

LEGISLATIVE COUNCIL

Read 1° 18 November 1986

(Brought in by the Honourable J. H. Kennan)

A BILL

to amend Part I of the *Trustee Act* 1958 and for other purposes.

Trustee (Amendment) Act 1986

The Parliament of Victoria enacts as follows:

Purpose.

1. The purpose of this Act is to widen the range of authorised investments in which trustees may invest and to amend Part I of the *Trustee Act* 1958.

Commencement.

2. This Act comes into operation on a day or days to be proclaimed.

Principal Act.

3. In this Act, the *Trustee Act* 1958 is called the Principal Act.

No. 6401.
Reprinted to
No. 9902 and
amended by
Nos. 10048,
10087, 10143,
10168, 10230
and 59/1986.

10 **New section 3B inserted.**

4. (1) After section 3A of the Principal Act insert—

Mortgage investment certificates.

“3B. (1) In this section—

- 15 **“Mortgage investment certificate”** means a document in the prescribed form that—

- (a) is issued by a trustee company subject to and in accordance with an approved trust deed; and
- (b) entitles the holder for the time being to exercise rights in accordance with the trust deed in relation to a first mortgage of freehold land registered under the *Transfer of Land Act 1958* (or, in the case of land in another State or in a Territory, under an enactment in force in that State or Territory corresponding to that Act) and held by the trustee company as trustee for the holder.

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“Prescribed” means prescribed by regulations made under this section.

(2) A trust deed is an approved trust deed for the purposes of sub-section (1) if—

- (a) it is approved by the Commissioner for Corporate Affairs on the application of a trustee company; and
- (b) it contains the prescribed conditions.

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(3) A reference in sub-section (1) to a first mortgage of freehold land is a reference to a first mortgage of freehold land held by a trustee company as an authorised investment under this Part or, if the land is in another State or in a Territory, under a law of that State or Territory corresponding to this Part.

(4) The Governor in Council may, on the recommendation of the Minister, make regulations prescribing all matters which by this section are authorised or required to be prescribed for the purposes of this section.”.

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(2) In section 3 (1) of the Principal Act, after the definition of “Mortgage-backed certificate” insert—

“**“Mortgage investment certificate”** means a mortgage investment certificate within the meaning of section 3B.”.

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Amendment of section 4.

5. (1) Section 4 (1) of the Principal Act is amended as follows:

- (a) In sub-section (1) (j), after “acceptor” insert “or indorser”;
- (b) After sub-section (1) (o) insert—

“(p) In mortgage investment certificates;

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(q) Subject to sub-section (6), in—

- (i) fully paid ordinary or preference shares; or
- (ii) prescribed securities—

of an approved corporation incorporated in a State or Territory if the shares or securities—

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- (iii) in the case of shares, are quoted on a stock exchange in a State or Territory; and

- (iv) in the case of shares, are registered in a register kept by the corporation in a State or Territory; and
- (v) in the case of securities, are redeemable or mature or are convertible within five years or, if another period is prescribed, that other period;
- 5 (r) In the units, or other shares of the investments subject to the trust, of a unit trust scheme if—
- (i) the trustee is a trustee company; and
- 10 (ii) there is in existence at the time of investment a trust deed under the *Companies (Victoria) Code* that has been approved as prescribed under this Act.”.
- (2) After section 4 (5) of the Principal Act insert—
- 15 (6) In sub-section (1) (q) “**approved corporation**” in relation to an investment, means a corporation that—
- (a) at all times during the period of two years immediately before the date on which the investment was made had a paid-up share capital of not less than the prescribed amount; and
- 20 (b) in respect of the prescribed period immediately before the date on which the investment was made, satisfied the prescribed requirements relating to the payment or declaration of dividends on prescribed shares or securities; and
- 25 (c) at all times during the period of two years immediately before the date on which the investment was made satisfied the prescribed requirements relating to the ratio of prescribed assets to prescribed liabilities.
- (7) A trustee who proposes to make an investment under sub-section (1) (q) or (r)—
- 30 (a) must first consider whether the investment is satisfactory having regard to—
- (i) the nature and purposes of the trust; and
- 35 (ii) the need to ensure that investments of the trust are, so far as circumstances allow, sufficiently diversified and if diversification within a particular description would be prudent, in respect of investments within that description; and
- 40 (b) must obtain written advice from an independent expert who holds a prescribed licence under the *Securities Industry (Victoria) Code* on those matters.
- (8) A trustee who makes an investment under sub-section (1) (q) or (r) must—

- (a) at intervals of not less than six months, obtain and consider the written advice from an independent expert who holds a prescribed licence under the *Securities Industry (Victoria) Code* on the matters referred to in sub-section (6) and the question whether those investments should be retained having regard to the provisions of sub-section (1) and the matters referred to in sub-section (7) and, if the investments should not be retained, how they should be disposed of; and 5
- (b) as appropriate, act on that advice.

(9) If a trustee retains shares or securities of a corporation that has ceased to be an approved corporation within the meaning of sub-section (6), the trustee commits a breach of trust but it is a defence to a charge of breach of trust if the trustee proves— 10

- (a) that the trustee acted honestly and reasonably and in accordance with advice obtained under sub-section (8); and 15
- (b) that the trustee disposed of the shares or securities or otherwise took steps to remedy the breach as soon as practicable after becoming aware of the breach.’

New section 12B inserted.

6. After section 12A of the Principal Act, insert in Part I— 20

Regulations.

“12B. The Governor in Council may make regulations prescribing all matters which by this section are authorised or required to be prescribed for the purposes of this Part.”.

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