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c 187 Investment Contracts Act

Ontario

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CHAPTER 187

The Investment Contracts Act

1. In this Act,

Interpre-
tation.

- (a) "filed" means filed under this Act;
- (b) "investment contract" means a contract, agreement, certificate, instrument or writing containing an undertaking by an issuer to pay the holder thereof, or his assignee, or personal representative, or other person, a stated or determinable maturity value in cash or its equivalent on a fixed or determinable date and containing optional settlement, cash surrender or loan values prior to or after maturity, the consideration for which consists of payments made or to be made to the issuer in instalments or periodically, or of a single sum, according to a plan fixed by the contract, whether or not the holder is or may be entitled to share in the profits or earnings of, or to receive additional credits or sums from, the issuer, but does not include a contract within the meaning of *The Insurance Act*;
- (c) "issuer" means any corporation which offers for sale, sells, makes or enters into investment contracts of its own issue, but does not include an insurer within the meaning of *The Insurance Act*, or a corporation within the meaning of *The Loan and Trust Corporations Act*;
- (d) "qualified assets" means,
- (i) cash,
 - (ii) first mortgages on improved real estate and first mortgages made under *The Dominion Housing Act, 1935* (Canada), *The National Housing Act, 1938* (Canada), or *The National Housing Act, 1944* (Canada),
 - (iii) bonds, debentures, stocks and other securities of the classes authorized under *The Companies Act* for the investment of the funds of joint stock insurance companies incorporated under the law of Ontario or authorized under *The Canadian and British Insurance Companies Act, 1932* (Canada) for the investment of the funds of companies registered thereunder,

Rev. Stat.,
c. 183.Rev. Stat.,
cc. 183, 214.1935, c. 58;
1938, c. 49;
1944-45, c. 46
(Can.).Rev. Stat.,
c. 59.1932, c. 46
(Can.).

- (iv) real property acquired by foreclosure or in satisfaction of a debt and held for a period of less than seven years, and
- (v) such other investments or securities as may be designated by regulation under this Act;
- (e) "prescribed" means prescribed by the regulations;
- (f) "registered" means registered under this Act;
- (g) "regulations" means regulations made under this Act;
- (h) "salesman" means a person employed, appointed or authorized by an issuer to sell investment contracts;
- (i) "Superintendent" means Superintendent of Insurance. 1948, c. 49, s. 1.

Filing form of contract.

2.—(1) No person shall issue for sale or offer for sale or sell an investment contract unless a copy of the form thereof has been filed with the Superintendent.

Forms not to be filed.

(2) The Superintendent shall accept for filing a copy of the form of any investment contract tendered for filing unless the sale of investment contracts in such form would be inequitable or tend to work a fraud upon purchasers thereof or be against the public interest. 1948, c. 49, s. 2.

Who may issue contract.

3.—(1) No person shall issue for sale an investment contract unless such person is registered as an issuer.

Who may sell contract.

(2) No person shall offer for sale or sell an investment contract unless such person is,

- (a) registered as an issuer; or
- (b) recorded by the Superintendent as an executive officer of a registered issuer; or
- (c) registered as a salesman. 1948, c. 49, s. 3.

What corporations may be registered.

4. No corporation shall be registered under this Act as an issuer unless,

- (a) there has been filed with the Superintendent,
 - (i) a certified copy of the Act, letters patent or other instrument of incorporation of such corporation,
 - (ii) a certified list of the names and addresses of the executive officers of such corporation,

- (iii) a certified copy of the balance sheet of such corporation as at the close of its last completed fiscal year and its auditor's report thereon, and
 - (iv) copies of all forms of investment contracts proposed to be issued by such corporation for sale in Ontario;
- (b) at least \$100,000 of its authorized capital stock has been subscribed and paid in, in cash, and is unimpaired;
- (c) arrangements satisfactory to the Superintendent have been made for the deposit with a trust company, chartered bank or other suitable depository or depositories within Canada of qualified assets aggregating in amount, when valued as provided in section 20, not less at any time than the amount for which such corporation, under the terms of its investment contracts, is liable as of such time to pay in cash to the holders of all its investment contracts then outstanding, or aggregating such lesser amount as the Superintendent may deem appropriate in the circumstances; provided that, in the case of a corporation which maintains with a trust company, chartered bank or other suitable depository or depositories outside Ontario but within Canada a deposit or deposits of qualified assets in such an aggregate amount or other deposit satisfactory to the Superintendent, no further deposit shall be required. 1948, c. 49, s. 4; 1950, c. 32, s. 1.

