

1970 Bill 129

Third Session, 16th Legislature, ~~19~~ Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 129

An Act to amend The Trust Companies Act, 1967

THE PROVINCIAL SECRETARY

First Reading

Second Reading

Third Reading

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BILL 129

1970

An Act to amend The Trust Companies Act, 1967

(Assented to _____, 1970)

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 2 is amended

(a) as to subsection (1) by adding the following clauses:

1A. "ancillary corporation" means a corporation referred to in section 111*a*, subsection (1) and controlled by a provincial company in accordance with that subsection;

21A. "real estate subsidiary" means a corporation referred to in section 111*b*, subsection (1);

(b) as to subsection (8) by adding after the words "real estate" the words "or leasehold estates".

3. Section 30 is amended by adding the following subsection after subsection (4):

(4*a*) A person is not eligible to be elected or appointed as a director of the company if he beneficially owns, directly or indirectly, more than 10 per cent of the issued shares of an ancillary corporation of the company or of a real estate subsidiary of the company that carry limited or full voting rights.

4. Section 49 is amended

(a) by adding the following subsection after subsection (2):

(2*a*) Common shares of a company shall not be issued for a consideration other than cash except where otherwise approved by the Minister and then only on such terms and conditions as the Minister prescribes.

Explanatory Notes

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

2. (a) As to the new definitions see the clause of this Bill dealing with sections 111a and 111b, respectively.

(b) Section 2, subsection (8) presently reads:

(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.

The amendment to subsection (8) is made because mortgages of leasehold estates will be authorized investments for provincial trust companies.

3. Section 30 deals with the eligibility of directors of a provincial trust company. The new subsection (4a) will make ineligible anyone who owns more than 10% of the shares of a real estate subsidiary.

4. Section 49, subsection (3), clause (b) presently reads:

(3) Common shares of a company without par value

.....

(b) shall not be issued for any consideration other than cash, and

The effect of the amendment is to allow for the issue of common shares, with or without par value, for a consideration other than cash in special cases with the Minister's approval.

- (b) as to subsection (3) by adding the word “and” after clause (a) and by striking out clause (b).

5. The following section is added after section 63a:

63b. (1) The directors of a company

- (a) shall refuse to allow the recording in the share transfer register of the company a transfer of a share of the capital stock of the company to another trust company or to an ancillary corporation of the company or a real estate subsidiary of the company, and
- (b) shall not allot, or allow the allotment of, any shares of the capital stock of the company to another trust company or to an ancillary corporation of the company or a real estate subsidiary of the company.

(2) Any allotment or recording in the share transfer register of the company made in contravention of subsection (1) is void and where a contravention of subsection (1) has occurred the company shall take any action necessary to cancel the entries made in the share transfer register and the shareholder’s register as a result of the contravention.

(3) A transfer of a share of the capital stock of a provincial company to another trust company or to an ancillary corporation of the company or a real estate subsidiary of the company is void.

(4) Every director of a company who knowingly authorizes or permits a contravention of subsection (1) 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.

(5) This section does not apply to a transfer of shares of the company to another trust company as a result of the purchase of those shares pursuant to section 136 or 137.

6. Section 80, subsection (3) is amended by striking out the words “managers, officers or liquidators” and by substituting the words “managers or officers”.

7. Section 96 is amended

- (a) as to subsection (1) by striking out the words “in subsection (2)” and by substituting the words “in subsections (2) and (6)”,
- (b) by adding the following subsection:

5. Shareholdings in a provincial trust company by that company's ancillary corporation or real estate subsidiary or by another trust company is prohibited.

6. Section 80, subsection (3) presently reads:

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

(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.

The new section 169 (as proposed in this Bill) will provide that a liquidator may be appointed only by the Lieutenant Governor in Council. The amendment to section 80, subsection (3) is made here because it assumes that the company has the power to appoint a liquidator.

7. Section 96, subsection (1) presently reads:

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.

The new subsection (6) will provide specific authority to borrow from the Canada Deposit Insurance Corporation and to mortgage any of its assets as security for such a loan. The same power was given to federal companies by the new section 70A of The Trust Companies Act (Canada). (See Bill S-8)

(6) A provincial company may borrow money from the Canada Deposit Insurance Corporation and may mortgage, hypothecate or pledge any part of the company's own property or the assets in its guaranteed fund as security for a loan from that corporation.

