

1972 Bill 90

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First Session, 17th Legislature, 21 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

**BILL 90**

**The Investment Contracts Amendment Act, 1972**

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THE ATTORNEY GENERAL

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First Reading .....

Second Reading .....

Third Reading .....

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# BILL 90

1972

## THE INVESTMENT CONTRACTS AMENDMENT ACT, 1972

(Assented to \_\_\_\_\_, 1972)

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

1. *The Investment Contracts Act is hereby amended.*
2. *Section 2, subsection (1) is amended by adding the following clause after clause (d):*
  - (d1) "Minister" means the Attorney General;
3. *The following heading and sections are added following section 36 and prior to the heading "Offences and Penalties":*

### Receivership and Liquidation

**36.1** The Commission may make a special report to the Minister with respect to any registered issuer where the Commission is satisfied, on the basis of an examination and inspection of that issuer's affairs or on the basis of any other source of information available to it, that

- (a) the issuer has defaulted on the payment of any of its liabilities, or
- (b) the issuer is not complying with this Act or the regulations and that the failure or the continuance of the failure to so comply is or may be prejudicial to the interests of the issuer's investment contract holders or creditors, or
- (c) the issuer's unimpaired paid-in capital, paid-in surplus and earned surplus, or any one or more of them, does not amount in the aggregate to \$500,000 or such lesser amount as the Commission has approved under section 8, clause (b), or
- (d) there exists any state of affairs within the issuer of a serious nature that is or may be prejudicial to the interests of the issuer's investment contract holders or creditors, or

## **Explanatory Notes**

**1.** This Bill amends chapter 191 of the Revised Statutes of Alberta 1970 by incorporating into the Act provisions similar to those contained in The Trust Companies Act dealing with receivership and liquidation.

**2.** Minister defined.

**3.** Liquidation and winding-up. These provisions are similar to section 174, sections 178-180 and section 183 of The Trust Companies Act. Clauses (e) and (f) of section 36.1 are new as these matters are not included in The Trust Companies Act.

- (e) the issuer has failed to maintain the deposit of qualified assets as set out in section 8, clause (c), or
- (f) the issuer has failed to maintain adequate reserves as set out in section 30, or
- (g) the issuer has ceased to carry on business in Alberta.

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

- (a) for the issuer if the issuer was incorporated in Alberta, or
- (b) for the issuer's branch offices, assets and affairs within Alberta if the issuer was incorporated elsewhere than in Alberta,

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

**36.3** (1) A receiver and manager appointed under section 36.2 may be a firm of chartered accountants, registered trust company or any other person.

(2) Where the receiver and manager is other than a firm of chartered accountants or a registered trust company, the order may require the filing of security with the Commission in such amount and in such form as the Commission considers adequate.

(3) Where a receiver and manager is appointed for the issuer

- (a) all of the powers of the shareholders and directors of the issuer 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 issuer may not exercise their respective powers.

(4) An order under section 36.2 may provide for any matter or thing relating to the business and affairs of the issuer during the appointment of the receiver and manager.

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

(6) A receiver and manager appointed under section 36.2 or under subsection (5) remains in office until he is removed from office or until a liquidator is appointed to wind up the company.



(7) 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 issuer's own funds, or, where the Minister is satisfied that the issuer's own funds are then insufficient for the purpose, out of the issuer's reserves, and
- (c) in the case of the winding up of the issuer, shall rank on the estate equally with the remuneration paid to the liquidator.

(3) During the period of the appointment of a receiver and manager for an issuer

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

(9) Where a receiver and manager has been appointed for an issuer and the value of the total assets held for the issuer's reserves is at any time during the appointment an amount less than its liabilities under investment contracts,

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

**36.4** (1) The Lieutenant Governor in Council may make an order that an issuer be wound up and appointing a liquidator for the issuer

- (a) upon the passing of a by-law of the shareholders of the issuer requesting that the order be made, or
- (b) where the Commission 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 issuer that the order be made.



(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 an issuer which is a provincial company commences on the effective date of the order under subsection (1).

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

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

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

**36.5** Divisions (3) to (7) of Part 10 of *The Companies Act* do not apply to an issuer except as the Lieutenant Governor in Council may provide by regulations under section 36.6.

**36.6** (1) The Lieutenant Governor in Council may make regulations relating to the winding up of an issuer which is a provincial company

- (a) making any provisions of Divisions (3) to (7) of Part 10 of *The Companies Act* applicable to the winding up of an issuer;
- (b) making any other provisions with respect to any matter relating to the winding up of an issuer 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 10 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.





(3) Regulations under this section may be general or particular in nature or application.

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

