

1975 Bill 57
(Second Session)

First Session, 18th Legislature, 24 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 57

THE TRUST COMPANIES AMENDMENT ACT, 1975

MR. ASHTON

First Reading

Second Reading

Third Reading

Bill 57
Mr. Ashton

BILL 57

1975

(Second Session)

THE TRUST COMPANIES AMENDMENT ACT, 1975

(Assented to _____, 1975)

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 adding the following clause after clause 18:

18.01 "mortgage investment corporation" means a corporation that qualifies as a mortgage investment corporation under section 130.1 of the *Income Tax Act* (Canada), as amended from time to time;

(b) as to clause 19 by striking out the words "not including" and by substituting the word "including",

(c) by striking out clause 31 and by substituting the following:

31. "unimpaired capital" with reference to any company means the unimpaired capital of the company determined in accordance with the regulations;

Explanatory Notes

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

Some of the proposals involve amendments to a number of provisions of the Act and for convenience of reference the amendments to implement these proposals are grouped as follows:

- Authorization for Alberta trust companies to participate in mortgage investment corporations: see section 14 of the Bill and related amendments in sections 2 (a), 13, 15, 18(d), 19, 22, 27, and 29(b) of the Bill.
- Authorization for Alberta trust companies to acquire an ancillary corporation by an exchange of shares or other securities: see section 14 and related amendments in section 8 and 9 (c) of the Bill.
- Increase in capital requirements: see sections 3, 4, 32, 33, 34, 36 (1) (b), (c) and (2) and 40 (a) of the Bill.
- Enlargement of grounds on which rehabilitation proceedings may be taken in respect of trust companies: see sections 36 (1)(a), (d), (e), 37, 38 and 39 of the Bill.
- Change in method of determination of unimpaired capital of Alberta trust companies: see sections 2 (c), 5 and 40(b) of this Bill and consequential amendments in sections 17, 18(a), (b), (c), 20, 25(a), 33, 34 and 36 (b).

2(a). The term “mortgage investment corporation” is defined primarily because of the proposed section 112.2: see section 15 of this Bill.

(b) Section 2(1)19 presently reads:

19. “paid in”, as applied to the capital stock of a company or to any of its shares, means the amount paid to it on its shares, not including the premium, if any, paid on such shares, whether such shares are or are not fully paid:

The effect of the amendment is to include contributed surplus resulting from share premiums in references elsewhere in the Act to “paid in capital”, e.g., sections 8(2) and 30(2) relating to share qualifications for directors.

(c) The definition of “unimpaired paid-up capital” presently reads:

31. “unimpaired paid-up capital” means that part of the subscribed and paid in permanent capital stock of a corporation that is unimpaired:

See the amendment to section 190(g) in section 40(b) of this Bill.

3. Section 8, subsection (2), clauses (a) and (b) are amended by striking out the figure "\$1,000,000" and by substituting the figure "\$2,000,000".

4. Section 10, subsection (1) is amended by striking out the figure "\$1,000,000" and by substituting the figure "\$2,000,000".

5. Section 14, subsection (1) is amended by striking out clause (c).

6. (1) Section 30 is amended

(a) as to subsection (4), clause (a) by adding after the words "another trust company" the words ", investment contract company",

(b) as to subsection (4), clause (b) by adding after the words "trust company" wherever they occur the words ", investment contract company", and

(c) by striking out subsection (8) and by substituting the following:

(8) In subsection (4), "investment contract company" means a corporation licensed as an issuer under *The Investment Contracts Act*.

(2) Subsection (1) does not apply to a provincial company (as defined in *The Trust Companies Act*) until the commencement of the annual general meeting of the shareholders of the company that first occurs after subsection (1) comes into force.

3. Section 8 (2) presently reads:

(2) Notwithstanding anything in a company's special Act, a person is not eligible to act as a provisional director unless he is a subscriber for stock of the company for and on his own behalf, so as to become the absolute and sole owner in his individual right of such stock and not as trustee or in the right of another, on which subscription not less than

- (a) \$3,000 have been paid in, where the paid in capital stock of the company is \$1,000,000 or less, or
- (b) \$4,000 have been paid in, where the paid in capital stock of the company is over \$1,000,000 and does not exceed \$3,000,000, or
- (c) \$5,000 have been paid in, where the paid in capital stock of the company exceeds \$3,000,000.

New Alberta trust companies will require a minimum capitalization of \$2,000,000. See note to section 33 of this Bill.

4. Section 10(1) presently reads:

10. (1) The provisional directors may call a meeting of the subscribers, in this section called the "statutory meeting", to be held at the place named in the special Act where the head office of the company is to be situated, when not less than \$1,000,000 of the capital stock of the company has been bona fide subscribed by at least 25 subscribers for the shares of the company, reckoned in accordance with section 70.

See note to section 3 of this Bill.