8. Section 105 is amended by striking out clause (b) and by substituting the following clause:

(b) mortgages held as investments or as security for loans under section 112, or

9. Section 108, subsection (1) is amended

(a) by adding at the end of clause (b) the words "and shares referred to in sections 111a and 111b",

(b) by adding the following clause:

(c) "equity share" means any share of any class of shares of a corporation and carrying full or limited voting rights and any share of any class of shares of the corporation carrying voting rights by reason of any contingency that has occurred and is continuing.

10. The following sections are added after section 111:

111a. (1) A company may invest the company's own funds and its deposits and investment moneys in fully paid common shares of any corporation incorporated in Canada to carry on a business activity reasonably ancillary to the business of a trust company if

(a) the approval of the Minister is first obtained, and

(b) the company is, upon making the investment and all times thereafter, the registered and beneficial owner of equity shares of the corporation carrying more than 50 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding.

(2) Where the Minister approves an investment under subsection (1), the approval may be made subject to any terms and conditions prescribed from time to time by the Lieutenant Governor in Council.

(3) Where there has been a contravention of any terms or conditions prescribed under subsection (2), the Director shall

(a) disallow the shares of the ancillary corporation owned by the company as assets of the company pursuant to section 164, subsection (1), clause (a), as if it were an unauthorized investment, and

8. Section 105, clause (b) presently reads:

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

.....

(b) first mortgages on improved real estate held as investments or as security for a loan authorized by section 112, or

Clause (b) is re-enacted as a consequence of the new section 112 to be enacted by this Bill.

9. Section 108, subsection (1), clause (b) presently reads:

(b) "securities" means any bonds, debentures, notes, evidences of indebtedness, obligations, certificates, investment certificates, investment contracts, receipts and shares referred to in section 111.

Sections 111a and 111b are being added by this Bill and permit a trust company to hold shares of subsidiary corporations. Section 113b is being added by this Bill and "equity share" is defined as it is used in the new sections 111a and 111b.

10. The new section 111a will allow a provincial trust company to have as a subsidiary a corporation that has objects similar or ancillary to those of a trust company, for example, a real estate agency, if it is controlled by the company at all times.

The new section 111b permits a provincial trust company to incorporate a subsidiary for purposes of financing a building project.

Certain restrictions on the holding of shares in corporations will not apply to these two types of subsidiaries.

- (b) direct the company to dispose of all of the shares by an order under section 130 as if the shares were an unauthorized investment.

111b. (1) A provincial company may arrange for the incorporation in Alberta or elsewhere in Canada of a corporation if

- (a) at the time of incorporation and at all times thereafter the company is the registered and beneficial owner of equity shares of the corporation carrying more than 50 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding, and
- (b) the corporation is incorporated primarily for the purpose of this section and with objects incidental to such purposes.

(2) Where a real estate subsidiary is incorporated, the company shall notify the Director of that fact within 10 days after the date of incorporation, and shall furnish him with a true copy of its instrument of incorporation and its memorandum of association and articles of association or any similar instruments or rules for the regulation of the affairs of the subsidiary.

(3) A provincial company may, with the company's own funds or its deposits and investment moneys, make a loan to its real estate subsidiary on the security of a first mortgage executed in favour of the company pursuant to section 112, subsection (1) if

- (a) the real estate subsidiary is the sole owner of the improved real estate so mortgaged at all times during the term of the mortgage,
- (b) the mortgage is otherwise not prohibited under this Division,
- (c) the amount of the indebtedness under the mortgage does not exceed an amount equal to 2 per cent of the aggregate of the company's own funds and the company's deposits and investment moneys,
- (d) at the time of execution of the mortgage, the real estate subsidiary has entered into leases or agreements for leases of the improved real estate and such leases will provide net revenue sufficient during the term of the mortgage to repay at least 85 per cent of the amount loaned by the company, and
- (e) the company has, prior to the execution of the proposed mortgage, informed the Director of the mortgage and the company and the real estate subsidiary have complied with any terms and conditions prescribed by the Director in respect of the mortgage or the leases.

(4) Except with the consent of the Director, a provincial company shall not enter into any agreement or arrangement with its subsidiary other than a mortgage permitted by this section or with respect to any matter incidental to that mortgage.

(5) A provincial company may have more than one subsidiary under this section but shall not enter into more than one mortgage with one subsidiary without the prior consent of the Director.

