

1982 BILL 43

Fourth Session, 19th Legislature, 31 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 43

**TRUST COMPANIES
AMENDMENT ACT, 1982**

THE MINISTER OF CONSUMER AND
CORPORATE AFFAIRS

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 43

1982

TRUST COMPANIES AMENDMENT ACT, 1982

(Assented to _____, 1982)

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

1 *The Trust Companies Act is amended by this Act.*

2 *Section 1(1) is amended*

(a) *by repealing clause (c) and substituting the following:*

(c) "company" or "trust company" means a corporation empowered to carry on the business of executing the office of

(i) executor, administrator or trustee, or

(ii) guardian or committee of the estate of a minor or mentally incompetent person,

other than as a professional corporation, as defined in section 112 of the *Legal Profession Act*, or as a trustee in accordance with the *Bankruptcy Act* (Canada);

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

(p.1) "person" includes a corporation, trustee, executor, administrator or other legal representative;

3 *Section 29 is amended by adding the following after subsection (4):*

(4.1) Notwithstanding subsection (4), the Minister may by order permit a person who

(a) was a director of a corporation converted or amalgamated to form a bank and of a company on the date of the issue of the letters patent for that bank, and

Explanatory Notes

1 This Bill will amend chapter T-9 of the Revised Statutes of Alberta 1980.

2 Section 1(1)(c) presently reads:

1(1) In this Act,

(c) "company" or "trust company" means a corporation empowered to carry on the business of executing the offices of executor, administrator and trustee, either with or without other objects or powers, but does not include a corporation whose objects include the objects contained in the Schedule to the Legal Profession Act and all issued shares of which are legally and beneficially owned by active members of The Law Society of Alberta;

3 Directorships in banks.

(b) would, apart from this subsection, be disqualified under subsection (4) in respect of his directorship in that bank,

to be elected or appointed and to act as a director of that company for the duration of any period for which a permission to act as a director of the bank has been granted pursuant to paragraph 269(1)(c) of the *Bank Act* (Canada) in respect of that person's acting as a director of

(c) the company,

(d) a corporation owning shares of the company, or

(e) a corporation that is controlled (within the meaning of the *Bank Act* (Canada)) by the company.

4 *Section 32(2)(c) is amended by adding "subject to section 29(4.1)," before "he".*

5 *Section 94 is amended*

(a) *in clause (i) by striking out "sell" and substituting "sell or lease";*

(b) *in clause (j) by adding "leases," after "transfers,".*

6 *The following is added after section 101:*

Pooled Trust Funds

101.1(1) This section applies to all trust companies, including extra-provincial companies.

(2) In this section, "pooled trust fund" means a fund in which money held in trust and belonging to various participants is combined for the purpose of investment and entitling the participant to receive an amount computed by reference to the value of a proportionate interest in the assets of the fund, but does not include

(a) a trust fund in respect of which participation is limited to fewer than 50 persons, or

(b) a common trust fund as defined in section 102(1).

4 Section 32(2)(c) presently reads:

(2) A director ceases to be a director if

(c) he ceases to comply with the requirements of section 29(4) or (5).

5 Section 94 presently reads in part:

94 A provincial company may

(i) sell any real or personal property held by the company, and execute and deliver all necessary conveyances and assurances in respect thereof;

(j) make, enter into, deliver, accept and receive all deeds, conveyances, assurances, transfers, assignments, grants and contracts necessary to carry out the purposes of the company, and promote its objects and business;

6 Adds provisions dealing with pooled trust funds.

(3) No corporation other than a registered trust company shall maintain a pooled trust fund.

(4) A trust company maintaining a pooled trust fund shall hold and manage the assets of the fund in trust under a trust instrument that complies with the regulations made under subsection (10).

(5) A trust company shall not offer to any person units or other interests in a pooled trust fund until there has been filed with the Director the form of the trust instrument and such other material as the Director requires in respect of the offering and until a receipt for those items has been obtained from the Director.

(6) The Director may, when in his opinion it is in the public interest, require a trust company to file with him an information folder which

(a) provides brief and plain disclosure of all material facts relating to the pooled trust fund,

(b) complies as to form and content with the regulations, and

(c) is so certified by the president, vice-president, managing director or other director appointed for that purpose and by the secretary or manager of the company.

(7) Where the Director has required the filing of an information folder,

(a) the company shall not receive from a prospective purchaser any application or money for participation in the pooled trust fund until the company has delivered to the prospective purchaser a copy of that information folder, and

(b) the company shall obtain from each prospective purchaser with his application a statement in writing acknowledging that he has received a copy of the information folder.

(8) A company that has filed an information folder under this section shall, as long as the company continues to offer participation in the pooled trust fund, file with the Director a copy of a new information folder in respect of its contracts,

(a) forthwith on any material changes in any facts set out in the latest filed information folder, and

(b) in any case, within 1 year and 1 month after the date of the latest information folder filed under this section.

