

Trustees (Amendment) Bill

Table of Contents

Bill No: 18/1992

Read the first time: 27th February 1992

Long Title

Enacting Formula

1 Short title and commencement

2 Amendment of section 3

3 Repeal and re-enactment of Part II

4 Amendment of section 70

5 Amendment of section 86

6 New First Schedule

7 Amendment of First Schedule

8 Amendment of Second Schedule

Explanatory Statement

Expenditure of Public Money

Trustees (Amendment) Bill

Bill No. 18/1992

Read the first time on 27th February 1992.

An Act to amend the Trustees Act (Chapter 337 of the 1985 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act may be cited as the Trustees (Amendment) Act 1992 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Amendment of section 3

2. Section 3 of the Trustees Act is amended —

(a) by deleting the definition of “land” and substituting the following definition:

“ “land” means —

(a) the surface of any defined parcel of the earth, all substances thereunder and so much of the column of airspace above the surface whether or not held apart from the surface as is reasonably necessary for the proprietor’s use and enjoyment, and includes any estate or interest therein and all vegetation growing thereon and structures affixed thereto; or

(b) any parcel of airspace or any subterranean space held apart from the surface of the earth and described with certainty by reference to a plan approved by the Chief Surveyor and filed in the Survey Department, and includes any estate or interest therein and all vegetation growing thereon and structures affixed thereto;”;

(b) by inserting, immediately after the definition of “securities”, the following definition:

“ “shareholders equity”, in relation to a company, means the total

assets of the company less the total liabilities of the company as disclosed in the last audited accounts of the company laid before a general meeting of the company in accordance with section 201 of the Companies Act (Cap. 50) (or the equivalent provision of the law of any other country which applies to that company) or, if a prospectus has subsequently been registered by the company in accordance with the requirements of law, the accounts contained in that prospectus;”.

Repeal and re-enactment of Part II

3. Part II of the Trustees Act is repealed and the following Part substituted therefor:

“PART II

INVESTMENTS

Powers of investment of trustees

4.—(1) Subject to the provisions of this Act, a trustee may invest any funds in his hands, whether at the time in a state of investment or not, in any manner specified in Part I, II or III of the First Schedule and may also from time to time vary such investments.

(2) Part IV of the First Schedule shall have effect for the interpretation and for restricting the operation of Parts I to III of that Schedule.

(3) Every power conferred by this section shall be exercised according to the discretion of the trustee, but subject to any consent or direction, with respect to the investment of the trust funds, required by the instrument, if any, creating the trust or by any written law.

(4) The Minister may, from time to time by order published in the *Gazette*, amend the First Schedule.

Duty of trustees in choosing investments

5.—(1) In the exercise of any of his powers of investment, a trustee shall have regard —

- (a) to the need for diversification of the investments of the trust, in so far as is appropriate to the circumstances of the trust, and to the degree of risk attaching to the holding of any particular investment or of

investments of any particular description; and

- (b) to the suitability to the trust of investment of the description of investment proposed and of the investment proposed as an investment of that description.

(2) Before exercising any power conferred by section 4 to invest in a manner specified in Part II or III of the First Schedule, a trustee shall obtain and consider proper advice on the question whether the investment is satisfactory in accordance with Part V of that Schedule.

(3) A trustee retaining any investment shall determine at what intervals the circumstances, and in particular the nature of the investment, make it desirable to obtain such advice as aforesaid, and shall obtain and consider such advice accordingly.

(4) A trustee shall not be treated as having complied with subsection (2) or (3) unless the advice was given in writing or has been subsequently so confirmed.

(5) Subsections (2) and (3) shall not apply —

- (a) to one of two or more trustees where he is the person giving the advice required by this section to his co-trustee or co-trustees;
- (b) to the Public Trustee; or
- (c) to trust companies as defined in the Trust Companies Act (Cap. 336).

Statutory powers of investment

6.—(1) In the case of trustees constituted under any written law, other than the Companies Act (Cap. 50), the power to invest in any manner mentioned in Parts II and III of the First Schedule shall apply only in so far as the Minister may direct.

(2) Where any body of persons, not being trustees, have under any written law power (however expressed) to make the like investments as trustees are for the time being authorised by law to make, the power to invest in any manner mentioned in Parts II and III of the First Schedule shall not apply to the body except in so far and to such extent as the Minister may direct.

(3) Any direction under this section may be given generally or in a particular case, and unconditionally or subject to conditions.

Power to retain investment which has ceased to be authorised

7. A trustee shall not be liable for breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorised by the trust instrument or by this Act.

Investment in bearer securities

8.—(1) A trustee may, unless expressly prohibited by the instrument creating the trust, retain or invest in securities payable to bearer which, if not so payable, would have been authorised investments.

(2) Securities payable to bearer retained or taken as an investment by a trustee shall, until sold, be deposited by him for safe custody and collection of income with a banker or banking company.

(3) A direction that investments shall be retained or made in the name of a trustee shall not, for the purposes of this section, be deemed to be such an express prohibition as aforesaid.

(4) A trustee shall not be responsible for any loss incurred by reason of such deposit, and any sum payable in respect of such deposit and collection shall be paid out of the income of the trust property.

Loans and investments by trustees not chargeable as breaches of trust

9.—(1) A trustee lending money on the security of any property on which he can properly lend shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, if it appears to the court —

- (a) that in making the loan the trustee was acting upon proper advice obtained in accordance with section 5(2); and
- (b) that the amount of the loan does not exceed two-third parts of the value of the property as stated in the report made by the person giving proper advice in accordance with section 5(2).

(2) A trustee lending money on the security of any leasehold property shall not be chargeable with breach of trust only upon the ground that in making such loan he dispensed either wholly or partly with the production or investigation of the lessor's title.

(3) A trustee shall not be chargeable with breach of trust only upon the ground that in effecting the purchase, or in lending money upon the security, of any property he has accepted a shorter title than the title which a purchaser is, in the