(6) Notwithstanding subsections (1) and (5), the Minister may by notice to a provincial company that has one or more real estate subsidiaries prohibit the company from arranging for the incorporation of any additional real estate subsidiaries except with the approval of the Minister and if the company thereafter arranges for the incorporation of a subsidiary in contravention of the notice, the shares of real estate subsidiary owned by the company are an unauthorized investment.

(7) The total amount of the moneys invested by the company in the shares of its real estate subsidiaries and loaned under mortgages in favour of its real estate subsidiaries shall not exceed more than 10 per cent of the aggregate of the company's own funds and its deposits and investment moneys.

11. Section 112 is struck out and the following section is substituted:

112. (1) A provincial company may, with the company's own funds and its deposits and investment moneys, invest in mortgages or make loans under mortgages executed in favour of the company, if in the case of each mortgage

- (a) the mortgage is of improved real estate in Alberta or elsewhere where the company is registered or licensed to carry on business as a trust company,
- (b) the amount invested in or loaned under the mortgage, together with the amount of indebtedness under any other mortgage or other charge on the improved real estate ranking equally with or superior to the first-mentioned mortgage does not exceed 75 per cent of the value of the improved real estate at the time of the investment or loan, and
- (c) the valuation referred to in clause (b) is established by a valuation report 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.

(2) A provincial company may, with the company's own funds and its deposits and investment moneys, invest in mortgages of leasehold estates or make loans under mort-

11. Section 112 presently reads:

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 each 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.

The new subsection (1) will permit provincial trust companies to invest in second or third mortgages of real estate if the total mortgage debt under its mortgage and any other mortgage ranking equally or ahead of it does not exceed 75 per cent of the value of the property. At present the company is restricted to first mortgages. As to limitations on total investment in mortgages other than first mortgages, see clause 11 of this Bill.

The new subsection (2) will permit the companies to invest in first mortgages of a leasehold estate up to 75 per cent of its value.

The new subsection (3) will permit mortgages in excess of 75% of value if the excess is guaranteed or insured by a government, government agency or insurance company in Canada.

gages executed in favour of the company of leasehold estates if in each case

- (a) the mortgage is a first mortgage of the leasehold estate,
 - (b) the leasehold estate is of improved real estate in Alberta or elsewhere where the company is registered or licensed to carry on business as a trust company,
 - (c) the amount invested or loaned does not exceed 75 per cent of the value of the leasehold estate at the time of the investment or loan as established by a report as to the value of the leasehold estate made by a person whom the company reasonably believed to be a competent valuator, instructed and employed independently of any owner of the leasehold estate or the improved real estate,
 - (d) the title to the real estate to which the leasehold estate pertains is not subject to an encumbrance or notification at the time of registration of the mortgage in a land titles office or land registry,
 - (e) 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 leasehold estate, and
 - (f) if the lease provides for a net revenue sufficient to yield a reasonable interest return during the term of the lease and to repay at least 85 per cent of the amount loaned by the company within the term of the lease, but not exceeding 30 years from the date of investment.
- (3) Notwithstanding subsection (1), clause (b) and subsection (2), clause (c), the amount of an investment or loan under this section may exceed the limits prescribed by those provisions if the excess
- (a) is guaranteed or insured by or through an agency of, the Government of Canada or the government of any province of Canada, or
 - (b) is insured by a policy of mortgage insurance issued by an insurance company registered under the *Canadian and British Insurance Companies Act* or the *Foreign Insurance Companies Act* or licensed under *The Alberta Insurance Act*.

12. The following section is added after section 113a:

113b. (1) Subject to subsections (2) and (3), where a company makes a loan pursuant to section 112 or 113 to a corporation, it may, in consideration of making the loan, acquire and hold fully paid common or preferred shares of that corporation or any notes, bonds, debentures or other evidences of indebtedness issued by that corporation.

12. A provincial company will be able to accept the securities issued by a corporation lending money from it, in consideration for making the loan. Ministerial approval will be required in each case. As the company will not be expending any of its own money to buy these securities, they will not be treated as investments and accordingly will not be subject to the limitations and restrictions of Division 7.

(2) A company shall not acquire any shares, notes, bonds, debentures or other evidence of indebtedness under subsection (1) except with the prior approval of the Minister and the Minister may make his approval subject to any terms or conditions he may prescribe.