5. Section 14(1)(c) presently reads:

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, respecting the following matters, namely,

- (c) setting aside out of premiums on shares or of profits a reserve fund, hereinafter called the "reserve",

This amendment is related to the proposed new definition of "unimpaired capital" in that reserves will be included in the determination of the unimpaired capital of a company. Reference elsewhere in the Act to "unimpaired paid-up capital and reserve" will be changed to "unimpaired capital".

6. Section 30(4) and (8) presently read:

(4) A person is not eligible to be elected or appointed a director of the company if

- (a) he is a director of a chartered bank, another trust company or a corporation incorporated under the laws of Canada or a province that carries on the business of a loan company and that accepts deposits from the public, or
- (b) he is a director of a corporation that owns shares of the capital stock of a chartered bank, trust company or loan company described in clause (a) in any number that would, under the voting rights attached to the shares owned by the corporation of which he is a director, permit the corporation of which he is a director to vote more than 10 per cent of the total votes that could, under the voting rights attached to all the issued and outstanding shares of the chartered bank, trust company or loan company described in clause (a), be voted by the holders thereof.

(8) In subsection (4), "loan company" does not include a corporation licensed as an issuer under The Investment Contracts Act.

The effect of the amendment is to make a person ineligible to be a director of an Alberta trust company if he is a director of a corporation licensed as an issuer under The Investment Contracts Act.

These amendments come into force on Proclamation: see section 42(2) of this Bill.

7. *The following section is added after section 38:*

38.1 (1) The shareholders of a company may, at a general meeting called for the purpose and by resolution passed by the affirmative vote of at least two-thirds of the subscribed and issued capital stock of the company, held by the shareholders present or represented by proxy at the meeting, authorize the directors to delegate, with or without the power of subdelegation, to the president of the company the exercise of any or all powers or authorities, whether discretionary or otherwise, that may be required to be exercised in the course of the performance by the company of any responsibilities that it has in a trust or representative capacity or under any contract or instrument.

(2) The exercise of any power or authority pursuant to subsection (1) by the president of the company or by any person to whom the power or authority is subdelegated by the president constitutes a performance by the company of its responsibility.

8. *The following section is added after section 47:*

47.1 (1) Subject to the consent of the Director and then only on such terms and conditions as he prescribes, a company may

- (a) issue share purchase warrants for the purchase of shares of the company, or
- (b) grant options to purchase shares of the company, or
- (c) otherwise grant or issue rights to subscribe for shares of the company.

(2) A company shall not issue share purchase warrants, grant options to purchase or otherwise grant or issue rights pursuant to subsection (1) 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.

9. *Section 65 is amended*

- (a) *as to subsection (1), clause (b) by striking out the words "allot, or allow the allotment" and by substituting the words "issue, or allow the issue",*
- (b) *as to subsection (2), by striking out the word "allotment" and by substituting the word "issue",*
- (c) *by striking out subsection (5) and by substituting the following:*

(5) This section does not apply

- (a) to a transfer of shares of the company to another trust company as a result of the purchase

7. The new section 38.1 will permit delegation of company powers to the president and other officers of the company so that routine documents that must be executed by the company as an executor or trustee do not have to be sent to the company's head office for signatures.

8. The proposed section 47.1 is aimed at allaying any doubt that Alberta trust companies have the right to issue share warrants to grant options to purchase its shares.

9. The proposed subsection (5) is the same as the present subsection (5) except for the addition of clause (b) which in turn is added as a consequence of the amendments in this Bill to section 112. The amendments to subsections (1) and (2) are aimed solely at replacing the references to "allot" and its derivatives to "issue" in order to conform to the terminology used in other sections of the Act, e.g., section 47. Section 65(1) and (5) presently read:

65. (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.
- (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 141 or 142.

of those shares pursuant to section 141 or 142,
or

- (b) to the issue of shares of the company pursuant to section 112, subsection (2.1), clause (c).

10. *Section 96.2 is amended*

- (a) *as to subsection (2) by striking out the word “directors” and by substituting the word “shareholders”*,
- (b) *as to subsection (3), clause (a),*
 - (i) *by striking out the word “approved” and by substituting the word “passed”*,
 - (ii) *by striking out the word “approval” and by substituting the word “by-law”*,
- (c) *by adding the following subsections after subsection (3):*

(3.1) A by-law of the shareholders under subsection (2)

- (a) shall prescribe the maximum amount of money that may be borrowed pursuant to the by-law,
- (b) may prescribe any other limitations, terms or conditions as to the borrowing, and
- (c) may authorize the directors of the company to prescribe, in a directors’ by-law under subsection (3.2), any other limitations, terms or conditions as to the borrowing that are not contrary to the shareholders’ by-law.

(3.2) Where a by-law has been passed by the shareholders pursuant to subsection (2), the company may issue subordinated notes only upon the authority of a by-law of the directors which

- (a) shall be made in accordance with the by-law of the shareholders under subsection (2), and
- (b) is invalid unless it is afterwards approved by the Director.

