

1971 Bill 112

Fourth Session, 16th Legislature, 20 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 112

An Act to amend The Trust Companies Act

THE ATTORNEY GENERAL

First Reading

Second Reading

Third Reading

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BILL 112

1971

AN ACT TO AMEND THE TRUST COMPANIES ACT

{Assented to _____ *, 1971}*

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

1. *The Trust Companies Act is hereby amended.*
2. *Section 2, subsection (1) is amended*
 - (a) *by striking out clause 2 and by substituting the following:*
 2. "ancillary corporation" means
 - (i) a corporation referred to in section 112, subsection (1) and controlled by a provincial company in accordance with that subsection, or
 - (ii) a corporation whose assets have been purchased by a provincial company in accordance with section 112.1;
 - (b) *by adding the following clause after clause 18:*

18.1 "other evidence of indebtedness" does not include a mortgage or a charge;
3. *Section 13 is amended by striking out clause (a).*
4. *Section 14, subsection (1) is amended*
 - (a) *by adding after the words "or any by-law passed by the shareholders" the words ", respecting the following matters, namely,"*
 - (b) *by adding the following clause after clause (e):*
 - (e1) the changing of the place where the head office of the company is situated, which place shall be in Alberta,
5. *Section 30 is amended by striking out subsection (7) and by substituting the following:*
 - (7) The election or appointment of any person as a director of a company is void if

Explanatory Notes

1. This Bill amends chapter 372 of the Revised Statutes of Alberta 1970.

2. Section 2 contains definitions of terms used in the Act.

(a) The present definition of "ancillary corporation" reads:

2. "ancillary corporation" means a corporation referred to in section 112, subsection (1) and controlled by a provincial company in accordance with that subsection;

The re-enactment of the definition is a consequence of the new section 112.1 being added by this Bill.

(b) In a number of places in the Act there occurs the phrase "bonds, debentures, notes or other evidence of indebtedness". The amendment is made to avoid a literal interpretation that the phrase could include mortgages or charges on property.

3. Section 13(a) presently reads:

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

(a) the changing of the place where the head office of the company is situated, which place shall be in Alberta;

The power to pass a by-law to change the location of a provincial trust company's head office is to be transferred to the board of directors: see section 4 of this Bill. The director's by-law is subject to shareholder confirmation under section 14(2) of the Act.

4. (a) Section 14(1) enumerates the subject matter of director's by-laws and commences

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

The amendment corrects a drafting omission.

(b) See section 3 of this Bill.

5. Section 30(7) presently reads:

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

The subsection is rewritten to make it clear that an unlawful election or appointment of a director is void in any case where he was ineligible, not just in the case under subsection (6) requiring three-quarters of the directors to be Canadians resident in Canada.

- (a) he was not eligible to be so elected or appointed under subsection (2), (3), (4) or (5), or
- (b) the composition of the board would as a result of the election or appointment fail to comply with subsection (6).

6. Section 33, subsection (2) is amended by adding the word "or" at the end of clause (b) and by adding the following clause after clause (b):

- (c) he ceases to comply with the requirements of section 30, subsection (4) or (5).

7. Section 42 is amended

(a) as to subsection (1)

- (i) by striking out the words "directors" and by substituting the word "Director",
- (ii) by adding the word "directors," before the words "officers or employees",

(b) by adding the following subsection:

(3) A bond under this section shall be in the amount of not less than

- (a) \$200,000, or
- (b) such greater amount as the Director may fix for the company from time to time.

8. Section 49, subsection (1), clause (a) is amended by striking out the words "if at the time the by-law is passed all of the capital stock has been subscribed and at least 90 per cent thereof is paid in".

9. Section 93, subsection (1), clause (b) is amended by adding at the end thereof the words "unless it has obtained the prior consent of the Minister to do so".

10. The following section is added after section 98:

98.1 (1) Where a provincial company has, with moneys held by it in a trust or representative capacity,

- (a) made any loan to a corporation associated with the company, or
- (b) invested in, or made a loan on the security of, any securities issued by a corporation associated with the company, or
- (c) invested in, or made a loan on the security of, any mortgage or real estate held by a corporation associated with the company,

6. Section 33(2) presently reads:

- (2) A director ceases to be a director if
- (a) he ceases to fulfill the requirements of section 30, subsection (2) with respect to holding of shares, or
 - (b) he ceases to be a Canadian citizen ordinarily resident in Canada and as a result thereof the composition of the board of directors ceases to comply with section 30, subsection (6).

