

1973

c 128 The Loan and Trust Corporations Amendment Act, 1973

Ontario

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CHAPTER 128

An Act to amend The Loan and Trust Corporations Act

*Assented to November 29th, 1973
Session Prorogued March 5th, 1974*

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, as amended by the Statutes of Ontario, 1972, chapter 101, section 1, is further amended by inserting after "Act" in the amendment of 1972 "a company referred to in clause *f* of section 152 or clause *g* of section 155 and that is controlled by a loan corporation or a trust corporation in accordance with the regulations"^{s. 1 (h), amended}.
2. Subsection 3 of section 2 of the said Act, as re-enacted by the Statutes of Ontario, 1972, chapter 101, section 2, is amended by striking out "65, except sections 24, 26" and inserting in lieu thereof "65*b*, except sections" in the first line.^{s. 2 (3), amended}
3. Subsection 1 of section 8 of the said Act is amended by striking out "twenty-five" in the fourth line and inserting in lieu thereof "five".^{s. 8 (1), amended}
- 4.—(1) Subsection 3 of section 9 of the said Act is amended by striking out "twenty-five" in the second and third lines and inserting in lieu thereof "five".^{s. 9 (3), amended}
 (2) The said section 9 is amended by adding thereto the following subsection:^{s. 9, amended}
 (4) Shares without par value shall not be allotted or issued except for such consideration as the by-laws provide.^{Consideration for no par value shares}
5. The said Act is amended by adding thereto the following sections:^{ss. 17a-17h, enacted}
 17*a*.—(1) A loan corporation incorporated and registered under this Act may apply by petition to the Lieutenant Governor in Council for an order designating it as a mortgage company.^{Mortgage investment company}

1970-71, c. 63
(Can.)

investment company for the purpose of carrying on business as a mortgage investment corporation within the meaning of the *Income Tax Act* (Canada) and such order may be made subject to such terms and conditions as may be prescribed by the Lieutenant Governor in Council.

Not to take
deposits

(2) Notwithstanding section 78, a loan corporation that is designated as a mortgage investment company shall not borrow money on deposit.

Business
confined

(3) A loan corporation that is designated as a mortgage investment company shall carry on its undertaking in Ontario and the other provinces and territories of Canada only.

By-laws must
conform

(4) A loan corporation that is designated as a mortgage investment company shall not commence business as a mortgage investment company until its by-laws have been amended to conform to the terms and conditions prescribed, the provisions of sections 17*b* to 17*f*, and the regulations and such by-laws have been filed with and approved by the Registrar.

Amendment
of
registration

(5) Upon the making of the order under subsection 1 and the amendment and approval of the by-laws under subsection 3, the Registrar shall amend the registration of the loan corporation kept under clause *a* of subsection 1 of section 120 and subsection 1 of section 135.

Investments

17*b*.—(1) Notwithstanding sections 150 and 151 and subject to subsection 2, a loan corporation designated as a mortgage investment company shall have and maintain at least 50 per cent of the book value of its assets in one or more of the following forms,

1973, c. 49.

(*a*) investments in mortgages or hypothecs on residential property as defined in the *Residential Mortgage Financing Act* (Canada) or loans on the security of such property; and

(*b*) cash on hand or on deposit in a bank or other depository approved by the Registrar.

Idem

(2) The total of,

(*a*) the book value of the investments of a mortgage investment company in shares of the capital stock of companies at least 85 per cent of whose assets are in the form of residential property as defined in the *Residential Mortgage Financing Act* (Canada); and

- (b) the book value of the investments of a mortgage investment company in real estate or leaseholds before deducting the amount of any charges or liens thereon but excluding real estate or leaseholds acquired by the company by foreclosure or otherwise after default made on a mortgage, hypothec or agreement of sale in respect thereof,

shall not exceed 25 per cent of the book value of its total assets.

17c.—(1) Notwithstanding sections 150 and 151, a loan corporation designated as a mortgage investment company may invest its funds in real estate or leaseholds in Canada for the production of income, either alone or jointly with any corporation incorporated in Canada or any person administering a trust governed by a registered pension plan or deferred profit sharing plan as those plans are defined in the *Income Tax Act* (Canada), if,

Investment
in real estate
or leaseholds

1970-71, c. 63
(Can.)

