

Bill 34
Mr. Hlady

BILL 34

2004

INCOME TRUSTS LIABILITY ACT

(Assented to , 2004)

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

Definition

- 1** In this Act, “Alberta income trust” means a trust
- (a) that is created by a trust instrument governed by the laws of Alberta, whether the trust is created before or after the coming into force of this Act, and
 - (b) that is a reporting issuer as defined in the *Securities Act*.

Limited liability

2(1) Notwithstanding any express or implied indemnity of a trustee by a beneficiary of an Alberta income trust, the beneficiary is not, as a beneficiary, liable for any act, default, obligation or liability of the trustee of the Alberta income trust.

(2) This section does not apply with respect to any act, default, obligation or liability of a trustee of an Alberta income trust that arose before this section came into force.

Governing law

3 Without limiting any other circumstances in which a trust instrument may be governed by the laws of a particular jurisdiction, a trust instrument is governed by the laws of the particular jurisdiction as provided in the trust instrument.

No effect on other trusts

4 This Act does not affect any liability of a beneficiary of a trust to which this Act does not apply.

Amends RSA 2000 cS-4

5(1) The *Securities Act* is amended by this section.

(2) Section 1(aa) is amended by striking out “or” at the end of subclause (iv), adding “or” at the end of subclause (v) and adding the following after subclause (v):

(vi) a person or company that is designated under section 10 or under the regulations as an insider;

(3) Section 3 is repealed and the following is substituted:

Control

3 A person or company is considered to control another person or company if the person or company, directly or indirectly, has the power to direct the management and policies of the other person or company by virtue of

- (a) the ownership or direction of voting securities of the other person or company,
- (b) a written agreement or trust instrument,
- (c) being the general partner or controlling the general partner of the other person or company, or
- (d) being the trustee of the other person or company.

(4) The following is added after section 7:

Deemed insiders of an income trust

7.1(1) In this section,

- (a) “income trust” means an Alberta income trust as defined in the *Income Trusts Liability Act*;
- (b) “operating entity” means a person or company with an underlying business or assets owned in whole or in part by an income trust for the purposes of generating cash flow;
- (c) “manager” means a person or company established or contracted to provide management or administrative services.

(2) The following are deemed to be an insider of an income trust:

- (a) every operating entity of the income trust;
- (b) every manager of the income trust;
- (c) if an operating entity or a manager is not a reporting issuer, every person or company who would be an insider of the operating entity or the manager if the operating entity or the manager were a reporting issuer.

(5) Section 10 is amended

(a) by adding the following after subsection (2):

(2.1) The Commission may, if the Commission considers that it would be in the public interest to do so, make an order designating a person or company as an insider.

(b) in subsection (3) by striking out “or (2)” and substituting “, (2) or (2.1)”.

(6) Section 223(t) is amended by adding the following after subclause (iv):

- (v) designating a person or company as an insider;

Coming into force

6 This Act comes into force on Proclamation.

Explanatory Notes

5 Amends chapter S-4 of the Revised Statutes of Alberta 2000. The addition of section 7.1 and the changes to sections 10 and 223(t) are to designate persons or companies as insiders. Sections 1(aa) and 3 presently read:

1 In this Act,

(aa) “insider” or “insider of a reporting issuer” means

(i) every director or senior officer of a reporting issuer,

(ii) every director or senior officer of an issuer that is itself an insider of a reporting issuer,

(iii) every subsidiary of a reporting issuer,

(iv) any person or company that

(A) beneficially owns, directly or indirectly, voting securities of a reporting issuer,

(B) exercises control or direction over voting securities of a reporting issuer, or

(C) beneficially owns, directly or indirectly, certain voting securities of a reporting issuer and exercises control or direction over certain other voting securities of a reporting issuer,

carrying more than 10% of the voting rights attached to all voting securities of the reporting issuer for the time being outstanding other than voting securities held by the

person or company as underwriter in the course of a distribution, or

- (v) a reporting issuer if it has purchased, redeemed or otherwise acquired any of its securities, for so long as it holds any of its securities, but a reporting issuer is not an insider of itself if the securities that it has purchased, redeemed or otherwise acquired have been cancelled and returned to its authorized but unissued capital;*

3 An issuer is controlled by a person or company if

- (a) voting securities of the issuer carrying more than 50% of the votes that may be cast to elect directors are held, other than for the purpose of giving collateral for a bona fide debt, by or for the benefit of the person or company, and*
- (b) the votes carried by the securities referred to in clause (a) are sufficient, if exercised, to elect a majority of the board of directors of the issuer.*

6 Coming into force.