Clause (c) is added to make it clear that all requirements for eligibility in section 30(4) and (5) must continue to be complied with after a director assumes office, and not applicable only at the time of election or appointment.

7. Section 42(1) presently reads:

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

The amendment will require directors to be bonded and sets a minimum amount for the bond.

8. Section 49(1)(a) presently reads:

49. (1) Where all of the common shares of a company have a par value, the directors may by by-law provide for
- (a) the increase of the capital stock of the company and the number and par value of the shares of the stock so increased, if at the time the by-law is passed all of the capital stock has been subscribed and at least 90 per cent thereof is paid in, or

9. Section 93(1) presently reads:

93. (1) 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.

10. Order of the Minister to an Alberta trust company to dispose of investments and loans made with trust funds and involving corporations associated with the company, i.e., where the trust company is not at arms length with the other corporation.

the Minister may by order direct the company to dispose of all or any of the investments or loans so made within the time prescribed in the order.

(2) An order under subsection (1) may be made subject to any terms or conditions that the Minister may prescribe.

(3) Where a company fails to comply with an order of the Minister under this section within the period prescribed in the order, the company is liable to a penalty of \$100 for each day during which the failure to so comply continues, commencing with the day immediately following the expiry of that period.

(4) This section

(a) applies to investments or loans made before or after the commencement of this section, and

(b) applies notwithstanding anything in The Trustee Act or in any instrument or agreement.

11. The following section is added after section 107:

107.1 (1) The Minister, on behalf of the Province, may enter into agreements with the government of another province of Canada or a corporation that is an agent of that government for any purpose in connection with an enactment of that province that provides for the insuring of the deposits and investment moneys, or any class thereof, of a provincial company registered or licensed as a trust company in that province.

(2) An agreement made pursuant to subsection (1) may contain an undertaking by the Province to indemnify the government of the other province, or its agent corporation, for any loss to that government or corporation occurring by reason of its obligation to make payment in respect of any deposits or investment moneys insured by that government or corporation, where that obligation arises during the period specified in the agreement for that purpose.

12. The following section is added after section 112:

112.1 (1) Notwithstanding anything in this Act, a provincial company may acquire the assets of a corporation incorporated in Canada to carry on a business activity reasonably ancillary to the business of a trust company, upon the assumption of the obligations and liabilities of that corporation, but no agreement therefor takes effect until it has been approved by the Minister.

(2) Where the Minister approves an agreement under subsection (1)

11. The new section 107.1 provides for indemnity agreements with other provinces relating to the insuring of deposits of Alberta trust companies in that province.

12. Section 112 provides for the purchase by an Alberta trust company of over 50% of the shares of an "ancillary corporation". The new section 112.1 provides for the purchase by the company of the assets of an ancillary corporation if it also assumes its liabilities. This power is subject to conditions similar to those contained in section 112.

- (a) the limitations and prohibitions relating to investments and loans contained in this Division do not apply to the purchase of the assets of the ancillary corporation, and
 - (b) 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), clause (b), the Director shall
- (a) disallow the assets of the ancillary corporation owned by the company as assets of that company pursuant to section 172, subsection (1), clause (a), as if they were an unauthorized investment, and
 - (b) direct the company to dispose of all of the assets of the ancillary corporation as if they were an unauthorized investment in such manner and upon such conditions as the Director prescribes.

13. Section 118 is amended by adding the following subsections after subsection (3):

(4) The Minister may increase the percentage limit referred to in subsection (1) in the case of an investment by a company in the shares of an ancillary corporation where the Minister approves the investment and he is satisfied that the increase is in the best interests of the company.

(5) Except where the Minister has taken any action under subsection (3) or (4), the Director may, notwithstanding subsection (1), 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

- (a) generally, or
- (b) with respect to any class of investments or loans or any class of securities or mortgages, or
- (c) with respect to any specific security or mortgage.

