

Res.  
HG4359  
S95

# **Summary of and Guide to the Proposed Revision and Consolidation of the Trust Companies Act and the Loan Companies Act**

---

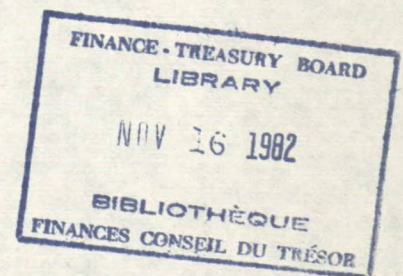
July 1982



HG4359  
595

# **Summary of and Guide to the Proposed Revision and Consolidation of the Trust Companies Act and the Loan Companies Act**

July 1982



**Department of Insurance  
Canada**

**Département des assurances  
Canada**

## **Foreword**

This document summarizes the principal provisions of a proposed act that would revise and consolidate the Trust Companies Act and the Loan Companies Act. Copies of the detailed proposals in draft legislative form (hereinafter referred to as a "draft bill") may be obtained from the Department of Insurance. The proposed title is the Canada Savings Banks and Trust Companies Act.

The draft legislative scheme outlined in this document and set forth in the draft bill proposes to revise and consolidate the Trust Companies Act and the Loan Companies Act to establish a uniform pattern of regulation of savings deposit activities for these companies that would be substantially the same as that applying to banks.

The proposals would revise and update corporate powers to give needed flexibility to serve the public while retaining adequate safeguards. Matters dealing with the formation of companies and their internal government would be revised to recognize modern thinking on corporate law; regulatory powers would be strengthened where necessary.

The following is a summary of the principal provisions in the draft bill, with an indication of the changes from existing requirement where necessary.

## **Part I—Interpretation and Application**

This part consists largely of definitions of terms for convenience and precision in drafting. So far as possible, the definitions follow the Bank Act. Of particular interest are definitions of affiliated corporations and the concept of control of a corporation. An affiliate of a company is defined as any corporation that controls a company, that is a subsidiary of a company or that is under common control with the company. One company is said to control another if it is in a position to elect a majority of the directors.

The statute contemplated by these proposals would apply to all existing companies that are now subject to the Trust Companies Act or the Loan Companies Act and these two Acts would be repealed. New companies other than banks wishing to be active in the savings deposit business at the federal level would have to seek incorporation under this Act.

## **Part II—Incorporation and Changes in Charter**

Incorporation would be by letters patent as at present, subject to the discretion of the Minister of Finance. Thus, incorporation would not be a matter of right as in the case of companies formed under the Canada Business Corporations Act. Letters patent would be issued by the Minister of Finance. This is a change from the present system whereby the letters patent are issued by the Minister of Consumer and Corporate Affairs, subject to the prior consent of the Minister of Finance.

The Bank Act pattern would be followed in empowering the Superintendent of Insurance to hold a public hearing if any objection is raised to an application for incorporation.

Letters patent would be in standard form but might be varied to meet special circumstances. The authority now existing whereby letters patent can contain limits on share ownership and voting rights would be continued.

A provision is included that would enable the transfer of existing federal corporations from the Canada Business Corporations Act to this new legislation and vice versa, but subject to Ministerial approval. Transfer out would be permitted only if a company is not carrying on a savings deposit business or fiduciary activities.

A company under this Act would have the capacity of a natural person but the provisions dealing with business and powers would impose limitations on the activities of a company.

### **Part III—Organization and Commencement of Business**

The provisions in this part follow the standard pattern set by the Bank Act and the Canada Business Corporations Act.

A provision that is unique to the draft bill is that a certificate of registry must be issued by the Minister before a company may commence business. The certificate would be issued on an annual basis and might contain such conditions and limitations as the Minister deems necessary to safeguard the company's financial position. The Minister might withdraw or fail to renew a certificate in specified circumstances. Such action would require a company to cease to take on new liabilities. This generally follows existing procedures for trust companies and loan companies.

