

1994 BILL Pr13

Second Session, 23rd Legislature, 43 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL Pr13

TD TRUST COMPANY AND
CENTRAL GUARANTY TRUST COMPANY ACT

MS. BURGNER

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill Pr13
Ms. Burgener

BILL Pr13

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TD TRUST COMPANY AND CENTRAL GUARANTY TRUST COMPANY ACT

(Assented to , 1994)

Preamble

WHEREAS Central Guaranty Trust Company and TD Trust Company, among others, have entered into an agreement made as of December 31, 1992 for the purpose of transferring to TD Trust Company the trusteeship and agency business of Central Guaranty Trust Company in Alberta and in other areas of Canada; and

WHEREAS it is desirable that the rights and obligations of those who have relations with Central Guaranty Trust Company and TD Trust Company concerning the trusteeship and agency business of Central Guaranty Trust Company be clearly determined; and

WHEREAS Central Guaranty Trust Company and TD Trust Company have by their petition prayed that it be enacted as herein set forth and it is expedient to grant the prayer of the petition;

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

Non-application
exceptions

1(1) This Act does not apply to,

(a) real or personal property owned or held by, vested in or granted to Central Guaranty Trust Company, and that is held by Central Guaranty Trust Company exclusively for its own use and benefit, and not in trust for or for the benefit of any other

person or purpose;

(b) real or personal property that is held by Central Guaranty Trust Company under a document or trust to which section 2 applies that is situate outside Alberta, and any power, right, immunity, privilege or right of action that may be exercised by or against Central Guaranty Trust Company under any such document or trust with respect to that property, but,

(i) for all property situate outside Alberta for which Central Guaranty Trust Company has been appointed, or is entitled to be appointed, by a court of Alberta, as personal representative of a deceased person, whether as executor, administrator or otherwise, TD Trust Company may, upon application to that court, be appointed personal representative in the place and stead of Central Guaranty Trust Company with respect to that property, and

(ii) for all property situate outside Alberta not coming within subclause (i), but held by Central Guaranty Trust Company under a document or trust to which section 2 applies, for which the Court of Queen's Bench or the Surrogate Court has jurisdiction under section 16 of the *Trustee Act* to make an order for the appointment of a new trustee, TD Trust Company may, upon application to the Court of Queen's Bench or the Surrogate Court, as the case may be, be appointed trustee in the place and stead of Central Guaranty Trust Company with respect to that property, and such appointment has for all purposes of the laws of Alberta the same effect as if made under section 16 of the *Trustee Act*,

and sections 5 and 6 of this Act apply to every document and trust in respect of which an appointment is made under subclause (i) or (ii);

(c) trusts relating to moneys received for guaranteed investment and any real or personal property held in trust with respect to any such guaranteed investment of which Central Guaranty Trust Company is trustee;

(d) any real or personal property granted to or held by or vested in Central Guaranty Trust Company pursuant to or in respect of,

(i) any trust indenture or other indenture to which section

2 would otherwise apply wherein Central Guaranty Trust Company is or may be a trustee and by virtue of which bonds, debentures or other evidences of indebtedness, warrants or rights have been or may be issued,

(ii) any document or trust to which section 2 would otherwise apply pursuant to which Central Guaranty Trust Company acts as trustee for unitholders in respect of any oil or gas royalty trust fund, and

(iii) any document or trust to which section 2 would otherwise apply pursuant to which Central Guaranty Trust Company acts as trustee, manager, advisor, registrar or transfer agent with respect to the Central Guaranty Trustfunds - Canadian Money Market Fund, Central Guaranty Trust Investors Fund (Income and Equity Sections), Central Guaranty Property Fund and Central Guaranty Trust Real Estate Fund;

(e) any agreement or other document of any kind whereby Central Guaranty Trust Company is named or may be named as registrar or transfer agent, except for any appointment of Central Guaranty Trust Company as registrar or transfer agent of a mutual fund (other than the mutual funds described in subclause (d)(iii)).

(2) Notwithstanding subsection (1)(c), this Act applies to trusts relating to moneys received by Central Guaranty Trust Company for guaranteed investment and any real or personal property held in trust by Central Guaranty Trust Company with respect to any registered home ownership savings plan, registered retirement savings plan, retirement income fund, deferred profit sharing plan or income averaging annuity contract, as those terms are defined in the *Income Tax Act* (Canada), or other registered or unregistered deferred income or employee benefit plan.

Substituted
fiduciary

2(1) Notwithstanding section 1(1)(b) but subject to sections 1(1)(a), (c), (d) and (e), and notwithstanding any contrary provision in the *Trustee Act*, effective January 1, 1993 TD Trust Company is substituted in the place and stead of Central Guaranty Trust Company in or in respect of every trust, trust deed, trust agreement, instrument of creation, deed of appointment, settlement, assignment, will, codicil or other testamentary document, and every letters testamentary, letters

probate, letters of administration, judgment, decree, order, direction, pension plan or benefit plan trust, investment management and investment administration accounts, agreements or contracts, or appointment of any court, judge or other constituted authority, and every other document or trust howsoever created, including every incomplete, inchoate or bare trust, and in every conveyance, mortgage, assignment, appointment or other writing, wherein or whereby, or of which Central Guaranty Trust Company is named as executor, administrator, trustee, personal representative, bailee, committee, tutor, assignee, liquidator, receiver, custodian, guardian, curator or agent, or is named to any other office or position whatsoever wherein any property, interest, possibility or right is vested in, administered or managed by, or put in charge of Central Guaranty Trust Company in trust, or in the custody, care or control of Central Guaranty Trust Company, for or for the benefit of any person or purpose, and every such document and trust shall be construed and given effect as if TD Trust Company had been named therein in the place and stead of Central Guaranty Trust Company with effect as of January 1, 1993.