(3) Where there has been a contravention of any of the terms or conditions of the approval prescribed by the Minister under subsection (2), the Director may

(a) disallow the shares, notes, bonds, debentures or other evidences of indebtedness as assets of the company pursuant to section 164, subsection (1), clause (a), as if they were an unauthorized investment, and

(b) direct the company to dispose of the shares, notes, bonds, debentures or other evidences of indebtedness by an order under section 130 as if they were an unauthorized investment.

(4) Shares, notes, bonds, debentures or other evidences of indebtedness acquired and held by a company under this section shall not be construed as an investment of the company for the purposes of this Division.

13. Section 114 is amended by striking out subsection (2) and by substituting the following:

(2) This section does not apply in respect of

(a) a security issued or guaranteed by the Government of Canada or the government of any province of Canada, or

(b) notes or deposit receipts of chartered banks or treasury branches, or

(c) a loan made in accordance with section 111*b* to a real estate subsidiary of the company.

(3) The Minister may waive the application of subsection (1) in the case of a loan made by a company

(a) under section 112, if the loan is guaranteed or insured by, or through an agency of, the Government of Canada or the government of any province of Canada, or

(b) under section 113,

where the Minister is satisfied that the loan is in the best interests of the company and that the purpose for which the money loaned is to be used will serve a public interest or be of public benefit.

14. Section 116 is amended by renumbering the section as subsection (1) and by adding the following subsection:

13. Subsection (2) is the same except for the addition of clause (c). Section 114, subsection (1) reads:

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.

A loan to a subsidiary under the proposed section 111b will instead be subject to the limitation prescribed in subsection (3) (c) of that section: see clause 7 of this Bill.

The proposed subsection (3) will allow for a Ministerial waiver in a special case of a government-guaranteed loan.

14. Section 116 presently reads:

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.

Under the proposed sections 111a and 111b a provincial trust company will be able to have subsidiaries in certain cases, so that the 20% limit in section 116 will not apply.

(2) This section does not apply to a company in respect of an ancillary corporation of the company or a real estate subsidiary of the company.

15. Section 117 is amended by striking out subsections (1) and (2) and by substituting the following section:

117. (1) The book value of a company's investments in, and loans upon the security of, common shares shall not exceed in the aggregate 25 per cent of the total of the company's unimpaired paid-up capital and reserve and its deposits and investment moneys.

(2) Notwithstanding subsection (1), the Director may, with respect to any company by a direction to the company concerned, from time to time, decrease the percentage limit referred to in subsection (1) either generally or by prescribing a percentage limit for the book value of common shares in either or both of the following cases, namely,

- (a) where the investments or loans are made from the company's own funds, or
- (b) where the investments or loans are made from the company's deposits and investment moneys.

16. Section 119 is amended by renumbering the section as subsection (1) and by adding the following subsection:

(2) Subsection (1), clause (d) does not apply to a company in respect of an ancillary corporation of the company or a real estate subsidiary of the company.

17. Section 120 is amended

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

(1a) The aggregate amount of all outstanding investments and loans in or upon mortgages under section 112, subsection (1) other than first mortgages shall not at any time exceed 5 per cent of the aggregate amount of

- (a) all outstanding investments and loans in or upon mortgages under sections 112 and 113, and
 - (b) the book value of foreclosed mortgages of real estate.
- (b) as to subsection (3), by striking out the words "section 112 or 113" and by substituting the words "section 112, subsection (1) or section 113",
 - (c) by adding the following subsection after subsection (3):

15. Section 117, subsections (1) and (2) presently read:

117. (1) 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.

(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).

16. Section 119, clause (d) presently reads:

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

.....
(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.

The subsidiaries of a provincial trust company under the proposed sections 111a and 111b will likely be private companies whose shares do not have a market value ascertainable in the manner referred to in clause (d).

17. Section 120, subsection (3), clause (a) and subsection (4) presently read:

(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

(4) In subsection (1), "book value of foreclosed mortgages of real estate" means the aggregate amount of

(a) the outstanding principal and interest owing to the company under mortgages of real estate at the time of acquisition by the company of that real estate under foreclosure proceedings,

(b) the outstanding amount of the taxed costs of the foreclosure proceedings owing to the company, and

(c) registration fees in connection with the foreclosure proceedings paid under The Land Titles Act or a law in force in the jurisdiction where the real estate is situated,

where that real estate is held by the company under section 123.

The new subsection (1a) will limit investments in mortgages of real estate other than first mortgages to 5% of the company's total land mortgage portfolio.

The amendments to subsection (3)(a) and (4) are the result of the new section 112.

