

1974 Bill 70

Third Session, 17th Legislature, 23 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 70

THE TRUST COMPANIES AMENDMENT ACT, 1974

THE ATTORNEY GENERAL

First Reading

Second Reading

Third Reading

Printed by L. S. WALL, Queen's Printer for the Province of Alberta, EDMONTON

BILL 70

1974

THE TRUST COMPANIES AMENDMENT ACT, 1974

(Assented to _____, 1974)

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 is hereby amended.*

2. *Section 72 is amended by adding after subsection (2) the following:*

(3) For the purpose of reporting under section 73 or 73.1, ownership shall be deemed to pass at such time as an offer to sell is accepted by the purchaser or his agent or an offer to buy is accepted by the vendor or his agent.

3. *The following section is added after section 73:*

73.1 (1) In this section, "offeror" means a person other than an agent, who makes a takeover bid, and includes two or more persons

(a) whose takeover bids are made jointly or in concert, or

(b) who intend to exercise jointly or in concert any voting rights attached to the shares for which a takeover bid is made.

(2) Where an offeror becomes an insider under this Act and through purchases effected through the facilities of a stock exchange or in the over-the-counter market becomes the beneficial owner, directly or indirectly, of equity shares of a provincial company carrying 20 per cent or more of the voting rights attached to all equity shares of the company for the time being outstanding, the offeror, within three days of acquiring such 20 per cent ownership, shall file with the Commission a report as of the day on which he attained such ownership.

(3) An offeror required to file a report under subsection (2) shall, within three days of purchasing further equity shares carrying an additional 5 per cent of the voting rights through the facilities of a stock exchange or in the over-the-counter market, file with the Commission a report as of the day on which he attained the additional 5 per cent of the voting rights and thereafter each time he acquires a further 5 per cent.

Explanatory Notes

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

2. Sections 73 and the proposed 73.1 relate to reports by insiders of an Alberta trust company.

3. The amendment will require a timely insider report upon the acquisition through market purchases of 20 per cent of the equity shares. A similar report will be required on the acquisition of each 5 per cent thereafter.

(4) Where the facts required to be reported by this section are identical to those required under section 73, a separate report under section 73 is not required.

4. The following provisions are amended by adding after the words "section 73" wherever they may appear the words "or 73.1":

section 74;

section 75, subsections (1), (2) and (5);

section 78, clause (a).

5. Section 96, subsection (1) is amended by adding after the words "section 96.1," the words "section 96.2,".

6. The following section is added after section 96.1:

96.2 (1) In this section, "subordinated note" means an instrument evidencing an indebtedness of a company that by its terms provides that the indebtedness evidenced by it shall, in the event of the insolvency or winding-up of the company, rank equally with the indebtedness evidenced by other subordinated notes of the company but be subordinate in right of payment to all other indebtedness of the company.

(2) A provincial company may, if authorized to do so by a by-law of the directors, borrow money for the purpose of making investments and loans under Division 7, by the issue of subordinated notes in accordance with this section.

(3) A by-law under subsection (2) is invalid unless

(a) it is approved by a vote of the shareholders at a special general meeting of the shareholders called for that purpose and the shares voted in favour of the approval represent at least two-thirds of the subscribed and issued capital stock of the company held by those shareholders entitled to vote on the question of the approval at the time the vote is taken, and

(b) it is afterwards approved by the Director.

(4) A subordinated note

(a) shall be issued only on application to the head office of the company,

(b) shall have a denomination of \$50,000 or more,

(c) shall be clearly designated on its face and in its terms as a subordinated note, and

(d) shall have a fixed term to maturity in excess of five years but may include a provision making it subject to earlier redemption at the option of the company with the approval of the Director.

4. Consequential amendments resulting from the addition of section 73.1.

5. Section 96 (1) presently reads:

96. (1) Except as provided in subsections (2) and (6) of this section, section 96.1, 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 6 of this Bill which will add the proposed section 96.2.

6. Authorizes the issue of subordinated notes by Alberta trust companies for the purpose of making investments and loans.

(5) A company, or any person acting on its behalf, shall not, in any prospectus, advertisement, correspondence or literature relating to a subordinated note issued or to be issued by the company, refer to such note otherwise than as a subordinated note.

(6) Section 96, subsection (5) does not apply in a case where money is borrowed pursuant to this section.

7. Section 113 is amended by adding the following subsection after subsection (7):

(8) The Minister may with respect to any company increase the percentage limit referred to in subsection (7) in respect of all or any of the real estate subsidiaries of the company.

8. Section 125, subsection (4) is amended by striking out the words "A company" and by substituting the words "Except with the consent of the Director, a company".

9. The following section is added after section 156:

156.1 (1) Where, before or after the commencement of this section, a registered extra-provincial company has acquired all or substantially all of the assets of another extra-provincial company, whether registered or not, and has assumed such of the duties, obligations and liabilities of the other company as are not performed or discharged by the other company, the acquiring company may apply to the Director to have a true copy of the agreement providing for the acquisition filed with him.

(2) The Director may require, as a condition of filing the agreement providing for the acquisition, that the acquiring company furnish to him copies of any approvals of the acquisition that are required by the laws under which the companies concerned were incorporated.

(3) Where the acquiring company is not registered, the application under subsection (1) shall be made in conjunction with its application for registration under this Part and the agreement shall be deemed to be filed with the Director on the date of registration of the company.

(4) Where the acquiring company is registered and the agreement is filed under this section, the Director shall cancel the registration of the company from whom the assets were acquired.

(5) Where an agreement is filed under this section, the Director shall issue to the acquiring company a certificate of the filing and may specify in the certificate that it is effective as of the effective date of the agreement.

7. Section 113 relates to the incorporation of "real estate subsidiaries" of an Alberta trust company. Subsection (7) presently reads:

(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.

8. Section 125, subsection (4) presently reads:

(4) A company shall not make any investment under this section in respect of real estate the title to which is subject to

- (a) any encumbrance or notification, or
- (b) any agreement for sale or option to purchase or option to lease.

9. This new section is similar to section 156 which deals with the effect of the amalgamation of two or more extra-provincial trust companies on existing instruments and agreements naming the former companies. Section 143, subsection (2) reads:

- (2) On and from the effective date of an approval
- (a) an instrument naming or appointing the selling company in a trust or representative capacity shall be read, construed and enforced as if the purchasing company was so named or appointed therein, and the purchasing company has, in respect of the instrument, the same rights, obligations and status as the selling company had,
 - (b) all trusts of every kind and description, including incomplete or inchoate trusts, and every duty assumed by or binding upon the selling company is vested in and binds and may be enforced against the purchasing company as fully and effectively as if it had been originally named or appointed in a trust or representative capacity in the instrument creating the trust, and
 - (c) where the selling company is referred to in a document registered, filed, lodged or deposited by or with a registrar and being uncanceled or undischarged as of the effective date of the approval, the document shall thereafter be dealt with by the registrar as though the document named the purchasing company instead of the selling company, without the necessity of filing a copy of the approval or any other document, or of making any entry in the registrar's records or of paying any fees to the registrar, or of filing any document with the registrar other than a certified copy of the approval and the agreement between the selling company and the purchasing company made pursuant to section 141 or 142, as the case may be.

(6) On and from the effective date of a certificate of the Director issued under this section, section 143, subsection (2) applies to the agreement referred to in the certificate and the parties to the agreement to the same extent as though

- (a) the extra-provincial company acquiring the assets were the purchasing company referred to in that subsection,
- (b) the company from whom the assets were acquired were the selling company referred to in that subsection, and
- (c) the certificate were an approval referred to in that subsection.

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