(2) Notwithstanding any contrary provision in the *Trustee Act*, where an instrument specified or described in subsection (1) names Central Guaranty Trust Company to any office or position described in that subsection and the instrument takes effect after the substitution of TD Trust Company for Central Guaranty Trust Company, TD Trust Company shall be deemed to be named therein in the place of Central Guaranty Trust Company.

Real and personal
property held in
trust by Central
Guaranty Trust
Company

3 Subject to section 1, and notwithstanding any contrary provision in the *Trustee Act*, effective January 1, 1993 all real and personal property and every interest therein that is granted to, or held by, or vested in Central Guaranty Trust Company, whether by way of security or otherwise, in trust, or in the custody, care or control of Central Guaranty Trust Company, for or for the benefit of any other person or purpose, pursuant to or in respect of every document and trust to which section 2 applies, and whether in the form in which it was originally acquired by Central Guaranty Trust Company or otherwise, is vested as of January 1, 1993 in TD Trust Company, according to the tenor of and at the time indicated or intended by the document or trust, upon the same trusts, and with the same powers, rights, immunities and privileges, and subject to the same obligations and duties as are thereby provided, granted or imposed.

Registration of Act
not required

4 Subject to section 7, for the purposes of every Act affecting the title to property, both real and personal, the vesting of title in TD Trust Company of every property affected by section 3 is effective without the registration or filing of this Act, or any further or other instrument, document or certificate showing the change of title in any public office whatsoever within the jurisdiction of the Province of Alberta.

Legal proceedings

5(1) No suit, action, appeal, application or other proceeding being carried on and no power or remedy being exercised by Central Guaranty Trust Company in any court of Alberta, or before any tribunal or agency of the Province of Alberta, pursuant to or in respect of a document or trust to which section 2 applies, shall be discontinued or abated on account of this Act, but may be continued in the name of TD Trust Company, which shall have the same rights and shall receive the same costs and awards as if the suit, action, appeal, application or other proceeding had been commenced in the name of TD Trust Company.

(2) A suit, action, appeal, application or other proceeding, or a power, right, remedy or right of distress that might have been brought or exercised by Central Guaranty Trust Company pursuant to or in respect of a document or trust to which section 2 applies, may be brought or exercised by TD Trust Company, which shall have the same rights in respect thereof, as those which Central Guaranty Trust Company would have had if this Act had not been enacted.

Rights of third
parties

6(1) Nothing in this Act affects the rights of any person having a claim against Central Guaranty Trust Company in respect of a document or trust to which section 2 applies, or impairs, modifies or affects the liability of Central Guaranty Trust Company to any such person.

(2) TD Trust Company shall not be liable for any debts, liabilities or obligations arising out of any act or omission on the part of Central Guaranty Trust Company in respect of a document or trust to which section 2 applies that occurred prior to January 1, 1993 and no suit, action, application or other proceeding, or power, right, remedy or right of distress that arose in respect of any such act or omission may be brought or

exercised against TD Trust Company.

recital instruments
relating with
property

7(1) Where a person is under an obligation to make payments in relation to property that is vested in TD Trust Company under section 3, the person may make the payments to Central Guaranty Trust Company until TD Trust Company gives or causes to be given notice in writing to the person that payment shall be made to TD Trust Company, and thereupon the person's obligation is owed to TD Trust Company.

(2) Any instrument dealing with property that is vested in TD Trust Company by section 3, but that remains registered in the name of Central Guaranty Trust Company or any predecessor trust or loan company of Central Guaranty Trust Company in any public office of the Province of Alberta or in respect of which Central Guaranty Trust Company is shown by a document of title as having legal ownership thereof, may be executed by TD Trust Company and may contain a recital referring to the vesting under this Act.

(3) An instrument executed by TD Trust Company containing the recital permitted by subsection (2) may be accepted for registration by any public office within the jurisdiction of the Province of Alberta without further proof of the accuracy of the recital, and every such instrument shall be deemed to be effective in passing title to the property described in the instrument notwithstanding any inaccuracy contained in the recital.

(4) In order to show the vesting in TD Trust Company under section 3 of any interest in personal property that constitutes a security interest within the meaning of the *Personal Property Security Act* and for which Central Guaranty Trust Company is shown as the secured party in any financing statement registered under that Act, it is sufficient for purposes of that Act for a financing change statement to be registered in respect of the vesting as if Central Guaranty Trust Company had assigned its interest to TD Trust Company.

own bound

8 This Act binds the Crown.