(3*a*) Subsection (3), clause (a) does not apply where the investment or loan in or upon a mortgage is made pursuant to section 112, subsection (1) and the encumbrance or notification is a mortgage or other charge ranking equally with or superior to the mortgage in or upon which the investment or loan is to be made.

- (d) as to subsection (4),
 - (i) by striking out the words "In subsection (1)" and by substituting the words "In this section",
 - (ii) by striking out clause (a) and by substituting the following clause:
 - (a) the outstanding principal and interest owing to the company under mortgages of real estate and leasehold estates at the time of acquisition by the company of the real estate or leasehold estates under foreclosure proceedings,
 - (iii) as to clause (c) and the portion of the subsection following clause (c) by adding after the words "real estate" wherever they occur, the words "or leasehold estate".

18. Section 123 is amended

- (a) as to subsection (1) by adding after the words "real estate" wherever they occur, the words "or a leasehold estate",
- (b) by striking out subsection (2).

19. Section 125 is amended by adding after subsection (4) the following subsections:

(5) Subsection (1), clauses (g), (h) and (i) and subsection (2) do not apply to a company in respect of an ancillary corporation of the company or a real estate subsidiary of the company.

(6) Subsection (1), clauses (a) to (f) apply to a company in relation to an ancillary corporation of the company or a real estate subsidiary of the company as though the words "the company" in those clauses read instead "an ancillary corporation of the company or a real estate subsidiary of the company".

(7) The Minister may exempt from the application of subsection (1), clauses (g), (h) and (i) a loan made by a company to a corporation associated with it where the loan is made under

- (a) section 112 and is guaranteed or insured by, or through an agency of, the Government of Canada or the government of any province of Canada, or

18. Section 123, subsections (1) and (2) presently read:

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.

(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.

The amendment to subsection (1) is made as a result of the proposed section 112, subsection (2) which would permit mortgages of leasehold estates.

Subsection (2) is repealed as being of little practical value where it may be an advantage for the company to hold the property at a time when its value is appreciating.

19. Section 125, subsections (1) and (2) presently read:

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,

- (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
- (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.
- (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.

(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).

The subsidiaries of a provincial trust company, being associated with it, would not in the absence of the amendment be able to transact business with one another.

As to the proposed subsection (7), see also the proposed subsection (3) to be added to section 114 by this Bill.

(b) section 113,
and where the Minister is satisfied that the loan is in the best interests of the company and that the purpose for which the money loaned is to be used will serve a public interest or be of public benefit.

20. Section 126, subsection (1) is amended by striking out clause (a) and by substituting the following:

- (a) sell any mortgage, loan, securities, real estate or leasehold estate to any corporation associated with it other than an ancillary corporation of the company or a real estate subsidiary of the company, or

21. Section 130, subsection (1) is amended by adding the word "or" at the end of clause (b) and by adding the following clauses after clause (b):

- (c) any common shares of an ancillary corporation of the company in respect of which there has been a contravention of any terms or conditions prescribed by the Lieutenant Governor in Council pursuant to section 111a, or
- (d) any shares, notes, bonds, debentures or other evidences of indebtedness acquired by the company pursuant to section 113b in respect of which there has been a contravention of any terms or conditions prescribed by the Minister pursuant to that section,

22. The following heading and section are added after section 138:

Continuation as a Federal Trust Company

138a. (1) A registered provincial company with the prior approval of the Lieutenant Governor in Council may apply under section 6A of the *Trust Companies Act* (Canada) for letters patent continuing it as if it had been incorporated by section 5 of that Act and changing its objects to objects to which the legislative authority of the Parliament of Canada extends.

(2) Upon the effective date of the letters patent specified pursuant to section 6A, subsection (2) of the *Trust Companies Act* (Canada)

- (a) in the case of a company incorporated by a special Act, the special Act of the company ceases to be in force, and may thereafter be repealed by Proclamation,

20. Section 126, subsection (1), clause (a) presently reads:

126. (1) A company shall not
(a) sell any mortgage, loan, securities or real estate to any corporation associated with it, or

The clause is rewritten to include leasehold estates and to exempt from its operation transactions between a company and its ancillary corporation or its real estate subsidiary.

21. Section 130, subsection (1) presently reads:

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.

The amendment is a consequence of the addition of sections 111a and 113b by this Bill. Section 130 allows for an appeal to the Supreme Court from the Director's order.