- (a) a lease of the real estate or leasehold is made to, or guaranteed by,
- (i) the government, or an agency of the government, of the province in which the real estate or leasehold is situated, a municipality in that province or an agency of such municipality, or
- (ii) a corporation, the preferred shares or common shares of which are, at the date of investment, authorized as investments by clause *l* or *m* of subsection 1 of section 150; and
- (b) the lease provides for a net revenue sufficient to yield a reasonable interest return during the period of the lease and to repay at least 85 per cent of the amount invested by the company in the real estate or leasehold within the period of the lease, but not exceeding thirty years from the date of investment,

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

(2) A loan corporation designated as a mortgage investment company may invest its funds in real estate or leaseholds in Canada for the production of income, either alone or jointly with any corporation incorporated in Canada or

Idem

any person administering a trust governed by a registered pension plan or deferred profit sharing plan as those plans are defined in the *Income Tax Act* (Canada), if the real estate or leasehold has produced, in each of the three years immediately preceding the date of investment, net revenue in an amount that, if continued in future years, would be sufficient to yield a reasonable interest return on the amount invested in the real estate or leasehold and to repay at least 85 per cent of that amount within the remaining economic lifetime of the improvements to the real estate or leasehold but not exceeding forty years from the date of investment, and the company may hold, maintain, improve, repair, lease, sell or otherwise deal with or dispose of the real estate or leasehold.

1970 71, c. 63
(Can.)

Application
of s. 150 (1)
(n, o)

(3) Clauses *n* and *o* of subsection 1 of section 150 do not apply in respect of a corporation to which this section applies.

Other
investments
"basket
clause"

17*d*.—(1) A loan corporation designated as a mortgage investment company may, subject to this section, make investments and loans not authorized by sections 17*b*, 17*c* and 150, including investments in real estate or leaseholds.

Production
of income

(2) Investments in real estate or leaseholds in Canada made under subsection 1 shall be made only for the production of income, and may be made either alone or jointly with any corporation incorporated in Canada or any person administering a trust governed by a registered pension plan or deferred profit sharing plan as those plans are defined in the *Income Tax Act* (Canada); and the company may hold, maintain, improve, repair, lease, sell or otherwise deal with or dispose of such real estate or leaseholds.

Saving

(3) This section shall be deemed not to,

(*a*) enlarge the authority conferred by section 150 to invest in mortgages or hypothecs and to lend on the security of real estate or leaseholds; or

(*b*) affect the operation of section 157 with reference to the maximum proportion of common shares and total shares of any corporation that may be purchased.

Limit

(4) Section 151 does not apply in respect of a company to which subsection 1 applies but the total value of the investments made under subsection 1 and held by the company, excluding those that are or at any time since acquisi-

tion have been authorized as investments apart from that subsection, shall not exceed 7 per cent of the book value of the total assets of the company.

17e.—(1) Notwithstanding section 83, the aggregate of the sums of money borrowed by a loan corporation designated as a mortgage investment company and outstanding shall not at any time exceed five times the excess of the book value of the assets of the company over its liabilities, but if at any particular time the book value of the assets of the company in the form of,

Borrowing
powers
limited

(a) investments in mortgages or hypothecs on residential property as defined in the *Residential Mortgage Financing Act* (Canada) or loans on the security of such property; and

1973, c. 49,
(Can.)

(b) cash on hand or on deposit in a bank or other depository approved by the Superintendent of Insurance,

are less than two-thirds of the book value of the assets of the company, the aggregate of the sums of money borrowed by the company and outstanding shall not at that time exceed three times the excess of the book value of the assets of the company over its liabilities.

(2) For the purpose of subsection 1, the principal amount of any charges or liens on the real estate or leaseholds remaining unpaid shall be included in the computation of the sums of money borrowed by the corporation.

Computing
sums
borrowed

17f.—(1) A loan corporation designated as a mortgage investment company shall so manage its affairs that the aggregate of,

Liquidity
level

(a) all repayments of principal on mortgages or hypothecs held by it and reasonably expected to be received within the year;

(b) amounts maturing on its other investments within the year;

(c) such amount of credit from chartered banks in Canada as is acquired in accordance with conditions imposed by the Superintendent of Insurance; and

(d) cash on hand or on deposit in a bank or other depository approved by the Superintendent of Insurance,

shall at all times be equal to or in excess of the aggregate of the sum of all mortgage commitments made by it and falling due within the year and the amount of all debt instruments issued by it and maturing within the year.

Meaning of
"within the
year"

(2) In this section, the expression "within the year" means the twelve-month period following the month in which the calculation is made.

Shares are
eligible
investment
R.S.O. 1970,
c. 224

17g. Notwithstanding any provision of *The Insurance Act* or this Act, the shares, debentures and other evidences of indebtedness of a mortgage investment company are an eligible investment for the funds of insurance companies, trust companies and other loan companies governed respectively by those Acts, subject to the provisions of the Acts governing those companies respecting,

- (a) the proportion of the funds of those companies that may be invested at any one time in the common shares of corporations; and
- (b) the proportion of the shares of any corporation that may be purchased by those companies.