- (d) *as to subsection (4), clause (a) by adding at the end thereof the words “unless the Director consents to the issue of the note in some other manner and then only on such terms and conditions as the Director prescribes”*,
- (e) *as to subsection (4), clause (b) by striking out the words “\$50,000 or more,” and by substituting the words “\$25,000 or more, unless the Director approves a lesser denomination.”*

10. Section 96.2 (2), (3) and (4) (a) and (b) presently read:

(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.

The amendments to subsections (2) and (3) and the new subsections (3.1) and (3.2) are intended to allow the shareholders to make a general by-law authorizing the company to borrow by way of issuing "subordinated notes" which would be followed by separate by-laws of the directors each time an issue of subordinated notes was made.

The amendment to subsection (4) (b) reduces the minimum denomination by half and permits lesser denominations with the approval of the Director of Trust Companies.

11. Section 103 is struck out and the following is substituted therefor:

103. The total of the liabilities of the company to its depositors and investment certificate holders shall not exceed such amount as the Lieutenant Governor in Council, in his discretion, determines for the company, not exceeding an amount equal to 25 times the amount of its unimpaired capital.

12. Section 107.1 is amended by adding after subsection (2) the following subsections:

(3) The Minister, on behalf of the Province may enter into agreements with the Canada Deposit Insurance Corporation under the *Canada Deposit Insurance Corporation Act* for any purpose in connection with the issue of policies of deposit insurance under that Act to provincial companies incorporated in Alberta.

(4) An agreement made pursuant to subsection (3) may contain an undertaking by the Province to indemnify the Canada Deposit Insurance Corporation for any loss to that Corporation occurring by reason of its obligation to make payment in respect of any deposit insured by a policy of deposit insurance, where that obligation arises during the period specified in the agreement for that purpose.

(5) An agreement entered into under section 1 of chapter 86 of the Statutes of Alberta, 1967 before the commencement of this subsection shall be deemed to be an agreement under subsection (3) and to have been entered into on behalf of the Province by the Minister.

13. Section 108, subsection (1), clause (b) is amended by adding after the words "in sections 112" the figure ", 112.2".

14. Section 112 is amended

- (a) as to subsection (1) by striking out the words "invest the company's own funds and its deposits and investment moneys in" and by substituting the words "acquire, in accordance with this section,"*
- (b) as to subsection (1), clause (b) by striking out the word "investment" and by substituting the word "acquisition,"*
- (c) as to subsection (2) by striking out the words "approves an investment" and by substituting the words "gives his approval",*
- (d) by adding the following subsections after subsection (2):*

11. Section 103 is rewritten to achieve three things, namely, to make it clear that the ratio relates to all of the liabilities of the company to its depositors and investment certificate holders (including interest added to deposit accounts and accrued interest) and not just to the amounts "received" by the company; to increase the maximum 20:1 ratio to 25:1; and to include in the company's capital base for the purpose of the ratio the principal outstanding on any debentures and subordinated notes issued by the company. Section 103 presently reads:

103. The total of the sums of money received as deposits and investment moneys shall not exceed such amount as the Lieutenant Governor in Council, in his discretion, determines for the company, not exceeding an amount equal to 20 times the combined amounts of its unimpaired paid-up capital and reserve.

As to the change from "unimpaired paid-up capital and reserve" to "unimpaired capital", see the notes to sections 2 and 5 of this Bill.

12. The amendment involves a transfer of section 1 of the Statutes of Alberta, 1967, c. 68 to The Trust Companies Act without change apart from the name of the Minister. Section 107.1 deals with similar agreements made with other provinces or their agencies.

13. Section 108(1)(b) presently reads:

108. (1) In this Division,

(b) "securities" means any bonds, debentures, notes, evidences of indebtedness, obligations, certificates, investment certificates, investment contracts, receipts and shares referred to in section 111 and shares referred to in sections 112 and 113, and

The amendment is made as a consequence of the proposed addition of section 112.2 to the Act by this Bill.

14. Section 112 presently reads:

112. (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 172, subsection (1), clause (a), as if it were an unauthorized investment, and

(b) direct the company to dispose of all of the shares by an order under section 134 as if the shares were an unauthorized investment.

The effect of the amendments is to enable an Alberta trust company to acquire control of an ancillary corporation by way of an exchange of shares rather than solely by way of a cash purchase of the ancillary corporation's shares.

