shareholders after the discharge or payment of all liabilities of the company and providing that the company is thereafter to be dissolved.

(2) A by-law under subsection (1) 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 held by those shareholders entitled to vote on the question of the approval at the time the vote is taken, and

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

(3) Upon the effective date of the order of the Lieutenant Governor in Council under subsection (2)

(*a*) the Director shall cancel the registration of the company, unless the company is then not registered, and

(*b*) the company shall proceed forthwith to carry out the provisions of the by-law in accordance with its terms.

(4) The Director shall make a report to the Minister upon being satisfied

(*a*) that the company has ceased to carry on business and that its registration has been cancelled, and

(*b*) that, in accordance with the by-law, all liabilities of the company have been discharged or paid and that the assets of the company have been distributed in sepcie to its shareholders.

(5) Where a report has been made under subsection (4),

(*a*) the special Act for the provincial company may be repealed on a date to be fixed by Proclamation, or

(*b*) in the case of a company incorporated in Alberta under the *Companies Ordinance* before October 1, 1929, the company's registration under *The Companies Act* may be cancelled by an order of the Lieutenant Governor in Council, whereupon the company is dissolved.

30. Section 172 is amended by adding the following subsection:

(4) The Director may, with the approval of the Lieutenant Governor in Council, suspend or cancel the registration

29. The new section 170a is intended to provide a means of repealing a trust company's special Act of incorporation after it has been wound up or ceases to have any assets or liabilities. In the case of companies that were incorporated under the Companies Ordinance, this would result in cancellation of registration.

30. Section 172 deals with grounds for suspension or cancellation of registration.

of a registered company other than a federal company, where the company ceases to be the holder of a policy of deposit insurance under the *Canada Deposit Insurance Corporation Act*.

31. Section 175 is amended by striking out the word "and" at the end of clause (*e*) and by striking out clause (*f*) and by substituting the following:

(*f*) prohibiting registered companies or any of them from using any specified business practices in connection with their transactions and affairs,

(*g*) providing for the method of calculation to be used by a registered company for the purpose of determining the amount of its unimpaired paid-up capital from time to time, including the methods of valuation of assets for that purpose, and

(*h*) 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.

32. The following section is added after section 181:

181*a*. No action lies against a receiver and manager or liquidator appointed under Division 4, or any officer or employee of any person so appointed, in respect of any loss or damage suffered by any person by reason of anything done or omitted to be done in the exercise or purported exercise of the powers of the receiver and manager or liquidator, as the case may be, except in the case of wanton or wilful misconduct.

33. (1) This Act, except sections 3, 7 to 10, 13, 18, 25 and 26, comes into force on the day upon which it is assented to.

(2) Sections 3, 7 to 10, 18, 25 and 26 come into force on July 1, 1969.

(3) Upon coming into force

(*a*) sections 5, 6, 20, 21 and 22 shall be deemed to have been in force at all times on and after December 2, 1968, and

(*b*) section 23 shall be deemed to have been in force at all times on and after November 13, 1968.

(4) Section 13 comes into force on a date to be fixed by Proclamation.

31. Section 175 empowers the Lieutenant Governor in Council to make regulations. The new clause (h) is a re-enactment of the present clause (f).

32. Liability of receiver and manager or liquidator of a trust company.

33. The amendments to sections 48 (3), 49 (6), 135 (4), 136 (2) and 137 (2) are made effective as to December 2, 1968, the date of filing of Alberta Regulation 385/68: see note to clause 6 of this Bill.

The new section 138 is made effective of November 13, 1968, the date of filing of Alberta Regulation 373/68: see note to clause 22 of this Bill.