22. The new section will permit the continuation of a provincial trust company as a federal trust company pursuant to section 6A of the Trust Companies Act (Canada) enacted earlier this year. Section 6A requires complementary provincial legislation to authorize the provincial company to apply for federal letters patent and the new section 138a will provide that authority. Under this arrangement, the company continues its corporate existence but with a change to federal status. It does not involve a new incorporation. There are similar provisions relating to continuation of companies in sections 140b, 140c and 140d of The Companies Act.

- (b) in the case of a company incorporated in Alberta under the *Companies Ordinance* before October 1, 1929, the company is thereupon dissolved and its registration is cancelled, and the Registrar of Companies shall forthwith make such entries in his records as he considers necessary to show that the company was so dissolved and its registration cancelled, and
 - (c) the company is thereupon deemed to be registered as a federal company and the Director shall forthwith make such entries in the Register of Trust Companies as he considers necessary to show that the company is registered as a federal company as of the effective date of the letters patent, and not as a provincial company.
- (3) The rights, property, obligations and liabilities of a provincial company are unaffected by its continuation as a federal company.

23. Section 139 is amended by striking out clause (e) and by substituting the following:

- (e) authorizing provincial companies to apply for and obtain a policy of insurance issued under the *Canada Deposit Insurance Corporation Act*, as amended from time to time, and empowering those companies to do any thing that they are required or permitted to do under that Act or the by-laws of the Canada Deposit Insurance Corporation or to enter into any agreement or arrangement with that Corporation in any case where that Corporation is empowered by that Act or such by-laws to enter into an agreement or arrangement with a provincial institution,
- (e1) prohibiting, restricting or prescribing limitations or conditions in respect of transactions, agreements or arrangements between
 - (i) a provincial company and its ancillary corporations and real estate subsidiaries or any of them, or
 - (ii) ancillary corporations of the same company, or
 - (iii) real estate subsidiaries of the same company, or
 - (iv) ancillary corporations and real estate subsidiaries of the same company,

24. Section 153 is amended by adding after subsection (3) the following subsection:

- (4) The cancellation or suspension of a trust company's registration under this Act does not affect

23. Section 139, clause (e) presently reads:

139. The Lieutenant Governor in Council may make regulations
(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.

Clause (e) is re-enacted for the purpose of specifying more explicitly what the regulations may provide for in regard to deposit insurance.

Clause (e1) will permit the making of regulations governing dealings between a provincial trust company and its ancillary corporations and real estate subsidiaries.

24. Section 153, subsection (1) presently reads:

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.

- (a) the company's capacity to hold or alienate any estate or interest in land that it held at the time of the cancellation or suspension, or
- (b) the registration under *The Land Titles Act* of that estate or interest.

25. The following section is added after section 157:

157a. Every registered provincial company shall furnish to the Director

- (a) unless otherwise instructed by the Director a copy of every audited comparative financial statement of each ancillary corporation of the company and each real estate subsidiary of the company that the ancillary corporation or subsidiary is required by law to send to its shareholders or to lay before an annual meeting of shareholders or to furnish on demand by any of its shareholders, and
- (b) whenever required by the Director in writing, a copy of the most recent audited comparative financial statements of the company including in them the assets and liabilities and income and expense of any one or more of its ancillary corporations or real estate subsidiaries specified by the Director and indicating in them that they are presented in consolidated form.

26. The following heading and sections are added after section 166:

Rehabilitation Proceedings

166a. Where it comes to the attention of the Director by any means that any assets that appear on the books of a provincial company may not be satisfactorily accounted for and upon investigation the Director believes that the assets are not satisfactorily accounted for, he shall inform the Minister of those facts, and shall, if the Minister directs him to do so, immediately take possession and control of the assets of the provincial company and maintain such possession and control for a period of seven days and, with the concurrence of the Minister, for any longer period that the Minister considers necessary in the circumstances

166b. (1) The Director shall report to the Minister in any case where the Director is of the opinion that the assets of a provincial company are not sufficient, having regard for all the circumstances, to give adequate protection to the company's depositors and investment certificate holders.

(2) Where the Minister, after full consideration of the matter and after a reasonable time has been given to the company to be heard by him, and upon such further inquiry

25. The new section 157a contains requirements as to submission of financial statements to the Director relating to a provincial company's ancillary corporation or real estate subsidiaries.

