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c 101 The Loan and Trust Corporations Amendment Act, 1972

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CHAPTER 101

**An Act to amend
The Loan and Trust Corporations Act**

*Assented to June 30th, 1972
Session Prorogued December 15th, 1972*

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

1. Clause *h* of section 1 of *The Loan and Trust Corporations Act*, being chapter 254 of the Revised Statutes of Ontario, 1970, is amended by inserting after "company" in the seventh line "a credit union incorporated under *The Credit Unions Act*". <sup>s. 1 (h),
amended</sup>

2. Subsection 3 of section 2 of the said Act is repealed and the following substituted therefor: <sup>s. 2 (3),
re-enacted</sup>

- (3) Sections 3 to 65, except sections 24, 26, 30 and 46, and sections 72 to 76, and sections 95, 98, 99, 100, 158, 163 and 165 apply only to provincial corporations. ^{Idem}
- (4) Sections 66 to 71 apply only to registered corporations having their head office in Ontario. ^{Idem}
- (5) Sections 127, 128, 138, 156, 157, 166 and 167 and sections 170 to 172 and section 175 apply only to registered corporations. ^{Idem}

3. Clause *a* of subsection 1 of section 57 of the said Act is amended by striking out "statutory" in the second line and inserting in lieu thereof "written". <sup>s. 57 (1) (a),
amended</sup>

4. Sections 58 and 59 of the said Act are repealed and the following substituted therefor: <sup>ss. 58, 59,
re-enacted</sup>

- 58. No transfers or issue of shares of a corporation shall be entered in the books maintained under section 66 until thirty days after notice thereof has been deposited with the Registrar, if, <sup>Report to
the Registrar</sup>

- (a) the transfer or issue relates to 10 per cent or more of the issued shares of the corporation for the time being enjoying voting rights; or
- (b) the directors have reason to believe that the transfer or issue would result in a majority of the issued shares of the corporation for the time being enjoying voting rights being beneficially owned by any one person.

Liability of directors

59. In determining, for the purposes of sections 54 to 58, whether a person is a resident or a non-resident, by whom a corporation is controlled or any other circumstances relevant to the performance of their duties under those sections, the directors of the corporation and any other person acting as proxy for a shareholder of the corporation may rely upon any statement made in any declarations made under section 57 or rely upon their own knowledge of the circumstances; and the directors and any such person are not liable in any action for anything done or admitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge.

s. 65, amended

5. Section 65 of the said Act is amended by adding thereto the following subsections:

Prohibition re purchase of common shares

- (12) A corporation may purchase its own common shares if the purchase is made,
- (a) for the purpose of eliminating fractions of shares; or
 - (b) for the purpose of collecting or compromising indebtedness to the corporation.

Not to redeem if insolvent

- (13) A corporation shall not redeem or purchase its own preference shares if,
- (a) the corporation is insolvent or if the redemption or purchase would render the corporation insolvent; or
 - (b) the effect of the redemption or purchase would reduce the corporation's unimpaired capital and reserve to an amount that would place the corporation in contravention of section 82 or 90.

- (14) The authorized and issued capital of the corporation is decreased when it redeems or purchases its own preference shares by the number and par value of the shares so purchased or redeemed and subsections 1 to 3 and 5 to 12 do not apply thereto. Decrease in capital by redemption

6. Section 74 of the said Act is amended by adding thereto the following subsection: s. 74. amended

- (7a) Where a corporation is a holding corporation and the financial statement to be presented to its shareholders is on a consolidated basis, the auditor in his report to the shareholders of the corporation shall state the additional amount, if any, that in his opinion is necessary to make full provision for, Statement on a consolidated basis

(a) where there is only one subsidiary of the corporation, the corporation's proportion of any loss of its subsidiary since it acquired shares of the subsidiary;

(b) where there is more than one such subsidiary, the corporation's proportion of the aggregate losses of its subsidiaries since it acquired shares of the subsidiaries that is in excess of its proportion of any undistributed profits of its subsidiaries since it acquired shares of the subsidiaries.

7. Section 76 of the said Act is amended by adding thereto the following subsection: s. 76. amended

- (6) This section does not apply to a loan corporation that does not accept money by way of deposit or issue debentures. Exemption

8. Subsection 4 of section 78 of the said Act is repealed and the following substituted therefor: s. 78 (4), re-enacted

- (4) Subsection 1 applies to loan corporations registered on or after the 1st day of January, 1968 and subsection 1 of section 71 of *The Loan and Trust Corporations Act*, being chapter 222 of the Revised Statutes of Ontario, 1960, as re-enacted by subsection 1 of section 5 of *The Loan and Trust Corporations Amendment Act, 1966*, applies to loan corporations registered before the 1st day of January 1968. Application of subsection 1 1966, c. 81

s. 80 (c),
re-enacted

9. Clause *c* of section 80 of the said Act is repealed and the following substituted therefor:

(c) mature on such date.

s. 81 (1),
amended

10. Subsection 1 of section 81 of the said Act is amended by inserting after "Every" in the first line "registered".

s. 87,
amended

11. Section 87 of the said Act is amended by adding thereto the following subsection:

Borrowing
by-law

(3) A provincial trust company shall not borrow money under subsection 2 unless it is authorized to do so by by-law and such by-law does not take effect unless it,

(a) has been passed by the affirmative vote of the holders of two-thirds of the shares for the time being carrying voting rights and present or represented by proxy at a general meeting of the shareholders of the trust company duly called to consider such by-law; or

