c 88 The Loan and Trust Corporations Amendment Act, 1974
CHAPTER 88

An Act to amend
The Loan and Trust Corporations Act

Assented to December 2nd, 1974

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

1. (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 and 1973, chapter 128, section 1, is further amended by inserting after "purpose" in the third line "of accepting deposits or issuing debentures, notes and like obligations and".

(2) The said section 1 is amended by adding thereto the following clause:

"oa) "subordinated note" means an instrument evidencing an indebtedness of a corporation that by its terms provides that the indebtedness evidenced by it shall, in the event of the insolvency or winding-up of the corporation, rank equally with the indebtedness evidenced by other subordinated notes of the corporation but be subordinate in right of payment to all other indebtedness of the corporation.

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

2a. This Act does not apply to,

(a) an incorporated company that is authorized, constituted or operated for the purpose of lending money on the security of real estate or investing money in mortgages, charges or hypothecs upon real estate that does not accept deposits, and borrows only by way of.
(i) loans from chartered banks in the usual course of business, or

(ii) by the issue of debentures, notes or like obligations of an amount not less than $100,000 each to any one person on his account, whereby the company is not obligated, or by demand of the holder cannot be obligated, to repay the money secured by such a debenture, note or like obligation within five years from the date of the issue of the said debenture, note or like obligation;

(b) an incorporated company whose objects do not provide for the lending of money on the security of real estate or leaseholds or the investing of its funds in mortgages or hypothecs on real estate or leaseholds and that acquires the bonds, debentures, debenture stock or other securities of a company that are collaterally secured wholly or in part by a mortgage or hypothec upon real estate or leaseholds.

3. Subsection 5 of section 3 of the said Act is amended by striking out "twenty-five" in the fourth line and inserting in lieu thereof "five".

4. Subsection 1 of section 17e of the said Act, as enacted by the Statutes of Ontario, 1973, chapter 128, section 5, is amended by striking out "83" in the first line and inserting in lieu thereof "82".

5. Section 17g of the said Act, as enacted by the Statutes of Ontario, 1973, chapter 128, section 5, is repealed and the following substituted therefor:

17g. Notwithstanding subsection 1 of section 383 of The Insurance Act and sections 150 and 153 of this Act, the shares, debentures and other evidence of indebtedness of a loan corporation designated as a mortgage investment company under this Act or under the Loan Companies Act (Canada) are an eligible investment for the funds of insurance companies, trust companies and other loan corporations.

6. Section 24f of the said Act, as enacted by the Statutes of Ontario, 1973, chapter 128, section 6, is repealed and the following substituted therefor:
24f. The chairman at a meeting has the right not to conduct a vote by way of ballot on any matter or group of matters in connection with which the form of proxy has provided a means whereby the person whose proxy is solicited may specify how such person wishes the shares registered in his name to be voted unless,

(a) a poll is demanded by any shareholder present at the meeting in person or represented thereat by proxy; or

(b) proxies requiring that the shares represented thereby be voted against what would otherwise be the decision of the meeting in relation to such matter or group of matters total more than 5 per cent of all the voting rights attaching to all the shares entitled to be voted and be represented at the meeting.

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

40a. In addition to the general powers of delegation authorized by section 40, the shareholders of a corporation may, at a general meeting called for the purpose, by resolution of two-thirds of the shareholders present in person or by proxy, authorize the directors to delegate, with or without the power of subdelegation, to the president of the corporation the exercise of any or all powers or authorities whether discretionary or otherwise, that may arise through the performance of the corporation of its responsibilities under any will, trust, deed, contract or instrument and the exercise of any such power by the president shall in all instances constitute a performance by the corporation of its responsibilities under any will, trust, deed, contract or instrument.

8. Section 59 of the said Act, as re-enacted by the Statutes of Ontario, 1972, chapter 101, section 4, is amended by striking out "admitted" in the twelfth line and inserting in lieu thereof "omitted".

9. Subsection 7a of section 74 of the said Act, as enacted by the Statutes of Ontario, 1972, chapter 101, section 6, is amended by inserting after "is" in the third line "not".

10.-(1) Subsection 1 of section 78 of the said Act is amended by striking out "the borrowing powers conferred by this Act" in the first and second lines and inserting in lieu thereof "its borrowing powers".
(2) Subsection 2 of the said section 78 is amended by adding thereto the following clause:

(a) issue subordinated notes to evidence any such borrowing referred to in clause a subject to regulations respecting the issuance of subordinated notes.

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

80a. — (1) A subordinated note,

(a) shall be issued only on application to the head office of the corporation;

(b) shall have a denomination of $50,000 or more, or such other amount as may be prescribed by the Lieutenant Governor in Council by regulation;

(c) shall be clearly designated on its face and in its terms as a subordinated note;

(d) shall have a fixed term to maturity of seven years or more, but with the approval of the Registrar may be for a lesser term or include a provision making it subject to earlier redemption at the option of the corporation; and

(e) shall be evidenced by a certificate, and the form and contents of such certificate are subject to the prior approval of the Registrar.