Regulations

17h. The Lieutenant Governor in Council may make regulations with respect to loan corporations designated as mortgage investment companies,

- (a) prescribing limitations on their dealings with companies providing investment advice or management services;
- (b) prescribing limitations and restrictions with respect to their purchase or acquisition of assets from or sale of assets to their directors, officers or shareholders;
- (c) providing for their redesignation as loan corporations.

s. 24.
re-enacted

6. Section 24 of the said Act is repealed and the following substituted therefor:

Interpre-
tation

24. In this section and in sections 24b to 24g,

- (a) "Commission" means the Ontario Securities Commission;
- (b) "company" means a body corporate, including a corporation to which this Act applies;
- (c) "form of proxy" means a written or printed form that, upon completion and execution by or on behalf of a shareholder, becomes a proxy;

(d) "information circular" means the circular referred to in subsection 1 of section 24c;

(e) "proxy" means a completed and executed form of proxy by means of which a shareholder has appointed a person as his nominee to attend and act for him and on his behalf at a meeting of shareholders;

(f) "solicit" and "solicitation" include,

(i) any request for a proxy whether or not accompanied by or included in a form of proxy,

(ii) any request to execute or not to execute a form of proxy or to revoke a proxy,

(iii) the sending or delivery of a form of proxy or other communication to a shareholder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy, and

(iv) the sending or delivery of a form of proxy to a shareholder pursuant to section 24b,

but do not include,

(v) the sending or delivery of a form of proxy to a shareholder in response to an unsolicited request made by him or on his behalf, or

(vi) the performance by any person of ministerial acts or professional services on behalf of a person soliciting a proxy.

24a.—(1) Every shareholder of a corporation, including a ^{Proxies} shareholder that is a company, entitled to vote at a meeting of shareholders may by means of a proxy appoint a person, who need not be a shareholder, as his nominee to attend and act at the meeting in the manner, to the extent and with the power conferred by the proxy.

(2) A proxy shall be executed by the shareholder or his ^{Execution and termination} attorney authorized in writing or, if the shareholder is a company, under its corporate seal or by an officer or attorney thereof duly authorized, and ceases to be valid one year from its date.

(3) In addition to the requirements, where applicable, of ^{Contents} section 24e, a proxy shall contain the date thereof and the

appointment and name of the nominee and may contain a revocation of a former proxy and restrictions, limitations or instructions as to the manner in which the shares in respect of which the proxy is given are to be voted or that may be necessary to comply with the laws of any jurisdiction in which the shares of the provincial corporation are listed on a stock exchange or a restriction or limitation as to the number of shares in respect of which the proxy is given.

Revocation

(4) In addition to revocation in any other manner permitted by law, a proxy may be revoked by instrument in writing executed by the shareholder or by his attorney authorized in writing or, if the shareholder is a company, under its corporate seal or by an officer or attorney thereof duly authorized, and deposited either at the head office of the corporation at any time up to and including the last business day preceding the day of the meeting, or any adjournment thereof, at which the proxy is to be used or with the chairman of such meeting on the day of the meeting, or adjournment thereof, and upon either of such deposits the proxy is revoked.

**Time limit
for deposit**

(5) The directors may by resolution fix a time not exceeding forty-eight hours, excluding Saturdays and holidays, preceding any meeting or adjourned meeting of shareholders before which time proxies to be used at that meeting must be deposited with the provincial corporation or an agent thereof, and any period of time so fixed shall be specified in the notice calling the meeting or in the information circular relating thereto.

**Mandatory
solicitation
of proxies**

24*b*.—(1) Subject to section 24*d*, the management of a corporation shall, concurrently with or prior to giving notice of a meeting of shareholders of the corporation, send by prepaid mail to each shareholder who is entitled to vote at such meeting at his last address as shown on the books of the corporation a form of proxy for use at such meeting that complies with section 24*e*.

Offence

(2) If the management of a provincial corporation fails to comply with subsection 1, the corporation is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000, and every director or officer of the corporation who authorized, permitted or acquiesced in such failure is also guilty of an offence and on summary conviction is liable to a like fine.

**Information
circular**

24*c*.—(1) Subject to subsection 2 and section 24*d*, no person shall solicit proxies unless,

- (a) in the case of a solicitation by or on behalf of the management of a corporation, an information circular, either as an appendix to or as a separate document accompanying the notice of the meeting, is sent by prepaid mail to each shareholder of the corporation whose proxy is solicited at his last address as shown on the books of the corporation; or
- (b) in the case of any other solicitation, the person making the solicitation, concurrently with or prior thereto, delivers or sends an information circular to each shareholder of the corporation whose proxy is solicited.

