

THE TRUSTEE (AMENDMENT) ACT 1967**No. 22 of 1967***Date of Assent: 18th August 1967**Date of Commencement: 25th August 1967***An Act of Parliament to amend the Trustee Act in relation to trustees' powers of investment of trust funds**

ENACTED by the Parliament of Kenya, as follows:—

1. This Act may be cited as the Trustee (Amendment) Act 1967.

Short title.

2. Section 2 of the Trustee Act (hereinafter referred to as the principal Act) is amended by inserting therein, in its proper alphabetical place, a new definition as follows—

Amendment of section 2 of Cap. 167.

“fixed-interest security” means a security which under its terms of issue bears a fixed rate of interest and includes a mortgage, but not a purchase, of immovable property.

3. Section 4 of the principal Act is amended—

Amendment of section 4 of principal Act.

(a) by inserting, immediately after paragraph (c) thereof, two new paragraphs as follows—

(ca) in any security issued by a company formed and registered under the Companies Act whose total issued and paid-up share capital is not less than ten million shillings and which has, in each of the five years immediately preceding the year in which the investment is made, paid a dividend on all of its shares which rank for dividend, being a security the price of which is quoted on a recognized stock exchange in Kenya;

(cb) in any units, or other shares of the investments subject to the trusts, of a unit trust within the meaning of the Unit Trusts Act 1965 and registered under section 7 of that Act;

(b) by renumbering the section as subsection (1) thereof and by adding at the end thereof three new subsections as follows—

(2) The provisions of the Schedule to this Act shall apply in cases where any part of the trust fund is to be invested or is invested in any security other than a fixed-interest security, to

the exclusion of the corresponding provisions of the law referred to in subsection (1) (a) of this section.

(3) The powers of investment conferred by this section are exercisable—

(a) notwithstanding the provisions of any instrument made before the 1st January 1967;

(b) only so far as a contrary intention is not expressed in any instrument made on or after that date,

and in this section “instrument” includes a written law or an instrument made under a written law.

(4) Where any person, not being a trustee, has a statutory power of making investments which is or includes power to make the like investments as trustees are for the time being by law authorized to make, however the power is expressed, the provisions of this section shall with the necessary modifications apply in relation to them as if they were trustees:

Provided that property belonging to a fund applicable wholly or partly for the redemption of debt shall not by virtue of this subsection be invested in a security other than a fixed-interest security.

Amendment of section 11 (3) of principal Act.

4. Section 11 (3) of the principal Act is amended by inserting therein, immediately after paragraph (b) thereof, a new paragraph as follows—

(ba) for the acquisition of the securities of the company, or of control thereof, by another company;

Insertion of Schedule in principal Act.

5. There shall be inserted in the principal Act, at the end thereof, a Schedule as follows—

SCHEDULE

(s. 4 (2))

Provisions applicable where part of the trust fund is invested in a security other than a fixed-interest security

Interpretation.

1. In this Schedule—

“compensating transfer”, in relation to any transferred property, means a transfer in the opposite direction of property of equal value;

“wider-range security” means a security other than a fixed-interest security.

2. No more than one-eighth part in value of the trust fund or the sum of ten thousand shillings, whichever is the greater, shall be invested in the securities of any one company or unit trust.

Restriction on investment in one company.

3. (1) A trustee may not make or retain any wider-range security unless the trust fund has been divided into two parts (in this Schedule respectively referred to as the fixed-interest part and the wider-range part), the parts being, subject to the provisions of this Schedule, equal in value at the time of the division; and where such a division has been made no subsequent division of the trust fund shall be made for the purpose of this Schedule, and no property shall be transferred from one part of the trust fund to the other unless either—

Division of trust fund.

- (a) the transfer is authorized or required by the following provisions of this Schedule; or
- (b) a compensating transfer is made at the same time.

(2) Property belonging to the fixed-interest range part of a trust fund shall not be invested except in fixed-interest securities, and any property invested in any other manner which is or becomes comprised in that part of the trust fund shall either be transferred to the wider-range part of the trust fund, with a compensating transfer, or reinvested in fixed-interest securities as soon as is practicable.

4. (1) Where any property (not being income) accrues to a trust fund after the fund has been divided in pursuance of paragraph 3 of this Schedule, then—

Accrual to part of trust fund.

- (a) if the property accrues to the trustee as owner or former owner of property comprised in either part of the trust fund, it shall be treated as belonging to that part of the trust fund;
- (b) in any other case, the trustee shall secure, by apportionment of the accruing property or the transfer of property from one part of the trust fund to the other, or both, that the value of each part of the fund is increased by the same amount.

(2) Where a trustee acquires property in consideration of a money payment, the acquisition of the property shall be treated for the purposes of this paragraph as investment and not as the accrual of property to the trust fund, notwithstanding that the amount of the consideration is less than the value of the property acquired.

5. Where in the exercise of any power or duty of a trustee property falls to be taken out of the trust fund, nothing in this section shall restrict his discretion as to the choice of property to be taken out.

Discretion where property taken out of trust fund.

6. If, for the purposes of this Schedule, a trustee obtains a valuation in writing of property from a person he reasonably believes to be qualified to make it, the valuation shall be conclusive in determining whether the division of the trust fund, or any transfer or appointment of property, made under this Schedule has been duly made, notwithstanding that the valuation is made by a person in the course of his employment as an officer or servant.

Valuation for purposes of division.

Duty of trustee
in choosing
investments.

7. (1) In the exercise of his powers of investment a trustee shall have regard to—

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

(2) Before investing in a particular wider-range security the trustee shall obtain and consider proper advice in writing on the question whether the investment is satisfactory having regard to the matters mentioned in paragraphs (a) and (b) of subparagraph (1) of this paragraph.

(3) A trustee retaining a wider-range security shall determine at what intervals the circumstances, and in particular the nature of the security, make it desirable to obtain proper advice on the question whether the security is a satisfactory investment having regard to the matters mentioned in paragraphs (a) and (b) of subparagraph (1) of this paragraph.

(4) For the purposes of subparagraphs (2) and (3) of this paragraph, proper advice is the advice of a person whom the trustee reasonably believes to be qualified by his ability in and practical experience of financial matters; and such advice may be given by a person notwithstanding that he gives it in the course of his employment as an officer or servant.