1973 Bill 38

Second Session, 17th Legislature, 21 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 38

The Trust Companies Amendment Act, 1973

THE ATTORNEY GENERAL

First Reading . . . . . .

Second Reading . . . . . .

Third Reading . . . . . .

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BILL 38

1973

THE TRUST COMPANIES AMENDMENT ACT, 1973

(Assented to , 1973)

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 13, clause (d) is amended by striking out the words "an even number of".

3. Section 16 is struck out and the following section is substituted:

16. (1) Every company shall furnish to the Director a certified copy of every by-law made by its directors or its shareholders or approved by its shareholders, whether the by-law is new or amends, repeals, replaces or consolidates a previous by-law, within 30 days of the passing or approval of the by-law.

(2) Where the Director decides that any by-law of the company was not validly passed or approved or is repugnant to this Act or any law in force in Alberta, he may by notice require the company to amend or repeal the by-law within the period prescribed in the notice, and shall give reasons in the notice for his decision.

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

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

(5) The order of the judge may be appealed to the Appellate Division by the Director or the company and the Appellate Division has the same duties and jurisdiction under subsection (4) as the judge who heard the motion.

Explanatory Notes

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

2. Section 13(d) 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:
>
> (d) the number of directors, which shall be an even number of not less than six nor more than 20;

The result will be that the number of directors of an Alberta trust company need not be an even number. See also section 5 of this Bill.

3. Section 16 presently reads:

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

See also section 152(2) of the Act which enables the Director to require an amendment to a repugnant by-law at the time of the company's application for registration. The new section 16 will permit him to require an amendment at any time after registration, subject to appeal to the Supreme Court.

4. Section 30 is amended by striking out subsection (2) and by substituting the following:

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

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

(b) $4,000, or such greater amount as the by-laws require, have been paid in or credited by the company as capital, when the paid in capital stock of the company is over $1,000,000 and does not exceed $3,000,000, or

(c) $5,000, or such greater amount as the by-laws require, have been paid in or credited by the company as capital, when the paid in capital stock of the company is over $3,000,000.

5. Section 31 is amended by striking out subsection (1) and by substituting the following subsections:

31. (1) There shall be an election of directors in each year in accordance with this section and the by-laws of the company.

(1.1) In the case of a company whose by-laws provide for an even number of directors, one-half of the number of directors shall be elected for a term expiring at the annual meeting held in the second year after the year in which they are elected.

(1.2) In the case of a company whose by-laws provide for an odd number of directors,

(a) a bare majority of directors shall be elected in one year, and

(b) the remaining number of directors shall be elected in the next or the preceding year,

on an alternating basis in accordance with the by-laws, and in the case of each election the directors shall be elected for a term expiring at the annual meeting held in the second year after the year in which they are elected.

6. Section 66, subsection (1), clause (b) is amended by striking out subclause (i) and by substituting the following:

(i) an individual who is not ordinarily resident in Canada or an individual who is ordinarily resident in Canada but who is not a Canadian citizen, or

7. Section 96, subsection (1) is amended by adding after the words "subsections (2) and (6) of this section," *the words* "section 96.1,".

4. Section 30(2) presently reads:

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

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

(b) $4,000, or such greater amount as the by-laws require, have been paid in, when the paid in capital stock of the company is over $1,000,000 and does not exceed $3,000,000, or

(c) $5,000, or such greater amount as the by-laws require, have been paid in, when the paid in capital stock of the company is over $3,000,000.

The subsection is rewritten so that any money paid by a director to the company as a premium on his shares (i.e., money "credited by the company as capital") may be counted as part of the amount required to qualify under subsection (2). At present, the only amount that qualifies is, in the case of par shares, the amount paid in on the shares themselves up to the par value.

5. Section 31(1) presently reads:

31. (1) At the election of directors in each year, one-half of the number of directors shall be elected for a term expiring at the annual general meeting held in the second year after the year in which they are elected.

At present, the number of directors must be an even number with one-half the number being elected annually for two year terms. The amendment to section 13(d) of the Act (see section 2 of this Bill) will allow for the number to be an odd number. Section 31(1) must as a consequence be rewritten to allow for this variation. In the case of a company with 15 directors for example, 8 will be elected in one year and 7 the next, with the by-laws of the company providing for the alternation.

6. Section 66 (1) (b) (i) presently reads:

66. (1) In this section and sections 67 to 69,

(b) "non-resident" means

(i) an individual who is not ordinarily resident in Canada, or

Sections 66 to 69 deal with restrictions on ownership by persons or corporations not resident in Canada of more than 25% of the shares of a provincial trust company. The effect of the amendment is to include landed immigrants resident in Canada in the definition of "non-resident".