26. Rehabilitation proceedings respecting a provincial trust company. The provisions are similar to those enacted earlier this year as sections 74, 74A and 74B of the Trust Companies Act (Canada). (See Bill S-8 to amend that Act.)

or investigation as he sees fit to make, believes that the situation described in subsection (1) exists, the Minister may take one or more of the following actions:

- (a) he may direct the Director to make the company's registration subject to such limitations or conditions as he considers appropriate,
- (b) he may prescribe a time within which the company shall make good any deficiency or inadequacy of assets, and
- (c) he may by order direct the Director forthwith to take possession and control of the company's assets.

(3) Upon the company's failure to make good any deficiency or inadequacy of assets within the time that may have been prescribed pursuant to subsection (2), clause (b) or any extension thereof subsequently given by the Minister, the Minister shall direct the Director to take possession and control of the company's assets.

(4) For the purpose of carrying out the provisions of this section, the Minister may appoint such persons as he considers proper, to value and appraise the company's liabilities and assets, and report upon its condition and its ability, or otherwise, to meet its obligations.

166c. (1) Upon the order of the Minister as provided in section 166b, the Director shall thereupon take possession and control of the property of such corporation and the conduct of its business and take such steps as in the Director's opinion may be taken toward the removal of the causes and conditions which have made such proceedings necessary, and for such purposes and without limiting the generality of the foregoing,

- (a) the Director has all the powers of the board of directors and shareholders of the company,
- (b) the Director has power to exclude the directors, employees and agents of the company or any of them from the property and business of the company, and
- (c) the Director has power to carry on, manage and conduct the operations of the company and in the name of the company to preserve, maintain, realize, dispose of and add to the property of the company, to receive the incomes and revenues of the company and to exercise all the powers of the company.

(2) Where the Director has taken possession and control of the assets of a company and the conduct of its business under this section,

- (a) the Director may appoint one or more persons to conduct the business of the company, and

(b) the remuneration of any person, other than an employee of the Government, appointed pursuant to clause (a), shall be fixed by the Minister.

(3) Where the Director has control of the assets of a company pursuant to section 166a or 166b, the company shall not make any loan or any purchase, sale or exchange of securities or any disbursement or transfer of cash of any kind whatever without the prior approval of the Director or a representative designated by him and a director, officer or employee of the company shall not have access to any cash or securities held by or in respect of the company unless he has with him a representative of the Director or unless such access is previously authorized by the Director or his representative.

(4) At any time that the Minister believes that a company in respect of which the Director has possession and control of its assets pursuant to this section, section 166a or section 166b, meets all of the requirements of this Act and that is otherwise proper for the company to resume possession and control of its assets and the conduct of its business, the Minister may direct the Director to relinquish possession and control of the assets of the company and the conduct of its business.

(5) The total expenses of the Director incurred in the administration of rehabilitation proceedings shall be borne by the provincial company concerned and are recoverable as a debt owing by the company to the Crown in right of Alberta.

(6) No action lies against Her Majesty, the Director or a representative of the Director for any thing done or omitted to be done in good faith by the Director or his representative while the Director has possession and control of a company or the company's assets pursuant to this Act.

27. Sections 169 and 170 are struck out and the following sections are substituted:

169. (1) The Lieutenant Governor in Council may make an order that a company be wound up and appointing a liquidator for the company

- (a) upon the passing of a by-law of the shareholders of the company requesting that the order be made, or
- (b) where the Director makes a special report to the Minister and recommends that the order be made and the Minister also recommends that the order be made, or
- (c) upon the request of the receiver and manager appointed for the company that the order be made.

27. Sections 169 and 170 presently read:

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.

These provisions are rewritten to spell out certain matters pertaining to winding up in more detail and also to indicate more specifically which provisions of The Companies Act are to apply. Regulations may be made to vary the provisions of The Companies Act where they are inappropriate or inadequate for the purposes of the winding up of a provincial trust company.

(2) The Lieutenant Governor in Council may at any time revoke the appointment of the liquidator and appoint another liquidator in his stead, or may appoint a new liquidator in the event that the office of liquidator becomes vacant for any reason.

(3) An order under this section shall be published in the *Gazette*.

(4) The winding up of a provincial company commences on the effective date of the order under subsection (1).

(5) Where a provincial company is being wound up,

(a) the company shall, from the date of the commencement of the winding up, cease to carry on business, except in so far as may be required for the winding up of the company, and

(b) all transfers of shares of the capital stock of the company, except transfers made with the sanction of the liquidator, or alterations in the status of the shareholders of the company, made after the commencement of the winding up, are void.

