1970

c 84 The Loan and Trust Corporations Amendment Act, 1970 (No. 1)

Ontario
CHAPTER 84

An Act to amend
The Loan and Trust Corporations Act

Assented to November 13th, 1970
Session Prorogued November 13th, 1970

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

1. Section 52 of The Loan and Trust Corporations Act is R.S.O. 1960, c. 222, s. 52, amended by striking out "section" in the first line and inserting in lieu thereof "sections 52d and", so that the section shall read as follows:

52. Subject to sections 52d and 53, no by-law shall be passed that in any way restricts the right of a holder of paid up shares to transfer them, but nothing in this section prevents the regulation of the mode of their transfer.

2. The Loan and Trust Corporations Act is amended by R.S.O. 1960, c. 222, amended adding thereto the following sections:

52a.—(1) In this section and sections 52b to 52f,

(a) "company" includes an association, partnership or other organization;

(b) "non-resident" means,

(i) an individual who is not ordinarily resident in Canada,

(ii) a company incorporated, formed or otherwise organized elsewhere than in Canada,

(iii) a company that is controlled directly or indirectly by non-residents as defined in subclause i or ii,

(iv)
(iv) a trust established by a non-resident as defined in subclause i, ii or iii, or a trust in which non-residents as so defined have more than 50 per cent of the beneficial interest, or

(v) a company that is controlled directly or indirectly by a trust mentioned in subclause iv;

(c) "resident" means an individual, company or trust that is not a non-resident.

(2) For the purposes of sections 52b to 52f, a shareholder shall be deemed to be associated with another shareholder if,

(a) one shareholder is a company of which the other shareholder is an officer or director;

(b) one shareholder is a partnership of which the other shareholder is a partner;

(c) one shareholder is a company that is controlled directly or indirectly by the other shareholder;

(d) both shareholders are companies and one shareholder is controlled directly or indirectly by the same individual or company that controls directly or indirectly the other shareholder;

(e) both shareholders are members of a voting trust where the trust relates to shares of a corporation; or

(f) both shareholders are associated within the meaning of clauses a to e with the same shareholder.

(3) For the purposes of sections 52b to 52f, where a share of the capital stock of a corporation is held jointly and one or more of the joint holders thereof is a non-resident, the share shall be deemed to be held by a non-resident.

52b.—(1) The directors of a corporation shall refuse to allow in the books referred to in section 59 the entry of a transfer of any share of the capital stock of the corporation to a non-resident,
(a) if, when the total number of shares of the capital stock of the corporation held by non-residents exceeds 25 per cent of the total number of issued and outstanding shares of such stock, the entry of the transfer would increase the percentage of such shares held by non-residents;

(b) if, when the total number of shares of the capital stock of the corporation held by non-residents is 25 per cent or less of the total number of issued and outstanding shares of such stock, the entry of the transfer would cause the total number of such shares of stock held by non-residents to exceed 25 per cent of the total number of issued and outstanding shares of such stock;

(c) if, when the total number of shares of the capital stock of the corporation held by the non-resident and by other shareholders associated with him, if any, exceeds 10 per cent of the total number of issued and outstanding shares of such stock, the entry of the transfer would increase the percentage of such shares held by the non-resident and by other shareholders associated with him, if any; or

(d) if, when the total number of shares of the capital stock of the corporation held by the non-resident and by other shareholders associated with him, if any, is 10 per cent or less of the total number of issued and outstanding shares of such stock, the entry of the transfer would cause the number of such shares of stock held by the non-resident and by other shareholders associated with him, if any, to exceed 10 per cent of the issued and outstanding shares of such stock.

(2) Notwithstanding subsection 1, the directors of a Loan and Trust Corporation may allow in the books referred to in section 59 the entry of a transfer of any share of the capital stock of the corporation to a non-resident when it is shown to the directors on evidence satisfactory to them that the share was, immediately prior to the coming into force of this section, held in the right of or for the use or benefit of the non-resident.
(3) The directors of a corporation shall not allot, or allow the allotment of, any shares of the capital stock of the corporation to any non-resident in circumstances where, if the allotment to such non-resident were a transfer of those shares, the entry thereof in the books would be required, under subsection 1, to be refused by the directors.

