

# TRUSTEE ORDINANCE 1972

1179

No. 41 of 1972

## An Ordinance to amend the *Trustee Act and Ordinance* 1893-1969

[Assented to 31 July, 1972]

**B**E it ordained by the Legislative Council for the Northern Territory of Australia as follows:—

1.—(1.) This Ordinance may be cited as the *Trustee Ordinance* 1972.

Short title  
and citation

(2.) The *Trustee Act and Ordinance* 1893-1969 is in this Ordinance referred to as the Principal Statute.

(3.) The Principal Statute as amended by this Ordinance may be cited as the *Trustee Act and Ordinance* 1893-1972.

2. Section 4 of the Principal Statute is repealed.

Repeal of  
section 4

3. After section 3 of the Principal Statute the following sections are inserted:—

“4.—(1.) A trustee, unless expressly forbidden by the instrument, if any, creating the trust, may invest trust funds in his hands, whether the funds are already invested or not—

Authorized  
investment

- (a) in government securities of the Commonwealth or a State of the Commonwealth, or of the United Kingdom of Great Britain and Northern Ireland or of New Zealand;
- (b) in debentures or securities guaranteed by the Government of the Commonwealth or of a State of the Commonwealth;
- (c) in securities issued by a city, county, municipal or shire council in the Commonwealth;
- (d) on fixed deposit with a bank carrying on business in the Commonwealth;
- (e) on deposit with a savings bank carrying on business in the Commonwealth;
- (f) by way of loan secured by a first registered legal mortgage of—

- (i) the fee simple of land in the Commonwealth;  
or
- (ii) land held under the provisions of the *Darwin Town Area Leases Ordinance* 1947-1971, the *Crown Lands Ordinance* 1931-1971, the *Church Lands Leases Ordinance* 1947-1963, or the *Special Purposes Leases Ordinance* 1953-1971;
- (g) by way of loan to a corporation, being a corporation in respect of which a declaration declaring the corporation to be an authorized dealer in the short-term money market is in force under paragraph (b) of sub-section (7.) of section 38 of the *Companies Ordinance* 1963-1969, upon the security or securities of the Commonwealth;  
or
- (h) on deposit in any corporation that is declared by the Administrator in Council by notice published in the *Gazette* to be authorized to accept trust funds deposits.

“(2.) In the case of a security mentioned in paragraphs (a), (b) or (c) of sub-section (1.) of this section a trustee may invest—

- (a) notwithstanding that the security may be redeemable and that the price paid therefor by him exceeds the redemption value; or
- (b) if the security is not redeemable, notwithstanding that the price paid therefor by him exceeds the value thereof at par.

“(3.) Sub-section (1.) of section 9 of this Statute does not apply in relation to the investment of trust funds in the manner specified in paragraph (g) of sub-section (1.) of this section.

“(4.) Nothing in this section authorizes a trustee to purchase a security that is redeemable at par or at another fixed rate—

- (a) if the security is a security other than a government security of the Commonwealth or of a State of the Commonwealth and is so redeemable within fifteen years after the date of purchase—at a price (excluding the amount of any accrued interest from the security, whether or not that interest was then due) exceeding its redemption value;
- (b) at a price (excluding any such interest) exceeding 15 per cent above par or such other fixed rate.

“(5.) Where a security has been purchased in accordance with this Ordinance or the instrument, if any, creating the trust, the trustee may—

- (a) if the security is redeemable—
  - (i) retain the security until redemption; or
  - (ii) at any time sell or dispose of the security even if at a price less than its redemption value; or
- (b) if the security is not redeemable—at any time sell or dispose of the security even if at a price less than its value at par.

“(6.) A trustee, unless expressly forbidden by the instrument, if any, creating the trust, may, notwithstanding that the security is payable to bearer, retain or invest in any of the securities authorized by this Ordinance and where any security is payable to bearer the provisions of this sub-section shall apply, that is to say—

- (a) unless the trustee is the Public Trustee or a trustee company, the trustee shall, until the security is sold, deposit it for safe custody and collection of income with a bank;
- (b) the trustee shall not be responsible for any loss incurred by reason of the deposit, and any sum payable in respect of the deposit and collection may be paid out of the income of the trust property; and
- (c) the trustee shall not be deemed to be expressly forbidden to retain or invest in the security by reason only of a direction that investments shall be retained or made in the name of the trustee.

“(7.) A trustee, unless expressly forbidden by the instrument, if any, creating the trust may, from time to time, vary any investment.

“(8.) The powers conferred by this section shall be exercised according to the discretion of the trustee with due regard to the circumstances of the trust, but subject to any consent required by the instrument, if any, creating the trust with respect to the investment of the trust funds.

“(9.) The powers conferred by this section shall be in addition to the powers conferred by any law in force in the Territory or by the instrument, if any, creating the trust.

“4A. A trustee may, pending the negotiation and preparation of any security or during any other time while an investment is being sought for or pending distribution or pending application for any purpose authorized by the instrument, if any,

Interim  
investment

creating the trust or by law, pay any trust money into a deposit or other accounts with a bank carrying on business in the Commonwealth or into a deposit or other account with a corporation declared under paragraph (h) of sub-section (1.) of the last preceding section or he may pay the trust money as otherwise ordered by the Court, and all interest, if any, payable in respect thereof shall be applied as income.”.

Repeal of  
sections 6, 7  
& 8

4. Sections 6, 7 and 8 of the Principal Statute are repealed.

Trustee's  
remuneration

5. Section 79 (first occurring) of the Principal Statute is amended by omitting the figures “79” and inserting in their stead the figures “78”.

Application of  
sections 4 & 4A  
of Principal  
Ordinance

6. Sections 4 and 4A of the Principal Statute as amended by this Ordinance apply in relation to trusts created before or after the commencement of this Ordinance.

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