(2) Subsection 1 does not apply to,

Where
subs. 1
does not
apply

- (a) any solicitation, otherwise than by or on behalf of the management of a corporation, where the total number of shareholders whose proxies are solicited is not more than fifteen, two or more persons who are the joint registered owners of one or more shares being counted as one shareholder;
- (b) any solicitation by a person made under section 80 of *The Securities Act*; and
- (c) any solicitation by a person in respect of shares of which he is the beneficial owner.

R.S.O. 1970,
c. 426

(3) A person who fails to comply with subsection 1 is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000, and, where such person is a corporation, every director or officer of such corporation who authorized, permitted or acquiesced in such failure is also guilty of an offence and on summary conviction is liable to a like fine.

Offence

(4) A person who effects a solicitation that is subject to this section by means of a form of proxy, information circular or other communication that contains an untrue statement of a material fact or omits to state a material fact necessary in order to make any statement contained therein not misleading in the light of the circumstances in which it was made is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000, and, where such person is a company, every director or officer of such company who authorized, permitted or acquiesced in such offence is also guilty of an offence and on summary conviction is liable to a like fine.

Idem

(5) No person is guilty of an offence under subsection 4 in respect of any untrue statement of a material fact or omission

Saving

to state a material fact in a form of proxy or information circular, if the untruth of such statement or the fact of such omission was not known to the person who effected the solicitation and in the exercise of reasonable diligence could not have been known to such person.

Where
s. 24b and
s. 24c(1)
do not apply

24d.—(1) Section 24b and subsection 1 of section 24c do not apply to a corporation that has fewer than fifteen shareholders, two or more persons who are the joint registered owners of one or more shares being counted as one shareholder.

Exemption
orders

(2) Upon the application of any interested person, the Commission may, if satisfied that in the circumstances of the particular case there is adequate justification for so doing, make an order, on such terms and conditions as seem to the Commission to be just and expedient, exempting any person from the requirements, in whole or in part, of section 24b or of subsection 1 of section 24c.

Hearing of
Commission
R.S.O. 1970,
c. 426

(3) Section 5 of *The Securities Act* applies, so far as possible, to hearings of the Commission under this section.

Appeal
from
Commission

(4) Any person who feels aggrieved by a decision of the Commission under this section may appeal the decision to the Supreme Court, and subsections 2 to 6 of section 29 of *The Securities Act* apply to the appeal.

Special form
of proxy

24e. Where section 24b or 24c is applicable to a solicitation of proxies,

(a) the form of proxy sent to a shareholder by a person soliciting proxies,

(i) shall indicate in bold-face type whether or not the proxy is solicited by or on behalf of the management of the corporation, and

(ii) shall provide a specifically designated blank space for dating the form of proxy;

(b) the form of proxy shall provide means whereby the person whose proxy is solicited is afforded an opportunity to specify that the shares registered in his name shall be voted by the nominee in favour of or against, in accordance with such person's choice, each matter or group of related matters identified therein or in the information circular as intended to be acted upon, other than the election of directors and the appointment of auditors, pro-

vided that a proxy may confer discretionary authority with respect to matters as to which a choice is not so specified by such means if the form of proxy or the information circular states in bold-face type how it is intended to vote the shares represented by the proxy in each such case;

- (c) a proxy may confer discretionary authority with respect to,
 - (i) amendments or variations to matters identified in the notice of meeting, or
 - (ii) other matters which may properly come before the meeting,

provided that,

- (iii) the person by whom or on whose behalf the solicitation is made is not aware a reasonable time prior to the time the solicitation is made that any such amendments, variations or other matters are to be presented for action at the meeting, and
 - (iv) a specific statement is made in the information circular or in the form of proxy that the proxy is conferring such discretionary authority;
- (d) no proxy shall confer authority,
 - (i) to vote for the election of any person as a director of the corporation unless a *bona fide* proposed nominee for such election is named in the information circular, or
 - (ii) to vote at any meeting other than the meeting specified in the notice of meeting or any adjournment thereof;
- (e) the information circular or form of proxy shall state that the shares represented by the proxy will be voted and that, where the person whose proxy is solicited specifies a choice with respect to any matter to be acted upon under clause *b*, the shares shall, subject to section 24*f*, be voted in accordance with the specifications so made;
- (f) the information circular or form of proxy shall indicate in bold-face type that the shareholder

has the right to appoint a person to attend and act for him and on his behalf at the meeting other than the person, if any, designated in the form of proxy, and shall contain instructions as to the manner in which the shareholder may exercise such right; and

- (g) if the form of proxy contains a designation of a named person as nominee, means shall be provided whereby the shareholder may designate in a form of proxy some other person as his nominee for the purpose of subsection 1 of section 24a.