(b) has been passed by the directors and confirmed at a general meeting of the shareholders of the trust company duly called to consider such by-law by resolution passed by the affirmative vote of the holders of at least two-thirds of the shares for the time being carrying voting rights present or represented by proxy at such meeting.

s. 89a,
enacted

12. The said Act is amended by adding thereto the following section:

Deposit and
investment
by-law

89a. A provincial trust company shall not exercise any of the powers contained in sections 88 and 89 unless it is authorized to do so by by-law and such by-law does not take effect unless it,

(a) has been passed by the affirmative vote of the holders of two-thirds of the shares for the time being carrying voting rights and present or represented by proxy at a general meeting of the shareholders of the trust company duly called to consider such by-law; or

(b) has been passed by the directors and confirmed at a general meeting of the shareholders of the trust company duly called to consider such by-

law by resolution passed by the affirmative vote of the holders of at least two-thirds of the shares for the time being carrying voting rights present or represented by proxy at such meeting.

13. Section 91 of the said Act is amended by inserting after ^{s. 91,} amended "a" in the first line "provincial".

14. Subsection 1 of section 93 of the said Act is amended ^{s. 93 (1),} amended by inserting after "Every" in the first line "registered".

15. Subsection 5 of section 136 of the said Act is amended by ^{s. 136 (5),} amended inserting after "a" in the first line "provincial".

16. Subsection 3 of section 137 of the said Act is repealed ^{s. 137 (3),} re-enacted and the following substituted therefor:

- (3) Upon the application for registration of a corporation, ^{Registry} on terms other than a provincial corporation, the Registrar may recommend to the Minister that the corporation be admitted to registry on terms and conditions and the Minister, if he so approves, may direct that the corporation be admitted to registry on such terms and conditions as he may prescribe, including a deposit of approved securities with him to such amount as he considers necessary from time to time and, so long as such conditions are satisfied and no final judgment against the corporation or order for its winding up or for distribution of its assets is given to the Minister, the corporation is entitled to receive the interest upon the securities forming the deposit.

17. Subsection 2 of section 146 of the said Act is repealed ^{s. 146 (2),} re-enacted and the following substituted therefor:

- (2) Any setting up or exhibiting of a sign or inscription ^{Matters} deemed ^{undertaking} business containing the name of the corporation, or any distribution or publication of any proposal, circular, card, advertisement, printed form or like document in the name of the corporation, or any written or oral solicitation on the corporation's behalf, or the advancing of funds of others in the purchase or lending on the security of mortgages that are assigned or registered in the name of the corporation, shall, both as to the corporation and as to the person acting or purporting to act on its behalf, be deemed undertaking the business of the corporation within the meaning of this section.

s. 150 (1) (l),
re-enacted

18. Clause *l* of subsection 1 of section 150 of the said Act is repealed and the following substituted therefor:

preferred
shares

(l) the preferred shares of a company if,

(i) the company has paid a dividend in each of the five years preceding the date of investment at least equal to the specified annual rate upon all its preferred shares, or

(ii) the common shares of the company are, at the date of investment, authorized as investments by clause *m*.

s. 157 (1),
amended

19. Subsection 1 of section 157 of the said Act is amended by adding thereto the following clause:

(c) make any investment in common shares the effect of which will be that the corporation will hold in the aggregate common shares carried on its books at more than 25 per cent of the book value of the total assets of the corporation if a loan corporation, or more than 25 per cent of the aggregate of the unimpaired capital and reserve of the company and the moneys held by it for guaranteed investment or as deposits if a trust company.

s. 159 (2),
repealed

20. Subsection 2 of section 159 of the said Act is repealed.

s. 163,
amended

21. Section 163 of the said Act is amended by adding thereto the following subsection:

Exception

(8) Notwithstanding the provisions of this section, a corporation is not prohibited from making a *bona fide* mortgage loan on the security of a residence of one of its officers who is not a director, where the loan is authorized by the directors of the corporation.

s. 168 (3),
re-enacted

22.—(1) Subsection 3 of section 168 of the said Act is repealed and the following substituted therefor:

Report of
auditor on
annual
statement

(3) The statement referred to in subsection 1 shall have attached the report of the auditor, which shall be in the form and content required by section 74.

s. 168 (8),
re-enacted

(2) Subsection 8 of the said section 168 is repealed and the following substituted therefor:

Filing of
financial
statements

(8) Every registered corporation shall file with the Registrar a certified copy of any financial statement

furnished to its shareholders within thirty-one days after distribution of the statement to its shareholders.

23. Subsections 1 and 2 of section 178 of the said Act are repealed and the following substituted therefor: s. 178 (1), re-enacted
s. 178 (2), repealed

(1) The Lieutenant Governor in Council may make, Regulations regulations,

(a) requiring the payment of fees for letters patent of incorporation and supplementary letters patent and in respect of any function performed by the Registrar under this Act and prescribing the amounts thereof;

(b) prescribing the terms and conditions under which registered corporations may invest their funds in fully paid shares under sections 152 and 155.

24. Schedules A and B of the said Act are repealed. Scheds. A, B, repealed

25.—(1) This Act, except section 12, comes into force on the day it receives Royal Assent. Commencement

(2) Section 12 comes into force on a day to be named by the Lieutenant Governor by his proclamation. Idem

26. This Act may be cited as *The Loan and Trust Corporations Amendment Act, 1972*. Short title

