



TRUSTEE

No. 55 of 1976

ANALYSIS

1. Short title and citation.
2. Interpretation.
3. Authorized investments.
4. Loans and investments by trustees not chargeable as breaches of trust.
5. Powers of two or more trustees exercisable by survivor.
6. Power to delegate trusts.

AN ACT to amend the Trustee Act 1898.

[11 November 1976]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—(1) This Act may be cited as the *Trustee Act 1976*.

Short title and
citation.

(2) The *Trustee Act 1898*, as subsequently amended, is in this Act referred to as the Principal Act.

Interpretation.

2 Section 4 of the Principal Act is amended by adding at the end the following definitions:—

“ ‘ trustee company ’ means a trustee company within the meaning of the *Trustee Companies Act 1953*;

“ ‘ valuer ’ means a valuer who is registered under the *Valuers Registration Act 1974*.”.

3 Section 5 of the Principal Act is repealed and the following section is substituted:—

Authorized
investments.
Cf. 15 Geo. V,
c. 19 (Imp.),
s. 1.

“ 5—(1) Subject to this section, a trustee may, unless he is expressly forbidden by the instrument (if any) creating the trust, invest any trust funds in his hands, whether at the time in a state of investment or not, in any one or more of the following ways:—

- (a) In any debenture, stock, or security—
 - (i) the payment of which, both as to principal and interest, is guaranteed by; or
 - (ii) that is issued by or on behalf of, the Commonwealth, this State or any other State of the Commonwealth, or the Hydro-Electric Commission;
- (b) In any stocks, funds, or securities for the time being authorized for the investment of cash under the control, or subject to the orders, of the Court;
- (c) In any debenture or other security—
 - (i) that is charged on the funds or property of the Fire Brigades Commission of Tasmania or of a municipality, marine board, or fire brigade in this State; and
 - (ii) that is declared by the Treasurer, by order, to be a security in which trustees may invest;
- (d) On deposit at interest in a bank carrying on business in this State;
- (e) On fixed deposit in a permanent building society (within the meaning of the *Building Societies Act 1876*), being a society that—
 - (i) is carrying on business in this State; and
 - (ii) is declared by the Treasurer, by order, to be a building society in which deposits may be made by trustees;

- (f) On first mortgage of real estate in this State, including a completed flat to which a stratum plan registered pursuant to Part XIA of the *Conveyancing and Law of Property Act 1884* relates (being a flat that is held in fee simple); and
- (g) In the purchase of real estate in fee simple in this State (being real estate on which there is a building) for the purpose of obtaining—
- (i) income for the trust by letting a building on the land; or
 - (ii) a building on the land as a dwelling for the use of a person who is entitled to income under the trust.

“(2) A trustee may vary an investment made by him under subsection (1).

“(3) The provisions of subsection (1) (f) extend and apply to and in relation to a mortgage or further charge under or in respect of which a trustee has priority over all other persons who lend money secured by the real estate that is subject to the mortgage or further charge.

“(4) Except as otherwise provided by the instrument (if any) creating the trust, no trustee—

- (a) shall make an investment of a class to which subsection (1) (g) applies if the value of the trust estate, as determined by a valuer at the time when it is proposed to make the investment, does not exceed \$20 000; or
- (b) shall make such an investment or incur an obligation as trustee of the trust estate that would cause the sum of the value of the investment, all other investments of that class made by the trustee, and all such obligations, as determined by a valuer immediately after the time when it is proposed to make the investment or incur the obligation, to exceed 50 per cent of the value of the trust estate, as determined by the valuer at that time.

“(5) A trustee who proposes to make an investment of a class to which paragraph (g) of subsection (1) applies shall first comply with the following provisions:—

- (a) He shall obtain and consider proper advice, in writing, as to the suitability, having regard to the terms of the trust, of the class of the proposed investment and of the investment proposed as an investment of that class; and

- (b) He shall obtain, and act only on, the recommendation, in writing, of a valuer that he should invest trust funds in the purchase of the real estate concerned for the purpose specified in the recommendation, being a purpose of a kind prescribed by that paragraph.

“(6) For the purposes of subsection (5) (a), ‘proper advice’ is the advice of a person who is reasonably believed by the trustee to be qualified by his ability and practical experience of financial matters; and that advice may be given by a person, notwithstanding that he is employed as an officer or a servant of the trustee or any other person.

“(7) Notwithstanding paragraph (a) of subsection (5), the advice required to be given by that paragraph need not be in writing, if it is given—

- (a) to his co-trustee or co-trustees by a trustee who is reasonably believed by him or them; or
- (b) in any other case—
- (i) to the Public Trustee by a member of the staff of the Public Trust Office who is reasonably believed by the Public Trustee; or
 - (ii) to a trustee company by an officer or a servant of that company who is reasonably believed by the manager or person in charge thereof,

to be qualified as required by subsection (6).