Where vote
by ballot not
required

24f. If the aggregate number of shares represented at a meeting by proxies required to be voted for or against a particular matter or group of matters carries, to the knowledge of the chairman of the meeting, less than 5 per cent of the voting rights attached to the shares entitled to vote and represented at the meeting, the chairman of the meeting has the right not to conduct a vote by way of ballot on any such matter or group of matters unless a poll is demanded at the meeting.

Regulations
re contents
of informa-
tion circular

24g. The Lieutenant Governor in Council may make such regulations respecting the form and content of an information circular as he considers necessary or appropriate in the public interest.

s. 26.
re-enacted

7. Section 26 of the said Act is repealed and the following substituted therefor:

Interpre-
tation

26.—(1) In this section and in sections 26a to 26f,

R.S.O. 1970,
c. 89

- (a) "affiliate" means an affiliated company within the meaning of subsection 3 of section 107 of *The Corporations Act*;
- (b) "associate", where used to indicate a relationship with any person, means,
- (i) any company of which such person beneficially owns, directly or indirectly, equity shares carrying more than 10 per cent of the voting rights attached to all equity shares of the company for the time being outstanding,
- (ii) any trust or estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar capacity, or

- (iii) any relative or spouse of such person or any relative of such spouse who, in any such case, has the same home as such person;
- (c) "capital security" means any share of any class of shares of a company or any bond, debenture, note or other obligation of a company, whether secured or unsecured;
- (d) "Commission" means the Ontario Securities Commission;
- (e) "company" means a body corporate, including a corporation to which this Act applies;
- (f) "equity share" means any share of any class of shares of a company carrying voting rights under all circumstances and any share of any class of shares carrying voting rights by reason of the occurrence of any contingency that has occurred and is continuing;
- (g) "insider" or "insider of a company" means,
 - (i) any director or senior officer of a company that has fifteen or more shareholders, two or more persons who are the joint registered owners of one or more shares being counted as one shareholder,
 - (ii) any person who beneficially owns, directly or indirectly, equity shares of such a company carrying more than 10 per cent of the voting rights attached to all equity shares of the company for the time being outstanding, provided that in computing the percentage of voting rights attached to equity shares owned by an underwriter there shall be excluded any equity shares that have been acquired by him as underwriter in the course of distribution to the public of such shares, but such exclusion ceases to have effect on completion or cessation of the distribution to the public by him, or
 - (iii) any person who exercises control or direction over the equity shares of such a company carrying more than 10 per cent of the voting rights attached to all equity shares of the company for the time being outstanding;
- (h) "senior officer" means,

- (i) the chairman or any vice-chairman of the board of directors, the president, any vice-president, the secretary, the treasurer or the general manager of a company or any other individual who performs functions for the company similar to those normally performed by an individual occupying any such office, and
- (ii) each of the five highest paid employees of a company, including any individual referred to in subclause i;

R.S.O. 1970,
c. 426

- (i) "underwriter" has the same meaning as in *The Securities Act*.

Idem

(2) For the purposes of this section and sections 26a to 26f,

- (a) every director or senior officer of a company that is itself an insider of another company shall be deemed to be an insider of such other company;
- (b) an individual shall be deemed to own beneficially capital securities beneficially owned by a company controlled by him or by an affiliate of such company;
- (c) a company shall be deemed to own beneficially capital securities beneficially owned by its affiliates; and
- (d) the acquisition or disposition by an insider of a put, call or other transferable option with respect to a capital security shall be deemed a change in the beneficial ownership of the capital security to which such transferable option relates.

Report

26a.—(1) A person who becomes an insider of a corporation shall, within ten days after the end of the month in which he becomes an insider, file with the Commission a report, as of the day on which he became an insider, of his direct or indirect beneficial ownership of or control or direction over capital securities of the corporation.

Idem

(2) If a person who is an insider of a corporation, but has no direct or indirect beneficial ownership of or control or direction over capital securities of the corporation, acquires direct or indirect beneficial ownership of or control or direction over any such securities, he shall, within ten days after the end of the month in which he acquired such direct or indirect beneficial ownership or such control

or direction, file with the Commission a report, as of the date of such acquisition, of his direct or indirect beneficial ownership of or control or direction over capital securities of the corporation.