Initial capital required for a new company would be substantially increased—from \$1 million to \$5 million in the case of a company with trust powers and to \$3 million in the case of a company without trust powers. A company doing only fiduciary business and no savings deposit business might be formed for less.

## **Part IV—Corporate Structure**

### **Division A—Directors and Officers**

This division generally follows the pattern established by the Bank Act and the Canada Business Corporations Act.

Some significant changes from existing requirements are prohibitions against a director of a company acting as a director of a competing deposit-taking institution and disqualifying a government employee from being a director. A director would not have to be a shareholder.

Up to four paid officers might be directors provided that they do not constitute a majority. For large boards, this number might be exceeded but not to over 15 % of the total number of directors.

→ The existing maximum limits on the number of directors would be removed.

A trust company would be permitted to delegate its duties as a trustee to the chief executive officer of the company and he in turn might sub-delegate.

### **Division B—Shareholders**

This division sets out the rules for shareholder meetings, the rights of shareholders to make proposals, the voting rights and the preparation of shareholders' lists. It follows closely the pattern of the Bank Act and the Canada Business Corporations Act and does not require any special comment.

### **Division C—Security Certificates, Register & Transfer**

The main part of this division deals with the formal rules for registration and transfer of shares and subordinated debentures issued by a company and follows the Canada Business Corporations Act and the Bank Act. It would be new for trust companies and loan companies but would be in accordance with modern corporate requirements and would not make any significant difference in actual practice.

A special provision has to do with transfers of major blocks of shares of a company. At least 30 days' notice to the Superintendent would be required prior to

the transfer of control of a company or transfer of any block of securities over 10 %. This follows the current requirement. In addition, the Minister might, within 30 days, give notice prohibiting the transfer. This would permit regulatory control, not only of formation of new companies, but of any later change in registered ownership.

Present provisions limiting ownership by non-residents of shares of a company would be expanded. The proposal would prevent beneficial ownership as well as registered ownership and would apply separately to each class of shares. The existing limit would not be changed, i.e., maximum of 10 % for any one non-resident and maximum of 25 % of all non-residents taken as a whole.

Share ownership by a government or government body would be prohibited.

#### **Division D—Corporation Finance**

This division follows the pattern of the Bank Act and the Canada Business Corporations Act.

As compared with existing requirements, the suggested scheme provides greater flexibility in the capital structure of companies than there is at present. Important changes in capital structure would require an amendment to a company's charter; however, rights and privileges attached to any class of shares might be fixed or varied by by-law approved by special resolution of the shareholders. Approval of any such by-law by the Superintendent of Insurance would be required in order to protect minority rights and to avoid excessive commitments for preferred dividends.

Well established companies might issue shares without par value.

Rules concerning options or rights would follow the Bank Act.

#### **Division E—Trust Indenture and Prospectus**

This division follows the Bank Act.

The requirement to file a prospectus with the Superintendent might be waived if a company is filing with a provincial securities commission in acceptable form. Only shares of capital stock and subordinated debentures would be subject to these requirements.

Savings certificates and ordinary debentures would not be made subject to prospectus requirements. These are in the nature of savings instruments and the whole regulatory structure of the legislation is designed to see to it that the company remains able to meet these obligations at all times.

**Division F—Insider Trading**

This division follows the Bank Act and the Canada Business Corporations Act.

**Division G—Proxies**

This division follows the Bank Act and the Canada Business Corporations Act.

**Division H—Records**

This division follows the Bank Act and the Canada Business Corporations Act.

## **Part V—Business and Powers**

### **Division A—General**

This part sets out the authorized business activities of companies subject to the act and sets out certain limits on investments and loans designed to maintain a good quality asset portfolio. Although companies would have all the powers of a natural person, they might exercise only such business powers as are specified here. Essentially these amount to raising money by accepting deposits and selling savings certificates or debentures and lending or investing the funds so obtained. In addition, existing trust companies and future companies that are specifically so authorized might carry on a general range of fiduciary activities.