(6) The Director may from time to time amend or revoke any direction given by him under subsection (5) by the giving of a further direction to that effect to the company.

14. Section 119 is amended by adding the following subsections after subsection (4):

(5) The Minister may increase the percentage limits referred to in subsections (2) and (3) in the case of an investment by a company in the shares of an ancillary

13. Section 118(1) presently reads:

118. (1) Subject to section 119, 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.

Section 112 permits a provincial trust company to own a subsidiary corporation carrying on a business reasonably ancillary to that of a trust company.

14. Section 119 presently reads:

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

(a) bonds, debentures, notes, obligations or other evidences of indebtedness issued by the corporation, and

(b) mortgages under which the corporation is the mortgagor, but does not include a security issued by a corporation and guaranteed by the Government of Canada or the government of a province of Canada or notes or deposit receipts of chartered banks.

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

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

(b) the common and preferred shares of that corporation or those associated corporations,

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

(c) 20 per cent of the company's paid in capital stock and reserve, and

(d) 5 per cent of the company's deposits and investment moneys.

(3) The market value of

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

(b) the common and preferred shares of that corporation or those associated corporations,

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

(4) The aggregate amount of the outstanding indebtedness to a company of any one individual or group of two or more individuals under mortgages held by the company and loans made by the company shall not exceed 15 per cent of the company's unimpaired paid-up capital and reserve.

corporation where the Minister approves the investment under section 112 and he is satisfied that the increase is in the best interests of the company.

(6) Notwithstanding anything in subsections (2) and (4), the Director may with respect to any company, by a direction to the company concerned, from time to time decrease any percentage limit or limits referred to in subsections (2) to (4) either

- (a) generally, or
- (b) with respect to any specified corporation, group of associated corporations, individual or group of individuals, or
- (c) with respect to any class of debt securities or shares of any corporation or group of associated corporations.

(7) The Director may from time to time amend or revoke any direction given by him under subsection (6) by the giving of a further direction to that effect to the company.

15. Section 145 is amended by adding the following clause after clause (f):

- (f1) authorizing provincial companies to apply for and obtain a policy of insurance respecting its deposits and investment moneys and issued under an enactment of any province where the companies are registered or licensed to carry on business, and empowering those companies to do any thing that they are required or permitted to do under that enactment or the by-laws of any deposit insurance corporation incorporated by that enactment or to enter into any agreement or arrangement with that corporation,

16. The following section is added after section 173:

173.1 (1) Where it appears to the Director, from an examination and inspection of a registered company's affairs or on the basis of any other source of information available to him, that the company, or any director, officer, employee or agent of the company, is carrying on any practice that is, in the Director's opinion, improper or imprudent, having regard to the best interests of the company, the Director may issue an order directed to the company that the improper or imprudent practice cease.

(2) When the order under subsection (1) is received by the company, the company shall immediately inform its directors, officers and employees and any of its agents

15. The amendment would permit the making of regulations to empower provincial companies to obtain deposit insurance from any provincial government that required such insurance coverage as a condition to the company carrying on business there.

16. Order of the Director to cease a violation of the Act or an improper or imprudent business practice.

referred to in the order, and such directors, officers, employees and agents shall be deemed to have notice of the order upon the expiration of 24 hours after it is received by the company.

(3) Where the company or any director, officer, employee or agent of the company fails to comply with an order under subsection (1) directed to that company, that person is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000 and in default of payment to imprisonment for a term not exceeding six months.

17. Section 179 is amended

(a) by striking out subsection (1) and by substituting the following:

179. (1) A receiver and manager appointed under section 178 may be a firm of chartered accountants, another registered trust company or any other person.

(1.1) Where a receiver and manager is appointed for the company

- (a) all of the powers of the shareholders and directors of the company are vested in the receiver and manager,
- (b) the receiver and manager has, in addition to the powers of the shareholders and directors, the powers and duties conferred or imposed upon him by the Lieutenant Governor in Council, and
- (c) the shareholders and directors of the company may not exercise their respective powers.