(3) A person who has filed or is required to file a report under this section or any predecessor thereof and whose direct or indirect beneficial ownership of or control or direction over capital securities of the corporation changes from that shown or required to be shown in such report or in the last report filed by him under this subsection shall, within ten days following the end of the month in which such change takes place, provided that he was an insider of the corporation at any time during such month, file with the Commission a report of his direct or indirect beneficial ownership of or his control or direction over capital securities of the corporation at the end of such month and the change or changes therein that occurred during the month, and giving such details of each transaction as may be required by the regulations made under section 26*f*. ^{Report of subsequent changes}

26*b*.—(1) All reports filed with the Commission under section 26*a* or any predecessor thereof shall be open to public inspection at the offices of the Commission during normal business hours of the Commission, and any person may make extracts from such reports. ^{Reports may be inspected}

(2) The Commission shall summarize in or as part of a monthly periodical for distribution to the public on payment of a reasonable fee therefor the information contained in the reports so filed. ^{Publication of information contained in reports}

26*c*.—(1) Every person who is required to file a report under section 26*a* or any predecessor thereof and who fails so to do is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000, and, where such person is a company, every director or officer of such company who authorized, permitted or acquiesced in such failure is also guilty of an offence and on summary conviction is liable to a like fine. ^{Offence}

(2) Every person who files a report under section 26*a* or any predecessor thereof that is false or misleading by reason of the misstatement or omission of a material fact is guilty of an offence and on summary conviction is liable to a fine of not more than \$1,000, and, where such person is a company, every director or officer of such company who authorized, permitted or acquiesced in the filing of such false or misleading report is also guilty of an offence and on summary conviction is liable to a like fine. ^{Idem}

Savings

(3) No person is guilty of an offence under subsection 2 if he did not know and in the exercise of reasonable diligence could not have known that the report was false or misleading by reason of the misstatement or omission of a material fact.

Consent to prosecute

(4) No prosecution shall be brought under subsection 1 or 2 without the consent of the Commission.

Liability of insiders

26*d*.—(1) Every insider of a corporation or associate or affiliate of such insider, who, in connection with a transaction relating to the capital securities of the corporation, makes use of any specific confidential information for his own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of such securities, is liable to compensate any person for any direct loss suffered by such person as a result of such transaction, unless such information was known or ought reasonably to have been known to such person at the time of such transaction, and is also accountable to the corporation for any direct benefit or advantage received or receivable by such insider, associate or affiliate, as the case may be, as a result of such transaction.

Limitation period

(2) An action to enforce any right created by subsection 1 may be commenced only within two years after the date of completion of the transaction that gave rise to the cause of action.

Order to commence action

26*e*.—(1) Upon application by any person who was at the time of a transaction referred to in subsection 1 of section 26*d* or is at the time of the application an owner of capital securities of the corporation, a judge of the High Court designated by the Chief Justice of the High Court may, if satisfied that,

(a) such person has reasonable grounds for believing that the corporation has a cause of action under section 26*d*; and

(b) either,

(i) the corporation has refused or failed to commence an action under section 26*d* within sixty days after receipt of a written request from such person so to do, or

(ii) the corporation has failed to prosecute diligently an action commenced by it under section 26*d*,

make an order, upon such terms as to security for costs and otherwise as to the judge seems fit, requiring the Commission to commence or continue an action in the name of and on behalf of the corporation to enforce the liability created by section 26*d*.

(2) The corporation and the Commission shall be given notice of any application under subsection 1 and shall have the right to appear and be heard thereon. Notice to corporation and O.S.C.

(3) Every order made under subsection 1 shall provide that the corporation shall co-operate fully with the Commission in the institution and prosecution of such action and shall make available to the Commission all books, records, documents and other material or information known to the corporation or reasonably ascertainable by the corporation relevant to such action. Order to require corporation to co-operate

(4) An appeal lies to the Court of Appeal from an order made under subsection 1. Appeal

26*f*. The Lieutenant Governor in Council may make regulations, Regulations

(a) prescribing the form and content of the reports required to be filed under section 26*a*;

(b) respecting any other matter necessary or advisable to carry out effectively the intent and purpose of sections 26 to 26*e*.

8. Subsection 2 of section 35 of the said Act, as amended by the Statutes of Ontario, 1971, chapter 98, section 4, is repealed and the following substituted therefor: s. 35 (2), re-enacted

(2) No person is qualified to be a director unless he is of the full age of eighteen years and he is a shareholder holding, in his own right, shares of the corporation in respect of which, either, Qualifications of directors

(a) at least \$1,000 has been paid in; or

(b) at the time of purchase had a market value of at least \$2,500,

and he is not in arrears in respect of any call thereon.

9. Subsections 1, 2 and 3 of section 65 of the said Act are repealed and the following substituted therefor: s. 65 (1-3), re-enacted

Increase or
decrease of
capital

(1) The directors of a corporation may by by-law provide for the increase or decrease of its capital and, where the corporation has been registered under this Act for a continuous period of five years, for the increase of its capital by authorizing no par value shares.

Contents of
by-laws

(2) The by-laws shall state the number, class and par value of shares with par value and for shares without par value the stated amount as consideration for which such shares might be issued, by which the capital is so increased or decreased.