5.—(1) No person shall be registered as a salesman unless there has been filed with the Superintendent a written notice to the Superintendent from a registered issuer that such person has been employed, appointed or authorized to sell investment contracts issued by such issuer. Registration requirements.

(2) Termination of the employment, appointment or authorization of a person employed, appointed or authorized to sell investment contracts issued by an issuer which has filed with the Superintendent a written notice pursuant to subsection 1 shall operate as a suspension of the registration of such person as a salesman. 1948, c. 49, s. 5. Suspension of registration.

6. Every application for registration shall be made to the Superintendent in writing upon the prescribed form and shall be accompanied by the prescribed fee. 1948, c. 49, s. 6. Application for registration.

7. Every applicant for registration shall state in the application an address for service in Ontario and all notices Address for service.

under this Act or the regulations shall be sufficiently served for all purposes if delivered or sent by prepaid mail to the latest address for service so stated. 1948, c. 49, s. 7.

Renewal of registration.

8. Every registration and renewal of registration shall lapse on the 31st day of March but any registered issuer or salesman desiring renewal of registration shall on or before the 21st day of March make application for renewal of registration upon the prescribed form with the prescribed fee. 1948, c. 49, s. 7.

Granting of registration or renewal to,

9. The Superintendent shall grant registration or renewal of registration,

issuer;

(a) to an issuer applying therefor where the applicant is suitable for registration and the sale of investment contracts issued by such issuer would not be inequitable or tend to work a fraud upon purchasers thereof or be against the public interest; and

salesman.

(b) to a salesman applying therefor where the applicant is suitable for registration and the proposed registration is not objectionable. 1948, c. 49, s. 9.

Liability on contracts.

10. Every registered issuer shall, at all times,

(a) maintain reserves for the payment of its outstanding investment contracts that, together with all future payments to be received by the issuer on such investment contracts, or the portions of such future payments still to be applied to reserves, and with accumulations of interest at an assumed rate provided in the contracts, such rate not to exceed a rate approved by the Superintendent, will attain the face or maturity value specified in the contracts when due, or the amount payable in accordance with the terms of the contracts; or

(b) maintain reserves of such lesser amount as the Superintendent may deem appropriate in the circumstances,

provided such reserves shall at no time be less than the amount for which such registered issuer, under the terms of its investment contracts, is liable to pay in cash to the holders of all its investment contracts then outstanding. 1950, c. 32, s. 2, *part*.

Investment of funds.

11. Subject to section 12, a registered issuer may invest its funds only in investments in which a joint stock insurance company may invest its funds under *The Companies Act*, or in

Rev. Stat., c. 59,

investments in which a company registered under *The Canadian and British Insurance Companies Act, 1932* (Canada) may invest its funds. 1950, c. 32, s. 2, *part*. 1932, c. 46 (Can.).

12.—(1) A registered issuer may acquire and hold for its own use and benefit such real property as is necessary for the transaction of its business and upon complying with and subject to *The Mortmain and Charitable Uses Act* may acquire or hold or construct a building larger than is required for the transaction of its business and may lease any part of such building not so required. Power to acquire and hold real property. Rev. Stat., c. 241.

(2) A registered issuer may acquire and hold such real property as is *bona fide* mortgaged to it by way of security, and such real property as is acquired by it by foreclosure or in satisfaction of a debt, and may sell, mortgage, lease or otherwise dispose of such real property, but such issuer shall sell any such last-mentioned real property within seven years after it has been so acquired. 1950, c. 32, s. 2, *part*. Idem.