(2.1) The company may acquire shares of an ancillary corporation pursuant to subsection (1) by any of the following methods or by any combination of them, namely,

- (a) by investing the company's own funds in those shares;
- (b) by investing its deposits and investment moneys in those shares;
- (c) subject to section 47, by the issue of shares of the company to the ancillary corporation, or to holders of shares of the ancillary corporation, in exchange for equity shares of the ancillary corporation;
- (d) subject to section 47.1, by the issue of share purchase warrants, by the granting of options to purchase or by otherwise granting or issuing rights pursuant to that section in favour of the ancillary corporation or of holders of shares of the ancillary corporation, in exchange for equity shares of the ancillary corporation;
- (e) by the issue of debentures of the company to the ancillary corporation or to holders of shares of the ancillary corporation, in exchange for equity shares of the ancillary corporation;
- (f) by the issue of subordinated notes of the company to the ancillary corporation or to holders of shares of the ancillary corporation, in exchange for equity shares of the ancillary corporation.

(2.2) Where a company acquires shares of an ancillary corporation pursuant to subsection (2.1), clause (c), (d), (e) or (f), the company shall be deemed to have invested in those shares for the purposes of sections 118, 119 and 121.

(2.3) Notwithstanding sections 96.1 and 96.2, a company may issue debentures or subordinated notes for the purposes of an exchange referred to in subsection (2.1), clause (e) or (f), as the case may be.

15. The following section is added after section 112.1:

112.2 (1) A company may invest the company's own funds and its deposits and investment moneys in fully paid common shares or preferred shares of a mortgage investment corporation if the approval of the Minister is first obtained.

(2) An approval given by the Minister under subsection (1) may be made subject to any terms and conditions prescribed from time to time by him.

15. Alberta trust companies will be authorized to invest in shares of corporations qualifying as mortgage investment corporations under section 130.1 of the federal Income Tax Act. By that Act, the trust company would be limited to 25% of the issued shares of the capital stock of the mortgage investment corporation. The purpose of section 130.1 of that Act was to authorize “conduit” or “flow-through” tax treatment for specialized mortgage investment companies to encourage their use as a mortgage investment vehicle.

(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 mortgage investment corporation owned by the company as assets of the company pursuant to section 172, subsection (1), clause (a), as if the shares were an unauthorized investment, and
- (b) direct the company to dispose of all the shares by an order under section 134 as if the shares were an unauthorized investment.

16. Section 113, subsection (6) is amended by adding after the words "the shares of" the word "the".

17. Section 118, subsection (1) is amended by striking out the words "unimpaired paid-up capital and reserve" and by substituting therefor the words "unimpaired capital".

18. Section 119 is amended

- (a) *as to subsection (2), by striking out the words "impaired paid in capital stock and reserve" and by substituting the words "unimpaired capital",*
- (b) *as to subsection (3), clause (c), by striking out the words "paid in capital stock and reserve" and by substituting the words "unimpaired capital",*
- (c) *as to subsection (4), by striking out the words "unimpaired paid-up capital and reserve" and by substituting the words "unimpaired capital",*
- (d) *as to subsection (5),*
 - (i) *by adding after the words "ancillary corporation" the words "or mortgage investment corporation", and*
 - (ii) *by adding after the words "section 112" the words "or 112.2, as the case may be,".*

16. Corrects a typographical omission.

17. Section 118(1) presently reads:

118. (1) 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.

See notes to sections 2 and 5 of this Bill.

18. Section 119(2), (3), (4) and (5) presently read:

(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.

(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.

(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 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.

As to the amendments to subsections (2), (3) and (4), see the notes to sections 2 and 5 of this Bill.

The amendments to subsection (5) are consequential upon the addition of the proposed section 112.2.

19. Section 120, subsection (2) is amended by adding after the words "ancillary corporation of the company" the words ", the shares of a mortgage investment corporation that are owned by the company".

20. Section 121, subsection (1) is amended by striking out the words "unimpaired paid-up capital and reserve" and by substituting the words "unimpaired capital".

21. Section 122, clause (c) is amended by striking out the words "common shares" and by substituting the words "any shares of a corporation".

22. Section 123, subsection (2) is amended by adding after the words "an ancillary corporation of the company" the words ", the shares of a mortgage investment corporation that are owned by the company".

23. Section 124, subsection (4) is amended by striking out the words "A company shall not" and by substituting the words "Except with the consent of the Director, a company shall not".

24. Section 125, subsection (3), clause (a) is amended by striking out the words "1 per cent" and by substituting the words "2 per cent".

19. Section 120 presently reads:

120. (1) 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.

(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.

Under section 130.1 of the federal Income Tax Act, the company would be able to own up to 25% of the issued shares of a mortgage investment corporation.

20. Section 121(1) presently reads:

121. (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.

See notes to sections 2 and 5 of this Bill.

21. Section 122 presently reads:

122. A company shall not make a loan secured by any securities unless under the terms upon which the loan is made the outstanding amount of the loan will not at any time exceed

- (a) their market value, in the case of Canada Savings Bonds issued by the Government of Canada, or
- (b) 90 per cent of their face value, in the case of investment certificates issued by the company, or
- (c) 50 per cent of their market value, in the case of common shares, or
- (d) 95 per cent of their market value, in the case of any other securities.