Conversion

(3) The directors may by by-law provide upon the terms therein stated for the conversion of partly paid-up shares into paid-up shares, for subdividing shares, altering the par value of shares, and subject to section 65a for the conversion of its shares.

ss. 65a, 65b,
enacted

10. The said Act is further amended by adding thereto the following sections:

Conversion of
par shares to
par shares

65a.—(1) The by-laws of a corporation may provide for the conversion of shares with par value into other shares with par value provided that the aggregate par value of the shares being converted is equal to the aggregate par value of the shares into which they are converted.

Par shares to
no par shares

(2) Where, in accordance with the by-laws, shares with par value are converted into shares without par value, the issued capital of the corporation attributable to the shares resulting from the conversion shall be equal to the aggregate par value of the shares converted.

No par shares
to par shares

(3) Where the by-laws provide for the conversion of shares without par value into shares with par value, no such shares shall be converted unless that part of the issued capital attributable to the shares being converted is equal to the aggregate par value of the shares resulting from the conversion.

Issued capital;
par value
shares how
expressed

65b.—(1) Where all the shares of a corporation are with par value, its issued capital shall be expressed in Canadian currency, and is an amount equal to the total of the products of the number of issued shares of each class multiplied by the par value thereof less such decreases in the issued capital as from time to time have been effected by the corporation in accordance with this Act.

No par value
shares how
expressed

(2) Where the shares of a corporation are without par value or where part of the shares of a corporation are

with par value and part are without par value, its issued capital shall be expressed in Canadian currency, and in an amount equal to the total of the products of the number of issued shares of each class with par value multiplied by the par value thereof, together with the amount of the consideration for which the shares without par value from time to time outstanding were issued and together with such amounts as from time to time by by-law of the corporation may be transferred thereto and less such decreases in the issued capital as from time to time have been effected by the corporation in accordance with this Act.

11. The said Act is further amended by adding thereto the following section: s. 66a,
enacted

66a.—(1) Any person, upon payment of a reasonable charge therefor and upon filing with the corporation or its agent the affidavit referred to in subsection 2, may require a corporation, or its transfer agent, to furnish within ten days from the filing of the affidavit a list setting out the names alphabetically arranged of all persons who are shareholders of the corporation, the number of shares owned by each such person and the address of each such person as shown on the records of the corporation made up to a date not more than ten days before the date of filing the affidavit. Where list of
shareholders
to be
furnished

(2) The affidavit referred to in subsection 1 shall be made by the applicant and shall be in the following form: Form of
affidavit

FORM OF AFFIDAVIT

Province of Ontario
County of

In the Matter of
(Insert name of corporation)

I, of the of
in the of
make oath and say:

(Where the applicant is a body corporate, indicate office and authority of deponent).

1. I hereby apply for a list of the shareholders of the above-named corporation.
2. I require the list of shareholders only for purposes connected with the above-named corporation.
3. The list of shareholders and the information contained therein will be used only for purposes connected with the above-named corporation.

Sworn, etc.

Idem, where
applicant
a body
corporate

(3) Where the applicant is a body corporate, the affidavit shall be made by the president or other officer authorized by resolution of the board of directors of the body corporate.

Use
of list

(4) No person shall use a list of all or any of the shareholders of a corporation obtained under this section,

(a) for the purpose of delivering or sending to all or any of the shareholders advertising or other printed matter relating to securities other than the securities of the corporation; or

(b) for any purpose not connected with the corporation.

Furnishing
list

(5) Every corporation or transfer agent shall furnish a list in accordance with subsection 1 when so required.

Purposes
connected
with
corporation
defined

(6) Purposes connected with the corporation include any effort to influence the voting of shareholders at any meeting thereof, any offer to acquire shares in the corporation or any effort to effect an amalgamation or reorganization.

s. 106 (1),
re-enacted

12. Subsection 1 of section 106 of the said Act is repealed and the following substituted therefor:

Power to
unite with
other cor-
porations and
to purchase
or sell assets

(1) Any registered loan corporation may unite, merge, amalgamate and consolidate its stock, property, business and franchises with those of any loan corporation or, subject to subsection 3 of section 116, with those of any trust company in Canada, or may purchase the assets of any other loan corporation in Canada, or may sell its assets to any registered corporation, and for the purpose of carrying out such purchase or sale the purchasing corporation shall assume the liabilities of the vendor corporation, and may enter into such bond or agreement of indemnity with the corporation or the individual shareholders thereof, or both, as may be necessary, and the corporations may enter into the contracts and agreements necessary to such union, merger, amalgamation, consolidation, sale or purchase.