The main authorized business activity would be to raise money by accepting deposits and issuing savings certificates or other debt instruments, and investing the funds in the form of loans on the security of real property. Traditionally mortgage loans on residential property have formed the major part of the assets of trust companies and loan companies.

In addition to the power to make mortgage loans, companies would have general power to lend on other types of security, or without security, and to invest in bonds and shares and real property, subject to certain restrictions, some of which are set forth in the legislation and others would be in regulations.

Additional incidental powers would permit a company to own and deal with real property acquired for its own use or acquired in satisfaction of debts, to guarantee obligations of subsidiaries but not of other companies, to engage in financial leasing, to administer mortgage loans sold to others and to act as agent in making loans for others, including interim funding. Further, companies would be empowered to offer safekeeping services, issue credit cards, sell registered savings plans, and issue annuities certain. Administrative services might be provided to subsidiaries and companies might act as agents for governments in issuing and redeeming securities.

Companies could not, except as specified in this part, deal in goods, wares or merchandise, engage in any trade or business, make investments or loans, or issue notes intended for circulation.

As respects fiduciary activities, specific authorization would be required in the company's instrument of incorporation except as respects existing trust companies.

## **Division B—Issue of Debt Obligations**

In its borrowing and savings deposit activities, a company would be empowered as at present to issue debt instruments in registered or bearer form. All claims for repayment of deposits or other money borrowed by a company would continue to rank equally, subject to the following exceptions

- (a) where a company must borrow to meet liquidity needs it could pledge assets,
- (b) a company could grant a mortgage on real property owned by it as security for moneys borrowed to develop that property,
- (c) a company could issue subordinated notes under which the obligations will rank after the obligations to depositors and the holders of savings certificates and ordinary debentures.
- (d) a company could borrow from shareholders and make the obligations subordinated to all other debt.

If a company issued subordinated notes, they could be issued only from the head office, would have to be clearly described and would require a specific maturity date.

## **Division C—Deposit Taking**

Companies would be empowered to accept deposits and offer chequing facilities. The rules concerning this activity would parallel the rules in the Bank Act, including the transfer to the Bank of Canada of unclaimed deposits.

Companies that accept deposits could become members of the Canadian Payments Association (pursuant to the Canadian Payments Association Act) for cheque clearing privileges but they would not be required to maintain specific reserves with the Bank of Canada other than within the rules of the Canadian Payments Association.

## **Division D—Capital and Liquidity**

All companies would be required by statute to maintain an adequate margin of assets over liabilities and appropriate amounts of liquid assets. Details of these requirements would be set forth in regulations. The Minister would be authorized to issue directives to individual companies concerning capital, surplus and liquidity. This statutory requirement parallels that in the Bank Act. Regulations would follow existing patterns of control of capital and surplus margins; that is, a company would be required to fix a maximum ratio of liabilities to capital and surplus. Any such ratio for new companies (under 10 years old) or any ratio in excess of 20, would require approval by the Minister to be effective. The Superintendent might publish guidelines concerning the determination of capital and surplus margins.

Rules concerning liquidity would be more flexible than at present. Each company would have the responsibility of fixing a plan to maintain adequate liquidity. If necessary, the Minister might issue specific directives. General rules would be established by regulation if company action and ministerial directive are not sufficient to maintain safe margins.

#### **Division E—Loans and Investments**

The proposals contain certain limits and restrictions on the general power to make loans and investments. These are

- (a) a loan secured by a mortgage on real property would be limited to 75 % of the value of the property unless the excess is insured, is secured by the pledge of personal property having a market value at least equal to the excess, or is guaranteed by a third party. This is the existing rule except that the authority to make a mortgage loan over 75 % if the excess is secured by personal property is new.  
Acceptance of a guarantee by an acceptable third party is new; a guarantee would require specific approval by the Superintendent.
- (b) A company would not be permitted to purchase or own more than 10 % of the voting shares of any corporation except in respect of specific types of corporations that may be operated as subsidiaries. The present rule permits up to 30 %.  
Investment by a company in shares of other companies subject to this act would be prohibited where both companies do trust business or accept deposits. For this purpose deposits would be defined as deposits repayable on demand or on notice not exceeding 100 days. Investment in voting shares of chartered banks would be prohibited except for trust companies in the course of fiduciary activities.