22. Section 123 (1) (d) and (2) presently read:

123. (1) 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 or registered in a corresponding capacity under the securities legislation of the jurisdiction where the investment or loan is intended to be made.

(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.

Consequential upon the addition of the proposed section 112.2.

23. Section 124(4) presently reads:

(4) A company shall not make any investment or loan in or upon a mortgage under section 114, subsection (1) or section 115 where the title to the real estate concerned is subject to

- (a) any encumbrance or notification, or
- (b) any lease or tenancy unless
 - (i) 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 rents payable under that lease or tenancy and all subsequent leases and tenancies of that real estate, or
 - (ii) that lease or tenancy, according to its provisions, will expire within one year or can be terminated by the lessor within one year,
- or
- (c) any agreement for sale or option to purchase, or
- (d) any option to lease unless, under the lease or tenancy to be granted pursuant to the option,
 - (i) 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 rents payable under that lease or tenancy and all subsequent leases and tenancies of that real estate, or
 - (ii) that lease or tenancy, according to its provisions, will expire within one year or can be terminated by the lessor within one year.

24. Section 125(3) (a) presently reads:

(3) The total book value of investments by a company in real estate for the production of income under this section shall not exceed

- (a) in the case of any one parcel of real estate, 1 per cent of the book value of the aggregate of the company's own funds and its deposits and investment moneys, or

25. *Section 126 is amended*

- (a) *as to subsection (3), by striking out the words “unimpaired paid-up capital and reserve” and by substituting the words “unimpaired capital”,*
- (b) *as to subsection (5), by striking out the words “A company” and by substituting the words “Except with the consent of the Director, a company”.*

26. *The following section is added after section 126:*

126.1 (1) Where a company has entered into an agreement with an owner of improved real estate under which the company becomes the agent of the owner to sell that real estate, the company may, in the same or a separate agreement, agree to purchase that real estate from the owner within a fixed or determinable period of time at a fixed or determinable price in the event that the company is unable, as the owner's agent, to conclude the sale of the real estate to some other person within a fixed or determinable period of time.

(2) A purchase of real estate under this section may be made by a company with the company's own funds or its deposits and investment moneys.

(3) The Director, with respect to any company,

- (a) may prescribe a limitation on the amount that may be invested by the company in real estate under this section, and
- (b) shall, pursuant to section 172, subsection (1), clause (a), disallow as assets of the company any real estate purchased under this section after the limitation prescribed under clause (a) has been reached, as if that real estate were an unauthorized investment.

(4) The Director

- (a) may by notice direct any company to sell any real estate acquired by it under this section within 60 days or such longer period as he may allow, and
- (b) shall, pursuant to section 172, subsection (1), clause (a), disallow as assets of the company any real estate that is the subject of a notice under clause (a) as if it were an unauthorized investment, where the direction in the notice is not complied with.

25. Section 126 (3) and (5) presently read:

(3) The book value of a company's investments under subsection (1) shall not exceed 35 per cent of its unimpaired paid-up capital and reserve.

(5) A company shall not purchase any real estate under this section where the title to the real estate is subject to

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

As to the amendment to subsection (3), see the notes to sections 2 and 5 of this Bill.

26. The new section 126.1 permits an Alberta trust company to acquire improved real estate under "guaranteed sale agreements" when it acts as agent for the owner thereof. Section 128 of the Act prohibits a company from acquiring real estate except as otherwise authorized by statute.

27. Section 129, subsection (5) is amended

- (a) by adding the following clause after clause (b):*
- (b1) the acquisition of shares of a mortgage investment corporation under section 112.2, or
- (b) as to clause (c) by adding after the words “an ancillary corporation of the company” the words “, a mortgage investment corporation of which the company is a shareholder”.*

28. Section 130 is amended

- (a) as to subsection (1), by striking out clause (b) and by substituting the following:*

- (b) except with the consent of the Director, enter into or remain as a party to any agreement or arrangement with
 - (i) a corporation associated with the company, or
 - (ii) a partnership any of the members of which is a director, officer or employee of the company or a corporation associated with the company, or
 - (iii) any person who is a director, officer or employee of the company or a corporation associated with the company,

under which that corporation, partnership or person assumes the carrying out of any functions in connection with, or provides any services in connection with, the management or operation of the company, whether or not any consideration is payable to that corporation, partnership or person, or

- (b) by adding the following subsections after subsection (1):*

(1.1) Subsection (1), clause (b) does not apply to an officer or employee of a company with respect to services rendered by him in consideration of the salary paid to him by the company.

(1.2) The Director may

- (a) make any consent given by him under subsection (1), clause (b) subject to any conditions he may prescribe whether before or after the consent is given;
- (b) terminate any agreement or arrangement referred to in subsection (1), clause (b) and entered into before or after the commencement of this subsection upon notice to the company and the other party thereto.