s. 107 (3),
amended

13. Subsection 3 of section 107 of the said Act is amended by inserting after "par value" in the sixth line "if any".

s. 116 (2, 3),
re-enacted

14. Subsections 2 and 3 of section 116 of the said Act are repealed and the following substituted therefor:

Power of
trust
companies to
unite with
other cor-
porations and
to purchase
or sell assets

(2) Any registered trust company may unite, merge, amalgamate and consolidate its stock, property, business and franchises with those of any loan corporation or trust

company in Canada, or may purchase the assets of any corporation in Canada or may sell its assets to any registered trust company, and for the purpose of carrying out such purchase or sale the purchasing corporation shall assume the liabilities of the vendor corporation, and may enter into such bond or agreement of indemnity with the vendor corporation or the individual shareholders thereof, or both, as may be necessary, and the corporations may enter into the agreements necessary to such union, merger, amalgamation, consolidation, sale or purchase, and subsection 2 of section 106 and sections 107 to 114, apply, *mutatis mutandis*, thereto.

(3) In any case of a union, merger, amalgamation or consolidation of a trust company with a loan corporation or a purchase of assets of a loan corporation by a trust company, the new, continuing or purchasing corporation, as the case may be, shall be a trust company, and it shall forthwith earmark and set aside in respect of any debentures and deposits of the loan corporation, securities, or cash and securities, equal to the full aggregate amount of such debentures and deposits, and for the purpose of this subsection, "cash" includes moneys on deposit and "securities" includes loans made upon securities.

Where trust
company
purchases
assets of loan
corporation

15. Subsection 6 of section 137 of the said Act is repealed.

s. 137 (6),
repealed

16. Clause *d* of subsection 3 of section 150 of the said Act is repealed and the following substituted therefor:

s. 150 (3) (d),
re-enacted

(d) real estate or leaseholds in Canada or in any country in which the corporation is carrying on business, notwithstanding that the loan exceeds the amount that the corporation is otherwise authorized to lend, if the excess is guaranteed or insured by, or through an agency of, the government of the country in which the real estate or leasehold is situate or of a province or state of that country or is insured by a policy of mortgage insurance issued by an insurance company licensed or registered under the *Canadian and British Insurance Companies Act* (Canada), the *Foreign Insurance Companies Act* (Canada), *The Insurance Act*, or similar legislation of any province or territory of Canada; and

R.S.C. 1970,
cc. 1-15, 1-16

R.S.O. 1970,
c. 224

s. 152,
amended

- 17.** Section 152 of the said Act is amended by striking out "or" at the end of clause *d*, by adding "or" at the end of clause *e* and by adding thereto the following clause:

(*f*) any company incorporated to provide financing by mortgage or otherwise on real property in the course of construction,

.

s. 155,
amended

- 18.** Section 155 of the said Act is amended by striking out "or" at the end of clause *e*, by adding "or" at the end of clause *f*, and by adding thereto the following clause:

(*g*) any company incorporated to provide financing by mortgage or otherwise on real property in the course of construction,

.

s. 162,
amended

- 19.** Section 162 of the said Act is amended by striking out "paid up" in the fourth line.

s. 163 (3) (*e*),
amended

- 20.—(1)** Clause *e* of subsection 3 of section 163 of the said Act is amended by striking out "manager" in the first line and inserting in lieu thereof "general manager".

s. 163 (6) (*b*),
amended

- (2) Clause *b* of subsection 6 of the said section 163 is amended by striking out "150, 151, 153 and 154" in the second and third lines and inserting in lieu thereof "106, 115, 116, 117, 150, 151, 152, 153, 154 and 155".

s. 177 (1),
amended

- 21.** Subsection 1 of section 177 of the said Act is amended by striking out "not less than \$20 and not more than \$200" in the fourth line and inserting in lieu thereof "not more than \$2,000" and by striking out "\$1,000" in the eighth line and inserting in lieu thereof "\$25,000".

s. 178 (1),
amended

- 22.** Subsection 1 of section 178 of the said Act, as re-enacted by the Statutes of Ontario, 1972, chapter 101, section 23, is amended by adding thereto the following clauses:

(*c*) respecting the records, papers and documents to be retained by corporations and the length of time they shall be so retained;

(*d*) requiring the disclosure to borrowers of terms and conditions of loans, mortgages and interest rates in lending transactions and prescribing the form thereof.

23.—(1) This Act, except section 5, comes into force on the day ^{Commence-}
it receives Royal Assent._{ment}

(2) Section 5 comes into force on a day to be named by ^{Idem}
the Lieutenant Governor by his proclamation.

24. This Act may be cited as *The Loan and Trust Corporations* ^{Short title}
Amendment Act, 1973.