(b) by striking out subsection (5) and by substituting the following:

(5) The fees payable to the receiver and manager for his services, and his expenses and disbursements in connection with the discharge of his duties

- (a) shall be fixed and determined by the Minister from time to time,
- (b) shall be paid out of the company's own funds, or, where the Minister is satisfied that the company's own funds are then insufficient for the purpose, out of the company's guaranteed fund, and
- (c) in the case of the winding up of the company, shall rank on the estate equally with the remuneration paid to the liquidator.

(6) During the period of the appointment of a receiver and manager for a company,

17. Section 179(1) and (5) presently read:

179. (1) A receiver and manager appointed under section 178

(a) may be a firm of chartered accountants, another registered trust company or any other person, and

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

(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 the Lieutenant Governor in Council, 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.

Subsection (1) is rewritten as two subsections to clarify the powers of the receiver and manager in relation to those of the shareholders and directors.

The new subsection (6) allows the company's guaranteed fund to be used for securing loans or operating the company when the company is in receivership.

The new subsection (7) creates a lien in favour of the company's depositors and investment certificate holders on the company's own property, to the extent that the assets in the "guaranteed fund" under section 104 are deficient. The company's own property is not available, to the extent of the lien, to judgment creditors.

- (a) the company may, subject to the approval of the Minister, pledge any part of the company's guaranteed fund as security for a loan to the company, and
- (b) the company's guaranteed fund may be used for the purpose of carrying on the business and affairs of the company, where the Minister is satisfied that the company's own funds are insufficient for that purpose.

(7) Where a receiver and manager has been appointed for a company and the value of the total assets in the company's guaranteed fund is at any time during the appointment an amount less than its liabilities for deposits and investment moneys,

- (a) the company's own property shall be deemed to be subject to a lien in favour of the company's depositors and investment certificate holders to the extent of the deficiency,
- (b) the lien has priority over every other lien or charge on the company's own property, and
- (c) the company's own property is not, to the extent of the lien, exigible in execution or liable to attachment or distress, notwithstanding any other Act.

18. Section 180 is amended by adding the following subsection after subsection (5):

(6) Where a provincial company is being wound up, the fees, expenses and disbursements may be paid from the company's guaranteed fund in the event that the company's own funds are insufficient for that purpose.

19. The following heading and section are added after section 189:

Government Claims Against a Provincial Company

189.1 (1) Where, with respect to any provincial company, the Government pays money

- (a) to the Canada Deposit Insurance Corporation by reason of its liability to the Corporation under an agreement of indemnity made pursuant to section 1 of chapter 86 of the Statutes of Alberta, 1967, or
- (b) to the government of a province or to a provincial deposit insurance corporation by reason of its liability to that government or corporation under an agreement of indemnity made pursuant to section 107.1, or

18. Remuneration of a liquidator may be paid from trust assets in the event that the company's own assets are insufficient.

19. Claims by the Government against the company as a result of providing financial assistance or guarantees.

(c) by way of expenditures certified by the Minister as having been incurred by the Government in the course of the administration of this Act and directly relating to that company,
the moneys so paid may be recovered by the Government from the company as a debt.

- (2) Claims by the Government against a company
- (a) in respect of any moneys referred to in subsection (1), or
 - (b) in respect of any loans to the company by the Government and interest thereon, on
 - (c) in respect of moneys paid by the Government as a result of its liability under a guarantee of a loan to the company,

shall on the winding up of the company rank immediately after the remuneration of the liquidator and of the receiver and manager, if any, and before any other claims.

20. Section 199 is amended by adding the following subsection:

(3) The Minister may exempt from the operation of subsection (1) a corporation that is not itself a trust company but is a subsidiary of a registered trust company, if he is satisfied that the name of the corporation will not mislead the general public into believing that the corporation is a trust company.

21. (1) This Act, except section 7, comes into force on the day upon which it is assented to.

(2) Section 7 comes into force on July 1, 1971.

20. Section 199 (1) presently reads:

199. (1) No person or association of persons not being a registered trust company shall assume or use in Alberta a name that includes any of the words "Trust" or "Trusts" or "Trustee" in combination or connection with any of the words "Corporation", "Company", "Association", or "Society", or "Limited", or Incorporated" or any abbreviation thereof, or in combination or connection with any similar collective term, or assume or use in Alberta any similar name, or any name or combination of names that is likely to deceive or mislead the public.