169a. Subject to section 169, subsections (2) to (5) and sections 169c, where a winding up order is made pursuant to section 169, subsection (1), clause (a), the provisions of Divisions (3) to (7) of Part X of *The Companies Act* applicable to the voluntary winding up of a company incorporated under that Act apply to the winding up of a provincial company as though the order of the Lieutenant Governor in Council under section 169 were a special resolution under that Act authorizing the winding up.

169b. Subject to section 169, subsections (2) to (5) and section 169c, where a winding up order is made pursuant to section 169, subsection (1), clause (b) or (c), the provisions of Divisions (3) to (7) of Part X of *The Companies Act* applicable to the winding up by the Supreme Court of a company incorporated under that Act apply to the winding up of a provincial company as though the order of the Lieutenant Governor in Council under section 169 were a winding up order of the Supreme Court under that Act.

169c. (1) The Lieutenant Governor in Council may make regulations relating to the winding up of a provincial company

(a) making any provisions of Divisions (3) to (7) of Part X of *The Companies Act* inapplicable to the winding up of a provincial company;

(b) make any other provisions with respect to any matter relating to the winding up of a provincial company in lieu of a provision of *The Companies Act* made inapplicable pursuant to clause (a);

(c) providing for any matter not provided for in Divisions (3) to (7) of Part X of *The Companies Act* or to meet any special circumstances that may arise and for which no provision is made by this Act or *The Companies Act*.

(2) Regulations under subsection (1), clauses (b) and (c) may confer jurisdiction on the Supreme Court.

170. Where an order has been made by the Supreme Court for the discharge of the liquidator,

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

(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 the company is dissolved.

28. *The Real Estate Agents' Licensing Act* is amended as to section 20 by adding the following subsections after subsection (3) :

(4) Subsections (1) to (3) do not apply to a trust company registered under *The Trust Companies Act, 1967*.

(5) A trust company licensed under this Act and registered under *The Trust Companies Act, 1967* shall furnish to the Superintendent a certified copy of each financial statement of the company prepared for distribution to its shareholders and the auditor's report thereon, within five days after they are first mailed or delivered to its shareholders.

29. The following Acts are repealed, except for the purpose of winding up the affairs of the respective companies incorporated thereunder :

An Ordinance to incorporate The Provident Trust and Investment Company, Limited, being chapter 33 of the Ordinances of the North-West Territories, 1900;

An Ordinance to Incorporate The British Canadian Trust and Guarantee Company, being chapter 35 of the Ordinances of the North-West Territories, 1901;

An Act to Incorporate The Alberta Fidelity Trust Company, being chapter 73 of the Statutes of Alberta, 1911-12;

28. This clause amends chapter 279 of the Revised Statutes. Section 20 deals with accounts and auditor's reports of real estate agents that are to be submitted to the Superintendent of Insurance. The amendment is intended to avoid duplication of regulation of trust companies licensed as real estate agents by requiring them to submit their financial statements to the Superintendent of Insurance in lieu of complying with section 20.

29. The Acts of incorporation being repealed ceased to have any effect by virtue of section 12, subsection (1) of The Trust Companies Act, 1967 because they failed to become registered within the prescribed period. Many have been defunct for many years. They are now being formally repealed as a matter of record.

An Act to Incorporate The Jasper Trust Company, being chapter 47 of the Statutes of Alberta, 1913 (Second Session) ;

An Act to Incorporate Toole, Peet Trust Company, being chapter 85 of the Statutes of Alberta, 1931;

An Act to Incorporate Annuity Trust Company Ltd., being chapter 103 of the Statutes of Alberta, 1957;

An Act to Incorporate Gibraltar Trust Ltd., being chapter 98 of the Statutes of Alberta, 1958;

The Mayflower Trust and Savings Limited Act, being chapter 133 of the Statutes of Alberta, 1964;

The Cardinal Savings & Trust Company Act, being chapter 108 of the Statutes of Alberta, 1965;

The Highland Savings and Trust Company Act, being chapter 111 of the Statutes of Alberta, 1965;

The Monarch Trust & Savings Corporation Act, being chapter 114 of the Statutes of Alberta, 1965.

30. (1) This Act comes into force on the day upon which it is assented to, and

(2) Upon coming into force, section 3 shall be deemed to have been in force at all times on and after December 1, 1969.