The following types of subsidiaries would be permitted subject to terms and conditions along the lines of those that now apply:

- (i) other non-federal corporations that carry on a business substantially similar to that permitted for a company subject to this act. This would permit companies to own and operate provincially incorporated trust companies or loan companies and corporations that are in the banking, savings deposit or fiduciary business in other countries;
- (ii) corporations engaged in real estate ownership operation or development;
- (iii) mutual fund corporations;
- (iv) mutual fund advisory and management corporations;
- (v) corporations engaged in financial leasing;
- (vi) personal loan corporations;
- (vii) any corporation engaged in activities judged to be reasonably ancillary to those of the existing company.

This list is the same as the existing list except that for an expansion of the present authority as respects provincial and foreign corporations, personal loan corporations, and corporations engaged in financial leasing.

Temporary investments of up to 50 % of the voting shares of corporations that do not accept deposits would be authorized to permit some activity in the form of venture capital. Such investments would be limited to two years except in the case of specific extensions by the Minister.

Investment in personal property other than for a company's own use would be permitted up to a maximum of 1 % of a company's assets. This will permit some limited investment in commodities such as gold or silver.

The existing maximum limit (35 % of capital and surplus) on real property for a company's own use would be retained.

Loans to officers and employees would be limited as in the case of banks. Mortgage loans secured by a mortgage on the residence of the officer or employee would be allowed; other loans would be limited to one year's salary or \$25,000, whichever is larger; any loan over \$25,000 would require approval of the Board of Directors. This represents a change from the present rule. Loans to officers are now prohibited. At present, loans to employees who are not officers are under no restriction; the above rule would impose a limit.

Loans to directors, and to shareholders who own over 10 % of the voting shares, are now prohibited. This prohibition would continue. Also prohibited would be loans to or investments in a corporation if directors, officers or substantial shareholders of the company have a significant interest (over 10 % of any class of shares) in that other corporation.

Penalties for violation of these requirements would be made more severe and more specific than at present.

Commercial loans, defined as a loan to a corporation that is not secured by real property within the limits described above, would be limited to a maximum total amount of 15 % of a company's assets. For purposes of this limit, financial leasing and investments in a financial leasing subsidiary would be treated as commercial loans.

If a company has trust powers, commercial loans as defined (not including finance-leasing) would be permitted only to corporations whose securities are not listed on an exchange.

For further protection against conflict of interests in the case of trust companies, a company as trustee would be barred from investing or lending trust funds (where it has discretionary authority) in or to any corporation having more than 10 % of its outstanding indebtedness payable to the company.

#### **Division F—Maintenance and Protection of Assets**

The present rule requiring assets to be maintained in Canada in Canadian currency to cover Canadian liabilities would be continued. Foreign investments to meet foreign liabilities would be permitted together with a pro-rata proportion of capital and surplus. If there are no liabilities outside of Canada, the limit would be 10 % of the capital and surplus.

Power would be sought to make regulations to limit

- (a) the total investment of a company in any specific class of investment;
- (b) the total amount lent to any one borrower or associated group of borrowers;
- (c) the total amount invested in any one corporation or associated group of corporations.

Regulations contemplated in this regard would limit the investment in common shares to 15 % of the total assets of a company; investments in real property (apart from property for a company's own use or acquired in satisfaction of debts but including investments in or loans to a real estate subsidiary) to 10 % of the total assets; loans to any one associated group of borrowers to 25 % of a company's capital and surplus; investments in any associated group of corporations, including loans to members of the group, to 25 % of a company's capital and surplus.

