

Trustees (Amendment) Bill

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Bill No: 43/2004

Read the first time: 21st September 2004

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Expenditure of Public Money

Trustees (Amendment) Bill

Bill No. 43/2004

Read the first time on 21st September 2004.

An Act to amend the Trustees Act (Chapter 337 of the 1999 Revised Edition) and to make related and consequential amendments to the Civil Law Act (Chapter 43 of the 1999 Revised Edition), the Interpretation Act (Chapter 1 of the 2002 Revised Edition) and certain other written laws.

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 2004 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 definitions of “approved company”, “approved valuer” and “authorised unit trust scheme”;
- (b) by inserting, immediately after the definition of “debentures”, the following definition:

“ “general power of investment”, in relation to a trustee, means the general power of investment conferred on him by section 4;”;
- (c) by deleting the definition of “land” and substituting the following definition:

“ “land” has the same meaning as in section 4 of the Land Titles Act (Cap. 157);”;
- (d) by inserting, immediately after the definition of “solicitor”, the following definitions:

“ “standard investment criteria”, in relation to a trust, means the standard investment criteria set out in section 5(3);

“statutory duty of care”, in relation to a trustee, means the duty of care required to be exercised by him under Part IA;”;
- (e) by deleting the definitions of “unit” and “unit trust scheme”.

New Part IA

3. The Trustees Act is amended by inserting, immediately after section 3, the following Part:

“PART IA

STATUTORY DUTY OF CARE

Trustees’ statutory duty of care

3A.—(1) In exercising any power, carrying out any duty or doing any act referred to in the First Schedule, a trustee shall exercise such care and skill as is reasonable in the circumstances, having regard in particular —

- (a) to any special knowledge or experience that he has or holds himself out as having; and
- (b) if he acts as trustee in the course of a business or profession, to any special knowledge or experience that may reasonably be expected of a person acting in the course of that kind of business or profession.

(2) This section shall apply in relation to trusts whether created before, on or after the date of commencement of the Trustees (Amendment) Act 2004 except if, or in so far as, it appears from the trust instrument that the requirements of subsection (1) are not meant to apply.”.

Repeal and re-enactment of sections 4, 5 and 6

4. Sections 4, 5 and 6 of the Trustees Act are repealed and the following sections substituted therefor:

“General power of investment

4.—(1) Subject to the provisions of this Part, a trustee may make any kind of investment that he could make if he were absolutely entitled to the assets of the trust.

(2) For the purpose of subsection (1), “investment” includes investment in assets that do not yield any income.

(3) This section shall apply in relation to trusts whether created before, on or after the date of commencement of the Trustees (Amendment) Act 2004.

Standard investment criteria

5.—(1) In exercising any power of investment, whether arising under this Part or otherwise, a trustee shall have regard to the standard investment criteria.

(2) A trustee shall, from time to time, review the investments of the trust and consider whether, having regard to the standard investment criteria, they should be varied.

(3) The standard investment criteria, in relation to a trust, are —

- (a) the suitability to the trust of investments of the same kind as any particular investment proposed to be made or retained and of that particular investment as an investment of that kind; and
- (b) the need for diversification of investments of the trust, in so far as is appropriate to the circumstances of the trust.

(4) This section shall apply in relation to trusts whether created before, on or after the date of commencement of the Trustees (Amendment) Act 2004.

Advice

6.—(1) Except as otherwise provided by subsection (3), a trustee shall, before exercising any power of investment, whether arising under this Part or otherwise, obtain and consider proper advice about the way in which the power should be exercised, having regard to the standard investment criteria.

(2) Except as otherwise provided by subsection (3), a trustee shall, when reviewing the investments of the trust, obtain and consider proper advice about whether the investments should be varied, having regard to the standard investment criteria.

(3) A trustee need not obtain the advice required under subsection (1) or (2) if he reasonably concludes that in all the circumstances it is unnecessary or inappropriate to do so.

(4) In this section, “proper advice” means the advice of a person who is reasonably believed by the trustee to be qualified to give such advice by his ability in and practical experience of financial and other matters relating to the proposed investment.

(5) This section shall apply in relation to trusts whether created before, on or after the date of commencement of the Trustees (Amendment) Act 2004.”.

Repeal of section 8

5. Section 8 of the Trustees Act is repealed.

Amendment of section 9