27. Section 129 (1) (2) and (5) presently read:

129. (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, or
 - (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 subsection (1), clause (g), (h) or (i).
- (5) Subsection (1), clauses (g), (h) and (i) and subsection (2) do not apply to a company in respect of
- (a) the acquisition of shares of an ancillary corporation pursuant to section 112, or
 - (b) the acquisition of the assets of an ancillary corporation pursuant to section 112.1, or
 - (c) transactions between the company and an ancillary corporation of the company or a real estate subsidiary of the company.

Consequential upon the addition of the proposed section 112.2.

28. Section 130 presently reads:

130. (1) A company shall not

- (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
 - (b) engage, or pay a fee or other consideration to, any corporation associated with it, to negotiate, make, deal with, administer, collect or settle on behalf of the company any mortgages or loans made or held by the company, except as otherwise permitted under the regulations and subject to the maximum fees or consideration prescribed by the regulations, or
 - (c) pay a finder's fee to any person to whom the company is prohibited from lending money by section 129, in respect of a mortgage or loan acquired or made or intended to be acquired or made by the company.
- (2) A company is liable to a penalty of
- (a) \$100 for each mortgage, loan, security, parcel of real estate or leasehold estate sold in contravention of subsection (1), clause (a), and
 - (b) an amount equal to double the amount of a finder's fee paid in contravention of subsection (1), clause (c).
- (3) A company that contravenes subsection (1), clause (b) is guilty of an offence.

This section of the Bill comes into force on Proclamation.

(c) *by striking out subsection (3) and by substituting the following:*

(3) A company that

(a) contravenes subsection (1), clause (b), or

(b) commits a breach of any condition prescribed by the Director pursuant to subsection (1.2), clause (a),

is guilty of an offence.

29. *Section 134, subsection (1) is amended*

(a) *as to clause (d) by striking out the figure "112" and by substituting the figure "117", and*

(b) *by adding the word "or" at the end of clause (d) and by adding the following clause after clause (d):*

(e) any shares of a mortgage investment corporation owned by the company in respect of which there has been a contravention of any term or condition prescribed pursuant to section 112.2,

30. *Section 136 is amended by striking out subsection (1) and by substituting the following:*

136. (1) Where a registered company proposes to make a loan and

(a) the amount to be advanced to the borrower is to be less than the principal amount repayable under the loan, or

(b) the principal amount repayable under the loan will include any fees or charges whether payable to the company or to any other person,

the company shall deliver to the borrower a statement at least 24 hours before the time the loan contract is signed by the borrower showing the information prescribed by the regulations.

31. *Section 143, subsection (2), clause (c) is amended by striking out the words "and the agreement between the selling company and the purchasing company made pursuant to section 141 or 142, as the case may be".*

- 29.** (a) Corrects a typographical error in the Revised Statutes of Alberta 1970.
- (b) Consequential to the addition of section 112.2. Section 134 (1) authorizes the Director of Trust Companies to order an Alberta trust company to dispose of investments held in contravention of the Act.

30. Section 136 (1) presently reads:

136. (1) Where a registered company proposes to make a loan that is subject to a bonus in favour of the company, the company shall deliver to the borrower a statement at least 24 hours before the time the loan contract is signed by the borrower showing the information prescribed by the regulations.

This amendment will come into force on Proclamation to allow the making of new regulations beforehand that will prescribe the new form of loan statement.

31. Section 143 (2) (c) presently reads:

(2) On and from the effective date of an approval

(c) where the selling company is referred to in a document registered, filed, lodged or deposited by or with a registrar and being uncancelled 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.

The reference in the clause to an "approval" is to an order in council under section 141 of the Act to approve the purchase by an Alberta trust company of the assets of another trust company or an order in council under section 142 to approve the sale of the assets of an Alberta trust company to another trust company. It also includes certificates filed under section 156.1 with respect to the sale of the assets of one extra-provincial trust company to another. The effect of the amendment is to remove the requirement to file with a registrar a copy of the sale agreement as well as the approval, since the approval alone is adequate for the purposes of registration.

32. Section 145 is amended by adding the following clause after clause (a):

- (a1) increasing any amounts of money referred to in section 8, subsection (2) or section 10, subsection (1) or section 30, subsection (2);

33. Section 151, subsection (1) is amended by striking out clause (d) and by substituting the following:

- (d) the company has an unimpaired capital of at least \$2,000,000 on deposit in a chartered bank or treasury branch,

34. Section 155, subsection (1) is amended by striking out clause (a) and by substituting the following:

- (a) the company has an unimpaired capital of at least \$2,000,000,

35. Section 156, subsection (3) is amended by striking out the word "fild" and by substituting the word "filed".

32. Section 145 enumerates the subject matters of regulations that may be made by the Lieutenant Governor in Council under Part 1 of the Act which deals generally with the operation of Alberta trust companies. Sections 8 (2) and 30 (2) deal with the minimum shareholdings of provisional directors and directors respectively and section 10(1) deals with the minimum paid in capital requirement at the time of the first or "statutory" meeting of a new Alberta trust company. See the amendments to section 8(2) and 10(1) above in sections 3 and 4 of this Bill. These amounts would be increased only as a consequence of an increase in capital requirements prescribed by regulation under the proposed clause (b1) of section 190 of the Act: See section 40(a) of this Bill.