(9) Where it appears to the Director that

(a) a filed information folder

(i) fails to comply in any substantial respect with the requirements of this section or the regulations,

(ii) contains any promise, estimate, illustration or forecast that is misleading, false or deceptive, or

(iii) conceals or omits to state any material fact necessary in order to make any statement contained therein not misleading in the light of the circumstances in which it is made, or

(b) the condition or method of operation of the trust company in connection with its pooled trust fund will render its operations hazardous to the public or to its participants,

the Director shall report that fact to the Minister and the Minister, if he concurs in the report and after hearing the trust company, may order the Director to prohibit the trust company from continuing to offer participation in the pooled trust fund.

(10) The Lieutenant Governor in Council may make regulations

(a) prescribing the form and content of the trust instrument establishing a pooled trust fund;

(b) prescribing investment restrictions and requiring reserves in respect of pooled trust funds;

(c) prescribing the form and content of information folders;

(d) prescribing the qualifications and training requirements for persons who may sell interests in pooled trust funds;

(e) governing the furnishing of information and advertising to the public in connection with a pooled trust fund;

(f) requiring trust companies to furnish the Director with such information, returns and reports respecting pooled trust funds as are prescribed;

(g) exempting extra-provincial companies from any of the provisions of this section or the regulations thereunder.

(11) A corporation that contravenes subsection (3), or continues to offer participation in a pooled trust fund after being prohibited from doing so under subsection (9), is guilty of an offence and liable to a fine of not more than \$10 000.

7 *Section 102 is amended*

(a) *in subsection (1)*

(i) *by striking out “maintained by a company”, and*

7 Section 102(1) presently reads:

102(1) In this section "common trust fund" means a fund maintained by a company in which money belonging to various estates and trusts in its care are combined for the purpose of facilitating investment, but does not include deposits and investment money.

(ii) by striking out “its care” and substituting “the care of the person maintaining the fund”;

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

(1.1) No corporation other than a registered trust company shall maintain a common trust fund.

(c) by adding the following after subsection (12):

(13) A corporation that contravenes subsection (1.1) is guilty of an offence and liable to a fine of not more than \$10 000.

8 Section 121(1)(d) is repealed and the following is substituted:

(d) at the time of execution of the mortgage, the ancillary corporation has entered into leases or agreements for leases of the improved real estate and the leases will provide a net revenue sufficient to yield a reasonable return on the loan and to enable the company to recover the amount loaned or a reasonable proportion of that amount, and

9 Section 122(2) is amended

(a) by adding “and” at the end of clause (c);

(b) by repealing clauses (d), (e) and (f);

(c) in clause (g) by adding “or of the owner of the real estate under an encumbrance or notification to which the real estate is subject” after “under the lease”.

8 Section 121(1)(d) presently reads:

121(1) A provincial company may, with the company's own funds or its deposits and investment money, make a loan to an ancillary corporation of the company on the security of a first mortgage executed in favour of the company pursuant to section 122(1) if

(d) at the time of execution of the mortgage, the ancillary corporation has entered into leases or agreements for leases of the improved real estate and the leases will provide net revenue sufficient during the term of the mortgage to repay at least 85% of the amount loaned by the company, and

9 Section 122(2) presently reads:

(2) A provincial company may, with the company's own funds and its deposits and investment money, invest in mortgages of leasehold estates or make loans under mortgages executed in favour of the company of leasehold estates if in each case

(a) the mortgage is a first mortgage of the leasehold estate,

(b) the real estate from which the leasehold estate is derived is improved real estate in Alberta or elsewhere where the company is registered or licensed to carry on business as a trust company,

(c) the amount invested or loaned does not exceed 75% of the value of the leasehold estate at the time of the investment or loan as established by a report as to the value of the leasehold estate made by a person whom the company reasonably believed to be a competent valuator, instructed and employed independently of any owner of the leasehold estate or the improved real estate,

(d) the title to the real estate to which the leasehold estate pertains is not subject to an encumbrance or notification at the time of registration of the mortgage in a land titles office or land registry,

(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

10 Section 129(1) is amended by adding “and” at the end of clause (a), striking out “and” at the end of clause (b) and repealing clause (c).

11 Section 157 is amended by adding the following after subsection (4):

(5) Notwithstanding subsection (3), a company may file a notice with the Director in the form required by him designating an additional form or forms of its name in accordance with subsection (6).

(6) Subject to subsection (1), the name of the company or an additional form of its name in a notice filed under subsection (5) may be in an English form or a French form (including the French form of the word “Trust” or “Trusts”) or in a combined English and French form and the company may use and may be legally designated by any of those forms.

subleases and to repay at least 85% 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.