13.—(1) The Superintendent may suspend or cancel any registration upon any grounds which would justify refusal to grant registration or renewal of registration. 1948, c. 49, s. 10 (1). Suspension or cancellation of registration.

(2) The Superintendent may suspend or cancel the registration of an issuer where it appears to him from the statements and reports filed with him or from an inspection or valuation that the issuer will be unable to provide for the payment of its investment contracts at maturity. 1948, c. 49, s. 10 (2); 1950, c. 32, s. 3. Idem.

14. Notwithstanding any order of the Superintendent, a further application may be made upon new or other material or where it is clear that material circumstances have changed. 1948, c. 49, s. 11. Further application for registration.

15.—(1) An applicant for registration or renewal of registration or any person who deems himself aggrieved by a decision of the Superintendent, may appeal therefrom to the Court of Appeal. Appeal.

(2) The appeal shall be set down for argument at the first sitting of the Court of Appeal which commences after the expiration of 30 days from the decision complained of. When to be set down.

(3) The practice and procedure upon and in relation to the appeal shall be the same as upon an appeal from a judgment of a judge of the Supreme Court, in an action. Procedure.

Certificate.

(4) The Superintendent shall certify to the registrar of the Court of Appeal the decision appealed from, his reasons therefor, and the documents, inspection reports and evidence, if any, and such other information as he had before him in making the decision. 1948, c. 49, s. 12.

Filing statement.

16.—(1) Not later than 30 days after the expiration of each quarterly period ending March 31st, June 30th, September 30th and December 31st, every registered issuer shall file with the Superintendent a statement, certified to by its auditor, showing,

- (a) the amount on the last day of the quarterly period required by section 10 to be maintained as reserves by the issuer on all outstanding investment contracts;
- (b) all qualified assets on deposit on the last day of the quarterly period last ended with the trust company, chartered bank or other depository or depositories within Canada approved by the Superintendent and the value, when valued as provided in section 20, of such qualified assets as at such date; and
- (c) such other information as the Superintendent may require. 1948, c. 49, s. 13 (1); 1950, c. 32, s. 4 (1).

Filing balance sheet.

(2) Not later than 90 days after the expiration of its fiscal year, every registered issuer shall file with the Superintendent a balance sheet and profit and loss statement for such completed fiscal year, certified by two of its directors and reported on by its auditor, and such other financial statements as the Superintendent may require. 1948, c. 49, s. 13 (2).

Market value of securities.

(3) The market value of all securities at the date of the statement shall be noted on the balance sheet. 1950, c. 32, s. 4 (2).

Auditor.

(4) The auditor of an issuer registered under this Act shall be a person or firm acceptable to the Superintendent. 1948, c. 49, s. 13 (3).

Inspection.

17.—(1) The Superintendent may at any time make or cause to be made an inspection of the books, documents and records of any issuer and of any salesman.

Access on inspection.

(2) Upon any such inspection, the Superintendent or his duly authorized representative shall be entitled to free access to all books of account, cash, securities, documents, bank accounts, vouchers, correspondence and records of every description of the issuer or salesman and no person shall with-

hold or destroy, conceal or refuse to furnish any information or thing reasonably required by the Superintendent for the purposes of the inspection. 1948, c. 49, s. 14.

18. The Superintendent may at any time require any issuer or salesman to submit for review any circulars, pamphlets, brochures, specimen contracts, application forms or other documents used by such issuer or salesman in connection with the sale of investment contracts. 1948, c. 49, s. 15.

19.—(1) Every registered issuer shall notify the Superintendent in writing of, Advertising and forms.

- (a) any change in its address for service;
- (b) any change in its executive officers; and
- (c) the commencement and termination of the employment, appointment or authorization of each of its salesmen.