33. Section 151(1)(d) presently reads:

151. (1) No application by a provincial company for registration shall be granted and no registration shall be made unless it is shown to the satisfaction of the Director by affidavit or otherwise that, at the time the application for registration is made,

(d) the company has an unimpaired paid-up capital of at least \$1,000,000 on deposit in a chartered bank or treasury branch,

Any new Alberta trust company seeking registration will be required to have a minimum unimpaired capital of \$2,000,000. See also the amendment to section 155(1). As to the change to "unimpaired capital" see the notes to sections 2 (c) and 5 of this Bill.

34. Section 155(1)(a) 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

(a) the company has an unimpaired paid-up capital of at least \$1,000,000,

As to the change to "unimpaired capital" see the notes to sections 2 and 5 of this Bill.

35. Corrects a typographical error.

36. *Section 174 is amended*

- (a) *as to subsection (1), clause (b) by adding after the words "this Act or the regulations" the words "or has not complied with any order of the Lieutenant Governor in Council, the Minister or the Director under this Act",*
 - (b) *as to subsection (1) by striking out clause (c) and by substituting the following:*
 - (c) *the unimpaired capital of the company is less than*
 - (i) *\$500,000, in the case of a company registered before May 1, 1967, or*
 - (ii) *\$1,000,000, in the case of a company registered on or after May 1, 1967 but before January 1, 1976, or*
 - (iii) *\$2,000,000, in the case of a company registered on or after January 1, 1976,*
- or**
- (c) *as to subsection (1), clause (c) (as re-enacted by clause (b) of this subsection) by striking out sub-clauses (i) and (ii) and by substituting the following:*
 - (i) *\$1,000,000, in the case of a company registered before January 1, 1976, or*
 - (d) *as to subsection (1), by adding the following after clause (c):*
 - (c1) *in the case of a provincial company, any assets that appear on the books of the company are not satisfactorily accounted for, or*
 - (c2) *in the case of a provincial company, the assets of the company are not sufficient, having regard to all the circumstances, to give adequate protection to the company's depositors and investment certificate holders, or*
 - (e) *as to subsection (3), by adding the word "or" at the end of clause (c) and by adding the following clause:*
 - (d) *in the case of a provincial company, that proceedings be taken under sections 176 and 177 in respect of that company.*

37. *Section 175 is struck out.*

36. Section 174 presently reads:

174. (1) The Director may make a special report to the Minister with respect to any registered company, where the Director is satisfied, on the basis of an examination and inspection of that company's affairs or on the basis of any other source of information available to him, that

- (a) the company has defaulted on the payment of any of its liabilities, or
 - (b) the company 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 company's depositors, investment certificate holders, creditors or shareholders, or
 - (c) the unimpaired paid-up capital of the company is less than
 - (i) \$500,000, in the case of a company registered before May 1, 1937, or
 - (ii) \$1,000,000, in the case of a company registered on or after May 1, 1967,or
 - (d) there exists any state of affairs within the company of a serious nature that is or may be prejudicial to the interests of the company's depositors, investment certificate holders, creditors or shareholders, or
 - (e) the company has ceased to carry on business in Alberta.
- (2) The Director may make a special report to the Minister with respect to any registered company where the company refuses to permit an inspection and examination of its affairs or condition under Division 3 of this Part or hinders or obstructs any part of the inspection and examination.
- (3) The Director may, in a special report to the Minister, recommend
- (a) that the registration of the company be suspended or cancelled, or
 - (b) in the case of a provincial company, that a receiver and manager be appointed for the company, or, if he considers that the circumstances warrant it, that a liquidator be appointed to wind up the company, or
 - (c) in the case of an extra-provincial company other than a federal company, that a receiver and manager be appointed for that company in respect of its branch offices, assets and affairs within Alberta.

(a) The amendment to subsection (1), clause (b) will empower the Director to make a special report to the Minister in the additional cases provided for. The report provides the basis for further regulatory increases such as the rehabilitation proceedings, receivership, etc. under Division 4 of Part 2.

(b) The effect of the re-enactment of subsection (1) (c) is to require trust companies registered on or after January 1, 1976 to have a minimum unimpaired capital of \$2,000,000, an increase from the present minimum of \$1,000,000. Other companies remain unaffected by this amendment. This amendment comes into force on assent.