10 Section 129(1) presently reads:

129(1) Subject to subsection (3) and the regulations, a company may invest the company's own funds or its deposits and investment money in real estate for the production of income, either alone or jointly with one or more regulated financial institutions,

(a) if the real estate is situated in Alberta or elsewhere where the company is registered or licensed to carry on business as a trust company,

(b) if at the time of the investment the real estate is subject to a lease made to, or guaranteed by,

(i) a corporation the preferred or common shares of which are authorized for investment under section 117,

(ii) the Crown in right of Canada or the Crown in right of Alberta or any other province of Canada, or

(iii) a Crown corporation incorporated under an Act of the Parliament of Canada, an Act of the Legislature or an enactment of any province of Canada,

and

(c) if the lease provides for a net revenue sufficient to yield a reasonable interest return during the unexpired term of the lease and to repay at least 85% of the amount invested by the company in the real estate within the term of the lease, but not exceeding 30 years from the date of investment,

and the company may hold, maintain, improve, sell or otherwise deal with or dispose of the real estate.

11 Section 157 presently reads:

157(1) A company, other than a federal company, shall not be registered if its name

(a) does not contain the word "Trust" or "Trusts",

(b) is known by the Director to be the same as the name of an existing corporation,

(c) is known by the Director to be the same as the name of a dissolved corporation unless the Director otherwise approves,

(d) is known to the Director to be similar to the name of any other corporation if the use of that name by the company would likely to deceive, or

(7) The company shall give public notice of the additional form of its name if the Director so directs and, in that case, in the manner so directed.

12 *The following is added after section 159(4):*

(5) The Director may make the registration of a provincial company subject to a condition that the company is prohibited from accepting deposits or from issuing or entering into investment certificates and, where he does so, subsection (4) does not apply.

13 *The following is added after section 169:*

DIVISION 1.1

Asset Requirements

169.1(1) A provincial company shall at all times retain in Canada and under its own control assets of a value at least equal to the amount of its total liabilities to its depositors.

(2) For the purposes of subsection (1), securities which

(a) have to be removed from Canada for the purpose of disposing of or exchanging them for other securities authorized by law, or for any similar purpose, and

(b) are entrusted for that purpose to a responsible bank, trust company or other corporation carrying on business outside Canada,

shall be deemed to be in Canada and under the company's control.

(e) is known to the Director to be the same as or similar to the name of a business or association if the use of that name by the company would be likely to deceive.

(2) In subsection (1) "business or association" means an individual carrying on business, an association or a partnership.

(3) If a provincial company desires to adopt a name different from that by which it was incorporated, or if, in the opinion of the Director, the name by which the company was incorporated may be confused with that of another existing company, the Lieutenant Governor in Council may change the name of the provincial company to some other name to be stated in the order in council.

(4) Public notice shall be given of any change of name, and of any application for a change of name, in The Alberta Gazette and otherwise as the Director may direct.

12 Section 159(4) reads:

(4) A provincial company is not entitled to registration unless the company becomes the holder of a policy of deposit insurance under the Canada Deposit Insurance Corporation Act (Canada) after it has made its application for registration, unless provincial companies are not then authorized by the regulations to obtain such policies.

13 Asset requirements.

14 *The following is added after section 172:*

172.1 On sufficient cause shown and on payment of the prescribed fee, the Director may, before a respective date referred to in section 171(1) or 172(1), extend the time for filing a return under that provision for an additional period not exceeding 30 days after that date.

15 *The following is added after section 208(5):*

(5.1) No corporation shall carry on any business referred to in, and not excepted by, section 1(1)(c) unless it is registered as a trust company.

(5.2) Subsection (5.1) does not apply to

(a) a loan company incorporated under and acting in accordance with the *Loan Companies Act (Canada)*,

(b) an equivalent corporation incorporated or registered or licensed under and acting in accordance with an equivalent statute of a province, or

(c) a corporation exempted from the application of that subsection by the regulations.

(5.3) The Lieutenant Governor in Council may make regulations exempting a corporation or class of corporation from subsection (5.1).

14 Sections 171(1) and 172(1) read:

171(1) Every registered provincial company shall file with the Director on or before the last day of January, April, July and October in each year a return showing, as of the end of the preceding month,

(a) the classes of deposits maintained by the company and the amounts of the deposit in each class,

(b) the classes of investment certificates issued by the company and the amounts received by the company under each class,

(c) the total amount of its deposits and investment money,

(d) a schedule of the assets comprising its guaranteed fund, classified in accordance with the form, and

(e) any other information required by the form with respect to the requirements of Division 6 of Part 1.

172(1) Every registered extra-provincial company shall, on or before the last day of January, April, July and October in each year, make a return to the Director in the form prescribed by him, showing as of the end of the preceding month,

(a) the total amount of its deposits and investment money and the amount of those deposits and investment money received in Alberta and outstanding, and

(b) a schedule of the assets comprising its guaranteed fund classified in accordance with the form and showing as to each class the portion thereof located in Alberta.

15 Adds provisions making it an offence for a corporation to carry on trust company business unless a registered trust company.

(5.4) A corporation that contravenes subsection (5.1) is guilty of an offence and liable to a fine of not more than \$10 000.

In accordance with section 4(1) of the Interpretation Act, this Bill comes into force on the date it receives Royal Assent.