(2) Every salesman registered under this Act shall notify the Superintendent in writing of, Notice of changes by issuer;

- (a) any change in his address for service; and
- (b) every commencement and termination of his employment, appointment or authorization by a registered issuer. 1948, c. 49, s. 16.

20. In any statement or balance sheet to be filed with the Superintendent under this Act, an issuer may value its assets as follows: Valuation of assets.

- (a) cash—in the amount thereof in lawful money of Canada;
- (b) first mortgages—in the amount of the balance of the principal sum secured thereby together with all unpaid interest accrued thereon;
- (c) bonds, debentures and other evidences of indebtedness having a fixed term and rate of interest which are not in default as to principal or interest and which in the opinion of the Superintendent are amply secured,
 - (i) if purchased at par, at the par value,
 - (ii) if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield meantime the effective rate of interest at which the purchase was made,

provided that the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase;

- (d) bonds, debentures and other evidences of indebtedness having a fixed term and rate of interest which are in default as to principal or interest or which in the opinion of the Superintendent are not amply secured—at the market value at the date of the statement;
- (e) stocks—at the book value not in excess of the cost to the issuer and in the aggregate not in excess of the aggregate market value at the date of the statement; and
- (f) other securities—at the book value but not in excess of the aggregate market value at the date of the statement,

provided that, where any assets consist of securities whose market values are unduly depressed and in respect of which, companies registered under *The Canadian and British Insurance Companies Act, 1932* (Canada) have been authorized to use values in excess of such market values, such assets may, with the approval of the Superintendent, be valued as authorized under that Act; and provided further that if it appears to the Superintendent that the amount secured by mortgage on any parcel of real estate together with interest due and accrued thereon, is greater than the value of such parcel, or that such parcel is not sufficient for the loan and interest, he may procure an appraisal thereof, and if from the appraised value it appears that such parcel of real estate is not adequate security for the loan and interest, such loan or mortgage shall be valued at an amount not to exceed the appraised value. 1950, c. 32, s. 5.

1932, c. 46
(Can.).

Extension
of time
prescribed.

21. The Superintendent may extend the time for the filing of any statement, balance sheet or other document, or the making of any application for renewal of registration under this Act. 1948, c. 49, s. 18.

Exempted
sales.

22. Nothing in this Act shall prevent the sale of an investment contract by or on behalf of the holder thereof where such sale is not made in the course of continued and successive transactions of like character or by a person whose usual business is the issuance or sale of investment contracts. 1948, c. 49, s. 19.

Penalties.

23.—(1) Every person who violates subsection 1 of section 2 or subsection 1 of section 3 or subsection 2 of sec-

tion 3 in respect of clause *a* or *b* thereof shall be guilty of an offence and on summary conviction shall be liable to a penalty of not more than \$5,000.

(2) Every person who violates subsection 2 of section 3 in *Idem.* respect of clause *c* shall be guilty of an offence and on summary conviction shall be liable to a penalty of not more than \$1,000.

(3) Every person who violates any other provision of this *Idem.* Act shall be guilty of an offence and on summary conviction shall be liable to a penalty of not more than \$500. 1948, c. 49, ss. 20, 22.

24. No proceedings to recover the penalties provided in section 23 shall be instituted except, Recovery of penalties.

- (a) with the written consent of the Attorney-General; and
- (b) within two years after the offence is committed. 1948, c. 49, s. 21.

25. The Lieutenant-Governor in Council may make Regulations. regulations,

- (a) prescribing the fees payable upon applications for registration and renewal of registration;
- (b) prescribing the forms for use under this Act;
- (c) designating investments or securities as qualified assets within the meaning of this Act;
- (d) respecting any other matter necessary or advisable to carry out effectively the intent and purpose of this Act. 1948, c. 49, s. 23.

26. Notwithstanding anything in *The Securities Act*, Rev. Stat., c. 351 not to apply.

- (a) an investment contract shall be deemed not to be a security; and
- (b) an issuer shall be deemed not to be an investment company,

within the meaning of that Act. 1948, c. 49, s. 24.