7. Section 96(1) presently reads:

96. (1) Except as provided in subsections (2) and (6) of this section, section 115, subsection (2), clause (d) and the regulations under section 145, clause (f), a provincial company has no power to borrow money.

See section 8 of this Bill.

8. The following section is added after section 96:

96.1 (1) Subject to subsection (2), a provincial company may borrow money by the issue of debentures.

(2) No debentures shall be issued under this section unless the borrowing and the issue of the debentures have been approved by a by-law of the shareholders and by the Director.

9. Section 111 is amended by adding the following subsection after subsection (3):

(4) A company may loan the company's own funds and its deposits and investment moneys without the taking by the company of security otherwise required by this Division if

(a) the loan is guaranteed as to repayment of the whole of the principal and interest thereunder by the Government of Canada, the government of any province of Canada or by the government of any country where the company is registered or licensed to carry on the business of a trust company, and

(b) loans under this subsection do not in the aggregate exceed an amount equal to 10 per cent of the company's own funds and its deposits and investment moneys or such lesser amount as the Director may prescribe for the company.

10. Section 114, subsection (2) is amended by striking out clauses (e) and (f) and by substituting the following:

(e) the company holds, as additional security, at the time of the investment or loan and at all times thereafter, a general assignment in its favour of all rents payable under subleases of the leasehold estate,

(f) there are in existence at the time of the investment or loan one or more subleases of the leasehold estate that will provide for a net revenue sufficient to yield a reasonable interest return during the terms of the subleases and to repay at least 85 per cent of the amount invested or loaned by the company within the terms of the subleases, but not exceeding 30 years from the date of the investment or loan, and

(g) there are in existence, at the time of the investment or loan, any additional agreements or arrangements required by the regulations for the protection of the company in the event of default of the mortgagor under the lease.

8. The new section 96.1 will authorize an Alberta trust company to borrow money by the issue of debentures.

9. The new subsection (4) of section 111 enables a provincial trust company to make government-guaranteed loans, without other security.

10. Section 114, subsection (2), clauses (e) and (f) presently read:

> (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 mortgages executed in favour of the company of leasehold estates if in each case
>
> (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 the investment or loan.

Clause (e) is rewritten to refer to a general assignment of subrents rather than an assignment of the leasehold estate itself. This reflects the normal practice in mortgage loans of leasehold estates.

Clause (f) is rewritten to remove a drafting inconsistency in the use of the words "the lease". Since the clause refers to revenue derived from the leasehold estate, the revenue must necessarily come from subleases, and not under the lease that created the leasehold estate.

Clause (g) is added to allow for additional security to be required by regulations: see the proposed clause (d1) of section 145 in section 17 of this Bill. The protective agreements or arrangements contemplated by the regulations will reflect normal practice in these cases involving covenants on the part of the landlord under the head lease in favour of the trust company in the event that the mortgagor (the owner of the leasehold estate) defaults under the head lease.

11. Section 116 is amended by adding after the words "registered trust company," *the words* "a loan company or insurance company incorporated in Canada,".

12. Section 118, subsection (1) is amended by striking out the words "Subject to section 119, the" *and by substituting the word* "The".

13. Section 119 is amended

(a) by striking out subsections (2) and (3) and by substituting the following:

(2) Except as provided in 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 the company as investments or as security for loans shall not exceed 15 per cent of the company's paid in capital stock and reserve.

(3) Notwithstanding section 118, the total of

(a) any loans to any one corporation or any corporations that to the knowledge of the company are associated, where the loans are made on the security of improved real estate and are repayable in full in one year or less, and

(b) the market value of

(i) any other debt securities of that corporation or those associated corporations, and

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

held by the company as investments or as security for loans,

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.

(3.1) The Director may, with respect to any loan referred to in subsection (3), clause (a), consent to the extension of the loan for a period greater than one year where he is satisfied that special circumstances exist.

(b) as to subsection (6), by striking out the words "subsections (2) and (4)" *and by substituting the words* "subsection (2), (3) or (4)".

11. Section 116 presently reads:

116. A company may make an investment or loan under section 114 or section 115, subsection (2), clause (a) or (c) jointly with any other registered trust company, subject to the approval of the Director and to any conditions prescribed by the Director.

The amendment will now allow an Alberta trust company to invest in or loan on the security of mortgages of real estate or leasehold estates or certain N.H.A. mortgages jointly with a loan company or insurance company. A similar amendment is made in section 125, subsection (1) which deals with investments in real estate.

12. 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.