“(8) The trustees of a savings bank and the trustees of a registered friendly society shall be deemed to be trustees within the meaning of this section.”.

Loans and investments by trustees not chargeable as breaches of trust.

4 Section 10 of the Principal Act is amended—

- (a) by omitting from subsection (1) the words “two persons whom he reasonably believed to be competent valuers” and substituting the words “a person whom he reasonably believed to be a competent valuer”; and
- (b) by omitting from that subsection the words “such competent valuers” (twice occurring) and substituting the words “that valuer”, in each case.

Powers of two or more trustees exercisable by survivor.

5 Section 25 of the Principal Act is amended by omitting subsections (2) to (5).

6 After section 25 of the Principal Act the following section is inserted:—

“ 25AA—(1) Subject to this section, where there are more trustees than one, any of those trustees who resides, or is about to reside, permanently out of this State and who is not expressly forbidden to do so by the instrument creating the trust may, notwithstanding any rule of law or equity to the contrary, delegate to any person resident in this State the execution or exercise of all or any of the trusts, powers, authorities, and discretions vested in him as trustee.

Power to
delegate trusts.
Imp., s. 25, No.
78 of 1962,
(W.A.), s. 54.

“(2) Subject to this section, a trustee who is temporarily out of, or is about to depart temporarily from, this State and who is not expressly forbidden to do so by the instrument creating the trust may, notwithstanding any rule of law or equity to the contrary, delegate to any person resident in this State the execution or exercise of all or any of the trusts, powers, authorities, and discretions vested in him as trustee, whether alone or jointly with any other person or persons.

“(3) A delegation under this section shall be by power of attorney executed as a deed.

“(4) The power to delegate conferred by subsection (2) shall not be exercised in favour of a person who is the only other co-trustee unless that person is the Public Trustee or a trustee company.

“(5) Notwithstanding the power to delegate conferred by this section, a trustee may not exercise that power unless his co-trustee or co-trustees (if any) and such other person as is empowered to appoint trustees by the instrument (if any) creating the trust, consent by the same or another deed to the delegation.

“(6) Where a delegation by a trustee under this section has been duly made to, and accepted by, a person and is for the time being in operation, that person has, within the scope of the delegation, the same trusts, powers, authorities, discretions, liabilities, and responsibilities (except the power of delegation conferred by this section) as he would have if he were then the trustee.

“(7) The donor of a power of attorney under this section is liable for the acts and defaults of the donee as if they were his own acts and defaults, and the donee is subject to the jurisdiction and powers of any court so far as respects the execution of the trust delegated to him in the same manner as if he were the trustee.

“(8) Subject to the *Powers of Attorney Act 1934*, a power of attorney given under this section—

- (a) if the donor is out of this State when he executes it, comes into operation forthwith after its receipt in this State; or
- (b) if the donor is in this State when he executes it, comes into operation when he leaves this State.

“(9) A power of attorney under this section that authorizes the donee to act for the donor while he is temporarily out of this State ceases to operate on the donor’s return to this State.

“(10) Notwithstanding that a power of attorney under this section—

- (a) has never come into operation;
- (b) has ceased to operate; or
- (c) has been revoked by the act of the donor of the power or his death or by operation of law,

any act done or instrument executed by the donee of the power is as valid and effectual in favour of a person dealing with the donee as if the power had come into operation and remained in operation or been unrevoked at the time when the act was done or the instrument was executed, unless that person had, at that time, actual notice that the power had never come into operation, had ceased to operate, or had been revoked.

“(11) Notwithstanding that the donor of a power of attorney under this section has not obtained the consent or consents required by subsection (5), any act done, or instrument executed, by the donee of the power is as valid and effectual in favour of a person dealing with the donee as if that consent or those consents had been properly obtained, unless that person had, at the time when the act was done or the instrument was executed, actual notice that the consent or consents had not been obtained.

“(12) A statutory declaration by the donee of a power of attorney under this section relating to any trust or estate that—

- (a) the power has come into operation; or
- (b) in any transaction the donee is acting in the execution of the trust, or the administration of the estate, to which the power relates,

is, in favour of a person dealing with the donee of the power, conclusive evidence of that fact.

“(13) The fact that it appears from a power of attorney under this section, or from any evidence required for the purposes of such a power of attorney or otherwise, that in any transaction the donee of the power is acting in the execution of a trust does not affect with notice of the trust a person dealing in good faith with the donee.

“(14) Where it is intended that the donee of a power of attorney under this section shall be entitled to transfer, or otherwise deal with, land to which the *Real Property Act 1862* applies, the power shall be in the form, and executed and attested in the manner, prescribed by that Act.

“(15) Nothing in this section limits or affects—

- (a) the power of appointment of a new trustee in the place of a trustee who is absent from this State; or
- (b) the power of the court to make any order by reason of that absence.

“(16) In this section, ‘ trustee ’ includes a tenant for life.”.