These propositions would be subject to discussion before adoption and might be altered from time to time as conditions change.

#### **Division G—Interest and Charges**

As respects loans made by a company, the provisions in the Bank Act concerning depositors and borrowers' rights and disclosure of interest rate would be followed. Broadly these require disclosure of interest rates on deposits; disclosure of service charges; a condition on any requirement to maintain a minimum credit balance; and disclosure of interest rates in accordance with regulations as respects loans to individuals.

## **Division H—Fiduciary Activities**

Existing trust companies and new companies authorized by charter provisions to carry on fiduciary activities, would have authority to engage in the general range of activities now carried on by trust companies. Such companies would be required to use the word "trust" in their names.

A trust company carrying on a savings deposit business would do so under the general powers proposed in this regard. This would be on a debtor-creditor basis rather than as at present under the concept of receiving money in trust, subject to a guarantee of repayment. Present guaranteed and trust funds could continue to be held and administered but the guaranteed trust concept would be terminated for funds received in the future after an interim period of one year.

The restrictions described above applying to investment and loans considered not to be at arm's length would apply also to the investing and lending of trust funds, subject to any specific instruction by the person establishing the trust. As mentioned earlier, a particular provision would be included to avoid conflict of interests that might arise were a trust company to lend trust funds to or invest trust funds in a corporation that is indebted to the trust company directly.

Special controls would be imposed on the establishment of pooled or common trust funds requiring notice to the Superintendent and compliance with terms and conditions he may prescribe.

## **Part VI—Mortgage Investment Companies**

This part continues unchanged the special conditions that apply to mortgage investment companies. These are a special class of loan companies, intended to be financed by capital funds to a much greater extent than is the case for ordinary loan companies. Such companies are not taxed on their income so long as they permit it to flow through to their shareholders. At least 50 % of the assets of a company must be in residential mortgage loans or in deposits in an approved depository. Investments in real property or in shares of real estate companies may not exceed 25 % of assets. Borrowing is limited to five times capital and surplus.

## **Part VII—Financial Disclosure**

This part deals with the reporting by a company to its shareholders. In general, it follows closely the terms of the Bank Act and the Canada Business Corporations Act.

The financial year of a company would generally coincide with the calendar year but a company might adopt a different financial year by by-law, approved by the Superintendent.

If a company has subsidiaries, it would be required to publish a consolidated statement using the equity accounting method. This applies also under the Bank Act. Statements of subsidiaries would have to be available at a company's head office for examination by shareholders.

## **Part VIII—Audit and Audit Committee**

This part deals with the auditing requirements. It follows the terms of the Bank Act except that only one auditor is required rather than two. Other requirements follow the standard practice as set forth in the Canada Business Corporations Act and the Bank Act.

The significant changes from existing requirements would be the requirement to establish an audit committee of the Board and a requirement that the auditor, on request, report to the Superintendent on the adequacy of a company's procedure and controls. The general practices and requirements are made more specific.

## **Part IX—Amalgamation, Purchase and Sale**

The provisions dealing with amalgamations follow the existing requirements as updated in the Bank Act and the Canada Business Corporations Act. Amalgamation would take place only with the consent of the Minister.

The procedure for purchase or sale of all or part of the business of another company follows existing requirements.

## **Part X—Take-Over Bids**

This part is identical to the provisions in the Canada Business Corporations Act.

There are no provisions in the existing Trust Companies Act or Loan Companies Act dealing with take-over bids but the practices followed generally are as set forth in the Canada Business Corporations Act. An important change from existing requirements would be that if one shareholder holds over 90 % of the shares of any particular class, the remaining shareholders may be required to tender their shares. If they are not satisfied with the offered price, they may call for appraisal by a court.

## **Part XI—Supervision**

This part, dealing with supervision, including reporting to the supervisory authority, is not changed in substance from the present rules applicable to the trust companies and loan companies. The supervisory authority would be the Department of Insurance, headed by the Minister of Finance as the minister responsible, with the Superintendent of Insurance as the deputy head of the Department.