The amendment is made to remove a difficulty in the interpretation of section 118(1) and section 119. The words "Subject to section 119" have been interpreted to mean both that section 119 prevails over section 118(1) or that section 119 operates as an exception to section 118(1). To remove the difficulty, section 118(1) is amended and the proposed subsection (3) of section 119 (see section 13 of this Bill) is stated to operate "notwithstanding section 118". The result is that interim financing loans referred to in the proposed section 119(3) will operate as an exception to the rule in section 118(1).

13. Section 119, subsections (1), (2) and (3) presently read:

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.

Subsections (2) and (3) are rewritten partly because of difficulties arising out of their interpretation and partly because subsection (2) operates to unduly encourage short term investments and loans instead of long-term ones. The effect of the amendment is to make the 15 per cent limit in the present subsection (3) the general rule, just as the limit is also the general rule in section 118(1). The 20 and 5 per cent limits in the present subsection (2) would apply only in cases of short-term real estate mortgages made for the purpose of providing interim financing.

Subsection (6) is amended as a consequence of the rewriting of subsections (2) and (3).

14. Section 124 is amended by adding the following subsection after subsection (1):

(1.1) The Director may with respect to any company by a direction to the company concerned, from time to time increase or decrease the percentage limit referred to in subsection (1), clause (a) or (b) or both either

(a) generally, or

(b) with respect only to mortgages and the book value of foreclosed mortgages, or

(c) with respect to any class of mortgages.

15. Section 125, subsection (1) is amended by adding after the words "either alone or jointly with any other registered trust company," *the words* "a loan company incorporated in Canada and approved by the Director or an insurance company incorporated in Canada,".

16. Section 144 is amended by striking out the words "section 6A" *wherever it occurs and by substituting the words* "section 6.1".

17. Section 145 is amended by adding the following clause after clause (d):

(d1) prescribing additional agreements or arrangements required for the protection of a company for the purposes of section 114, subsection (2), clause (g).

18. Section 155 is amended

(a) as to subsection (1), clause (c) by striking out the words "except in the case of a federal company,",

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

(1.1) Subsection (1), clause (c) does not apply

(a) where the applicant is a federal company, or

(b) where the registration of the company will be made subject to a condition that the company is prohibited from accepting deposits in Alberta or from issuing or entering into investment certificates in Alberta.

19. Section 156, subsection (3) is amended by striking out the word "Directora" *and by substituting the word* "Director".

14. Section 124(1) presently reads:

124. (1) The aggregate amount of all outstanding investments and loans in or upon mortgages under sections 114 and 115 and the book value of foreclosed mortgages of real estate and of real estate acquired pursuant to section 125, subsection (2) shall not at any time exceed

(a) in the case of investments and loans made with the company's own funds, 75 per cent of those funds, or

(b) in the case of investments and loans made with the company's deposits and investment moneys, 75 per cent of those deposits and investment moneys.

15. Section 125, subsection (1) commences:

125. (1) Subject to subsections (3) and (4), a company may invest its own funds and its deposits and investment moneys in improved real estate for the production of income, either alone or jointly with any other registered trust company,

See Note to section 11 of the Bill. The investment powers given by this amendment and the amendment to section 116 follow similar ones made to the Trust Companies Act (Canada) in 1970.

16. Updates a section reference in the Trust Companies Act of Canada which changed as a consequence of the Revised Statutes of Canada 1970.

17. Section 145 authorizes the Lieutenant Governor in Council to make regulations and the new clause (d) will authorize regulations governing additional protective arrangements that may be required where an Alberta trust company loans money on the security of a leasehold estate under section 114(2).

18. Section 155, subsection (1), clause (c) presently reads:

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

(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.

The exception for federal companies in clause (c) is transferred to clause (a) of the new subsection (1.1). Clause (b) of subsection (1.1) will remove an anomaly that presently exists which could bar registration to a company for want of a policy of deposit insurance from the Canada Deposit Insurance Corporation when that company will not be accepting any deposits or investment moneys that could be so insured.

19. Corrects a typographical error in the Revised Statutes.

20. Section 179 is amended by adding the following subsection after subsection (7):

(8) Where the order appointing the receiver and manager is revoked effective as of a future date, the order of revocation may empower the receiver and manager to do such acts as are necessary for him to arrange a meeting of the shareholders of the company on a date subsequent to the effective date of the revocation order.

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

20. Section 179(1.1) states that where a receiver and manager is appointed for a company, the powers of the directors and shareholders are suspended. If his appointment were revoked, these powers would be restored but there might not be any directors in office who could resume control of the company and call a shareholders meeting. The new subsection (8) would allow for a procedure to permit the receiver and manager to call and arrange a shareholders' meeting to take place immediately after his appointment is terminated.