As to the change to "unimpaired capital" see the notes to sections 2 and 5 of this Bill.

(c) The effect of this amendment is to require companies registered before May 1, 1967 to have a minimum unimpaired capital of \$1,000,000, an increase from the present minimum of \$500,000. This amendment, however, comes into force only on proclamation: see section 42 (2). It would bring the minimum requirement up to the same level as companies registered in the period from May 1, 1967 to January 1, 1976.

(d) The new clauses (c1) and (c2) are added as a result of the amendments to sections 176 and 177 which will result in rehabilitation proceedings being available in all of the cases enumerated in subsection (1) of section 174 and not just where there is a deficiency or inadequacy of assets.

(e) As to the new clause (d) of subsection (3), see the amendments to section 176 in section 38 of this Bill. Sections 175 to 177 are under the heading "Rehabilitation Proceedings".

37. Section 175 presently reads:

175. 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.

See note to section 38 of this Bill.

38. *Section 176 is amended*

- (a) *by striking out subsections (1) and (2) and by substituting the following:*

176. (1) Where the Director makes a special report to the Minister and recommends that proceedings be taken under this section or section 177 in respect of a provincial company, the Minister may take any one or more of the following actions:

- (a) he may require 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;
- (c) he may by order direct the Director to forthwith take possession and control of the company's assets indefinitely or for such period as the order prescribes.

(2) The Minister shall not take any action under subsection (1) until after a reasonable time has been given to the company to be heard by him except where the Minister makes an order under subsection (1), clause (c) and is of the opinion that, having regard to all the circumstances, the order should be made without notice or any further notice to the company.

- (b) *as to subsection (3),*
- (i) *by striking out the words "subsection (2)" and by substituting the words "subsection (1)",*
 - (ii) *by adding after the words "the Minister shall" the words "by order".*

39. *Section 177 is amended*

- (a) *as to subsection (1) by striking out the words "such corporation" and by substituting the words "the company",*
- (b) *as to subsection (3), by striking out the words "Where the Director has control of the assets of a company pursuant to section 175 or 176" and by substituting the words "Where the Director has possession and control of the assets of a company and the conduct of its business under this section",*
- (c) *as to subsection (4), by striking out the words "pursuant to this section, section 175 or section 176" and by substituting the words "and the conduct of its business under this section".*

38. Section 176 presently reads:

176. (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 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;
- (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.

The present sections 175 and 176 limit the use of rehabilitation proceedings to cases where assets are not accounted for or where the assets are inadequate for the protection of the company's depositors and investment certificate holders. The new section 176 will allow for the use of rehabilitation proceedings in any of the cases enumerated in section 174 (1) as amended by this Bill. Section 174 (1) in turn will be amended to add clauses (c1) and (c2) which deal with deficiency and inadequacy of assets respectively: see section 36 of this Bill.

39. Section 177 deals with the Director's powers when he is ordered to take possession and control of a company's assets and the eventual relinquishment of possession and control if and when the rehabilitation of the company is successful. The amendments are made partly as a consequence of the repeal of section 175 by this Bill and partly to cure some drafting inconsistencies.

40. *Section 190 is amended*

(a) *by adding the following clause after clause (b):*

(b1) *increasing any amount referred to in any or all of the following provisions, namely,*

(i) *section 151, subsection (1), clause (d);*

(ii) *section 155, subsection (1), clause (a);*

(iii) *section 174, subsection (1), clause (c);*

(b) *by striking out clause (g) and by substituting the following:*

(g) *governing the manner in which the unimpaired capital of a registered company is determined from time to time under this Act, including provision for methods of valuation of assets for that purpose, and authorizing the Director to make any calculation or valuation of assets for that purpose;*

41. *Chapter 86 of the Statutes of Alberta, 1967 is hereby repealed.*

42. (1) *Subject to subsection (2), this Act comes into force on the day upon which it is assented to.*

(2) *The following provisions of this Act come into force on a date or dates to be fixed by Proclamation:*

section 6;

section 28;

section 30;

section 36, clause (c).

40. (a) Section 190 enumerates the subject matters of regulations that may be made by the Lieutenant Governor in Council under Part 2 of the Act which deals with the registration and regulation of all trust companies. The amendment will permit the regulations to increase the minimum capital requirements for trust companies. The requirements in the provisions enumerated in the proposed clause (b1) are being increased by other amendments proposed in this Bill. See also section 36 of this Bill.

(b) See notes to sections 2 and 5 of this Bill. Section 190 (g) presently reads:

190. The Lieutenant Governor in Council may make regulations

(g) providing for the method of calculation to be used by a registered company for the purpose of determining the amount of its unimpaired paid-up capital from time to time, including the methods of valuation of assets for that purpose, and

41. The content of section 1 of this Act is to be replaced by the new subsections (3) and (4) to be added by this Bill to section 107.1 of the Act.