(2) The corporation, or any person acting on its behalf, shall not, in any offering circular, advertisement, correspondence or literature relating to a subordinated note issued or to be issued by the corporation refer to such note otherwise than as a subordinated note.

12. Sections 82 and 83 of the said Act are repealed and the following substituted therefor:

82. — (1) The total amount borrowed by a registered loan corporation, by way of the issue of debentures, bonds or other securities, including subordinated notes, and by way of deposits shall not at any time, except as authorized by subsection 5, exceed an amount equal to four times the excess of its assets over its liabilities, including subordinated notes, but the Lieutenant Governor in Council may, on the report of the Registrar, and on such terms and conditions as the Lieutenant Governor in Council may prescribe,
(a) increase the total amount that may be borrowed by a corporation, other than by subordinated notes, to an amount equal to such greater multiplier in excess of four times as the corporation may petition and is supported by a by-law under section 78, which by-law shall not increase the limit beyond twenty times the excess of its assets over its liabilities, excluding subordinated notes, unless the financial condition of the loan corporation complies with the standards established by the regulations; and

(b) prescribe the portion of the total amount that may be borrowed by such corporation by way of deposits.

(2) The Lieutenant Governor in Council may make regulations prescribing the financial standards of loan corporations for the purpose of subsection 1.

(3) Where the Lieutenant Governor in Council has approved a by-law under subsection 1, the corporation shall not have outstanding subordinated notes issued by the corporation in an amount greater than the excess of the corporation’s assets over its liabilities, including subordinated notes.

(4) Subject to subsection 3, where the Lieutenant Governor in Council has approved a by-law that increases the limit of the total amount that may be borrowed, beyond twenty times the excess of the corporation’s assets over its liabilities, as provided for in subsection 1, the corporation shall maintain subordinated notes that have more than one year to run to maturity in an amount being not less than a percentage of the amount by which the total amount borrowed exceeds twenty times the excess of the assets over the liabilities, as determined under subsection 1, such percentage to be fixed by the Registrar.

(5) The aggregate of the amounts of money borrowed by a corporation may, if approved by a by-law in accordance with section 78, at any time exceed the limit otherwise imposed by this section by an amount not greater than the amount by which the aggregate of,

(a) the cash owned by the corporation and held on hand or on deposit in a chartered bank or other depository approved by the Registrar; and

(b) the market value of the unencumbered debentures, bonds, stocks or other securities of or guaranteed
by the Government of Canada or of a province of Canada and maturing within three years, owned by the corporation,

exceeds 20 per cent of the amount of deposits and of obligations of the corporation payable in less than 100 days.

(6) Where a loan corporation passes a by-law under section 78 that enables the corporation to borrow moneys in excess of twenty times the excess of its assets over its liabilities or that authorizes the issue of subordinated notes, the corporation shall file with the Registrar a return in the form and at such intervals as is required by the Registrar relating to outstanding subordinated notes and to the financial condition of the corporation and compliance thereof with the standards prescribed by the regulations.

(7) A loan corporation that issues subordinated notes shall at all times maintain unencumbered investments in addition to those investments required to be held under section 81 that,

(a) in the aggregate equal the principal amount of the outstanding subordinated notes;

(b) are in securities authorized under clauses e to k of subsection 1 of section 150; and

(c) that mature within six months of the date that the subordinated notes mature.

(8) Subsections 1 to 7 do not apply to registered loan corporations incorporated and licensed under the Loan Companies Act (Canada).

(9) Each loan corporation registered in Ontario and incorporated and licensed under the Loan Companies Act (Canada) shall file with the Registrar copies of all applications filed under the Loan Companies Act (Canada) for any increase in the amount that it may borrow, and shall also file with the Registrar a copy of any approval of such application within seven days of filing or receipt, as the case may be.

13.-(1) Subsection 1 of section 87 of the said Act is repealed and the following substituted therefor:

(1) A provincial trust company does not have power to borrow money by taking deposits or by issuing debentures but may, subject to the regulations, borrow money by the issue of subordinated notes.
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(2) Subsection 3 of the said section 87, as enacted by the Statutes of Ontario, 1972, chapter 101, section 11, is amended by striking out “subsection” in the second line and inserting in lieu thereof “subsections 1 and”.