### **Division A—Statements and Returns**

The supervising pattern would require companies to submit annual statements to the Superintendent of Insurance and authorize the Superintendent to fix the form of statement. This represents a slight change in that under present law the form of statement is fixed by the Minister.

Additional statements would be required quarterly to reveal potential liquidity problems and semi-annual statements would be required to show purchases and sales of assets.

Additional information might be called for by the Superintendent. Regular returns would be required, as under the Bank Act, to report unclaimed deposits where there has been no contact for nine years.

A new requirement would call for a special return following each annual meeting to report on changes amongst directors and officers, as under the Bank Act.

The Superintendent would be required to maintain a public register where the charter and financial statement of each company might be examined. This also follows the Bank Act. At present, financial statements are published by the Superintendent and are available publicly through a computer facility, but no provision exists for access to financial statements in the Department's offices.

### **Division B—Valuation of Assets**

This part would authorize valuation rules to be fixed by regulation. Some discretion would be left to the Superintendent as respects assets other than investments and loans.

### **Division C—Examination of Companies**

These provisions follow existing legislation requiring the Superintendent, or his staff, to visit each company at least once a year to examine its financial condition and affairs. More frequent visits may be made if necessary.

Further provisions are proposed, taken from the Bank Act, empowering the Minister to instruct the Superintendent to carry out a special examination where he has reason to believe that an offence against the act has been or is about to be committed; the Superintendent would be given the powers of a commissioner under the Inquiries Act for the purpose of obtaining evidence.

### **Division D—Annual Report of Superintendent**

This part would require the Superintendent to prepare an annual report for the Minister, giving details of the financial position of each company. This is in accordance with the existing law.

Existing legislation would be followed in requiring the Superintendent to make all necessary corrections in the statements as filed and to disallow any unauthorized investments and loans.

An appeal to the Federal Court would be available against any ruling by the Superintendent concerning the admissibility of any asset.

### **Division E—Remedial Powers**

This part sets forth the duties of the Superintendent where he believes that any assets of the company are not properly accounted for or where he believes that the ability of a company to meet its obligations is inadequately secured. The provisions here are unchanged from the existing legislation.

The procedure specified would require the Superintendent to report to the Minister if he is concerned about the financial position of a company and the Minister, if he agrees with the Superintendent and after giving the company a chance to be heard, could impose conditions on a company, specify a time within which the company is to remedy any defect or direct the Superintendent to seize control of a company's assets.

If trouble persists, the Minister could seek a court order to wind-up the company or an order giving the Superintendent control of the company for its rehabilitation.

Any expenses incurred by the Superintendent in exercising control of a company would be chargeable to other companies in the same manner as other expenses of the Department. These would represent a charge against the assets of the company in question in priority to claims of shareholders but ranking after all other claims.

## **Part XII—Liquidation and Dissolution**

This part sets forth the procedures for liquidation of a solvent company. It follows similar procedures set forth in the Bank Act and the Canada Business Corporations Act.

## **Part XIII—General**

This part deals with special provisions that do not fit in any of the preceding categories and, in particular, deals with transitional matters.

All companies doing a deposit business are authorized to use the term “savings bank” in their names and in describing their business.

Technical details for notice to directors and shareholders are included, copied from the Canada Business Corporations Act.

Provision is included that would enable the Minister to name a temporary Superintendent if the incumbent is unable to act.

The Crown, the Minister, the Superintendent and the staff acting on the direction of the Minister or the Superintendent would be relieved of any liability for anything done or omitted to be done in good faith in connection with administration of the legislation.

Penalties would be specified for offences against the Act, for officers, directors or employees of a company corruptly accepting inducements to grant favour.

These provisions follow similar provisions in the Bank Act.

Power would be included enabling the Governor-in-Council to adopt regulations as may be required and specifying that proposed regulations must be published at least sixty days prior to the effective date. This also follows the Bank Act.