(4) Default in complying with this section does not affect the validity of a transfer or allotment of a share of the capital stock of the corporation that has been entered in the books referred to in section 59, but every director or officer who knowingly authorizes or permits such default is guilty of an offence and on summary conviction is liable to a fine of not more than $5,000 or to imprisonment for a term of not more than one year, or to both such fine and imprisonment.

52c.—(1) A non-resident shall not exercise the voting rights attached to shares of a corporation unless he is entered in the books of the corporation as a shareholder in respect of the shares.

(2) Where a resident holds shares of the capital stock of a corporation in the right of, or for the use or benefit of, a non-resident and in respect of which the non-resident is not entered in the books of the corporation as the holder, the resident shall not, either in person or by proxy or by a voting trust, exercise the voting rights pertaining to those shares.

(3) Where a person or company who is a resident becomes a non-resident while entered on the books of a corporation as a shareholder and the number of shares of such person or company recorded in such books when added to those entered therein as owned by other non-residents exceed the limit set out in section 52b, the person or company shall not exercise, directly, by proxy or by a voting trust, any voting rights in respect of its shares that exceed the limit set out in section 52b.

(4) Notwithstanding subsections 1, 2 and 3, where any shares of the capital stock of a corporation are held in the name of or for the use or benefit of a non-resident, other than shares in respect of which the non-resident was entered in the books of the corporation before this Act comes into force or is entered on the books under subsection 2 of section 52b, no person
person shall, either as proxy or by a voting trust or in person, exercise the voting rights pertaining to such shares held by the non-resident or in his right or for his use or benefit, if the total of such shares so held, together with such shares held in the name or right of or for the use or benefit of,

(a) any shareholders associated with the non-resident; or

(b) any persons who would, under subsection 2 of section 52a, be deemed to be shareholders associated with the non-resident were such persons and the non-resident themselves shareholders,

exceed in number 10 per cent of the issued and outstanding shares of such stock.

(5) Every person who knowingly contravenes this section is guilty of an offence and on summary conviction is liable to a fine of not more than $5,000 or to imprisonment for a term of not more than one year, or to both such fine and imprisonment.

(6) If any provision of this section is contravened at a general meeting of the corporation, no proceeding, matter or thing at that meeting is void by reason only of such contravention, but any such proceeding, matter or thing is, at any time within one year from the day of commencement of the general meeting at which the contravention occurred, voidable at the option of the shareholders by a resolution passed at a special general meeting of the corporation.

52d.—(1) The directors of a corporation may make such by-laws as they consider necessary to carry out the intent of sections 52a to 52c and in particular, but without restricting the generality of the foregoing, the directors may make by-laws,

(a) requiring any person holding any share of the capital stock of the corporation to submit statutory declarations,

(i) with respect to the ownership of such share,

(ii) with respect to the place in which the shareholder and any person for whose use or benefit the share is held are ordinarily resident, (iii)
(iii) as to whether the shareholder is associated with any other shareholder, and

(iv) with respect to such other matters as the directors consider relevant for the purposes of sections 52a to 52c;

(b) prescribing the times at which and the manner in which any declarations required under clause a are to be submitted; and

(c) requiring any person desiring to have a transfer of a share to him entered in the books referred to in section 59 to submit such a declaration as may be required under this section in the case of a shareholder.

(2) Where by or under any by-law made under subsection 1 any declaration is required to be submitted by any shareholder or person in respect of the transfer of any share, the directors may refuse to enter such transfer in the books referred to in section 59 until the required declaration has been completed and submitted.

(3) Any person who makes any willfully false or deceptive statement in a declaration required by a by-law made under subsection 1 is guilty of an offence and on summary conviction is liable to a fine of not more than $5,000 or to imprisonment for a term of not more than one year, or to both such fine and imprisonment.

52e. No transfers of shares of a corporation shall be entered in the books maintained under section 59 until thirty days after notice thereof has been deposited with the Registrar, if,

(a) the transfer 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 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.

52f. In determining, for the purposes of sections 52a to 52e, whether a person is a resident or non-resident, by whom a corporation is controlled or any other circumstances
circumstances relevant to the performance of their duties under those sections, the directors of the corporation may rely upon any statement made in any declarations made under section 52d or rely upon their own knowledge of the circumstances; and the directors are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge.

3. This Act shall be deemed to have come into force on the 17th day of June, 1970.

4. This Act may be cited as The Loan and Trust Corporations Amendment Act, 1970.