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

87a.—(1) A subordinated note,

(a) shall be issued only on application to the head office of the company;

(b) shall have a denomination of $50,000 or more or such other amount as may be prescribed by the Lieutenant Governor in Council by regulation;

(c) shall be clearly designated on its face and in its terms as a subordinated note;

(d) shall have a fixed term to maturity of seven years or more, but with the approval of the Registrar may be for a lesser term or include a provision making it subject to earlier redemption at the option of the company; and

(e) shall be evidenced by a certificate, and the form and contents of such certificate are subject to the prior approval of the Registrar.

(2) The trust company, or any person acting on its behalf, shall not, in any offering circular, advertisement, correspondence or literature relating to a subordinated note issued or to be issued by the company refer to such note otherwise than as a subordinated note.

15. Section 90 of the said Act is repealed and the following substituted therefor:

90.—(1) The total of the moneys received by a registered trust company as deposits under section 88 and for investment under section 89 or borrowed under section 87 shall not at any time, except as authorized by subsection 5, exceed an amount equal to twelve and one-half times the excess of its assets over its liabilities, including subordinated notes, but the Lieutenant Governor in Council may, on the report of the Registrar and on such terms and conditions as the Lieutenant Governor in Council may prescribe,
(a) increase the total amount that may be so received or borrowed other than by subordinated notes by a company to an amount equal to such greater multiplier in excess of twelve and one-half times as the company may petition and is approved by a by-law under section 87, which by-law shall not increase the limit beyond twenty times the excess of its assets over its liabilities, excluding subordinated notes, unless the financial condition of the trust company complies with the standards established by the regulations; and

(b) prescribe the portion of the total amount that may be so received or borrowed by such company that may be borrowed by way of deposits.

(2) The Lieutenant Governor in Council may make regulations prescribing the financial standards of trust companies for the purposes of subsection 1.

(3) Where the Lieutenant Governor in Council has approved a by-law under subsection 1, the company shall not have outstanding subordinated notes issued by the company in an amount greater than the excess of the company's assets over its liabilities, including subordinated notes.

(4) Subject to subsection 3, where the Lieutenant Governor in Council has approved a by-law that increases the limit of the total amount that may be borrowed, beyond twenty times the excess of the company's assets over its liabilities, as provided for in subsection 1, the company shall maintain subordinated notes that have more than one year to run to maturity in an amount being not less than a percentage of the amount by which the total amount borrowed exceeds twenty times the excess of the assets over the liabilities, as determined under subsection 1, such percentage to be fixed by the Registrar.

(5) The aggregate of the amounts of money so received and borrowed by a trust company may, if approved by a by-law in accordance with section 87, at any time exceed the limit otherwise imposed by this section by an amount not greater than the amount by which the aggregate of,

(a) the cash held by the company in its own right and for guaranteed investment and held on hand or on deposit in a chartered bank or other depository approved by the Registrar; and
(b) the market value of the unencumbered debentures, bonds, stocks or other securities of or guaranteed by the Government of Canada or of a province of Canada and maturing within three years held by the company in its own right and received for guaranteed investment,

exceeds 20 per cent of the amount of deposits and of funds received for guaranteed investment coming due in less than 100 days.

(6) Where a trust company passes a by-law under section 87 that enables the company to receive and borrow moneys in excess of twenty times the excess of its assets over its liabilities or that authorizes the issue of subordinated notes, the trust company shall file with the Registrar a return in such form and at such intervals as is required by the Registrar relating to outstanding subordinated notes and to the financial condition of the company and compliance thereof with the standards prescribed by the regulations.

(7) A trust company that issues subordinated notes shall at all times maintain unencumbered investments in addition to those investments required to be held under section 93 that,

(a) in the aggregate equal the principal amount of the outstanding subordinated notes;

(b) are in securities authorized under clauses e to k of subsection 1 of section 150; and

(c) mature within six months of the date that the subordinated notes mature.

(8) Subsections 1 to 7 do not apply to companies incorporated under the provisions of the Trust Companies Act (Canada).

(9) Each trust company registered in Ontario and incorporated under the Trust Companies Act (Canada) shall file with the Registrar copies of all applications and supporting documents filed under the Trust Companies Act (Canada) respecting applications for any increase in the amount it may borrow or receive as deposits or for guaranteed investment, and shall also file with the Registrar a copy of any approval of such application within seven days of filing or receipt, as the case may be.

Paragraph 3 of subsection 1 of section 137 of the said Act is repealed and the following substituted therefor:
3. Corporations duly constituted as joint stock corporations under the laws of any other province of Canada or of Canada that issue permanent shares having capital paid in and unimpaired of at least $1,000,000, together with such surplus as the Minister in the circumstances may require, and who undertake to comply with and be bound by the provisions of sections 54 to 59 to the same extent as if they were a provincial corporation.

17. Subsection 1 of section 166 of the said Act is repealed.

18. This Act comes into force on the day it receives Royal Assent.

19. This Act may be cited as The Loan and Trust Corporations Amendment Act, 1974.