

2001 BILL 26

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First Session, 25th Legislature, 50 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# BILL 26

TRUSTEE AMENDMENT ACT, 2001

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THE MINISTER OF JUSTICE AND  
ATTORNEY GENERAL

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First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

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## BILL 26

2001

### TRUSTEE AMENDMENT ACT, 2001

(Assented to \_\_\_\_\_, 2001)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Amends RSA  
1980 cT-10

**1 The Trustee Act is amended by this Act.**

**2 Sections 2 to 13 are repealed and the following is substituted:**

Application

**2(1)** Sections 3 to 9 are subject to a contrary intention expressed in the instrument creating a trust.

**(2)** Subject to section 9, sections 3 to 8 apply to a trust regardless of whether the trust was created before or after this section came into force.

Powers and  
duties with  
respect to  
investment

**3(1)** A trustee may invest trust funds in any kind of property if the investment is made in accordance with this section.

**(2)** A trustee must invest trust funds with a view to obtaining a reasonable return while avoiding undue risk, having regard to the circumstances of the trust.

**(3)** A trustee must review the trust investments at reasonable intervals for the purpose of determining that the investments continue to be appropriate to the circumstances of the trust.

**(4)** A trustee who has invested trust funds in property may exercise for the benefit of the trust any right or power that a person who was both the legal and beneficial owner of the trust's interest in the property could exercise.

## Explanatory Notes

1 Amends chapter T-10 of the Revised Statutes of Alberta 1980.

2 Sections 2 to 13 presently read:

2 *In this section and sections 3 to 13,*

(a) *“approved corporation” means*

(i) *a corporation approved by the Lieutenant Governor in Council under this Act before July 1, 1966, whether the approval is a general one or is limited to a specified class or classes of security or to deposits,*

(i.1) *a loan corporation,*

(ii) *a corporation designated as an approved corporation pursuant to section 4,*

(iii) *a trust corporation, or*

(iv) *a credit union;*

(b) *“debentures” includes debenture stock;*

(c) *“improved real estate” means an estate in fee simple in land*

(i) *on which there exists a building, structure or other improvement used or capable of being used for residential, commercial or industrial purposes,*

(5) Without restricting the matters that a trustee may consider, in planning the investment of trust funds a trustee must consider the following matters, insofar as they are relevant to the circumstances of the trust:

- (a) the purposes and probable duration of the trust, the total value of the trust's assets and the needs and circumstances of the beneficiaries;
- (b) the duty to act impartially towards beneficiaries and between different classes of beneficiaries;
- (c) the special relationship or value of an asset to the purpose of the trust or to one or more of the beneficiaries;
- (d) the need to maintain the real value of the capital or income of the trust;
- (e) the need to maintain a balance that is appropriate to the circumstances of the trust between
  - (i) risk,
  - (ii) expected total return from income and the appreciation of capital,
  - (iii) liquidity, and
  - (iv) regularity of income;
- (f) the importance of diversifying the investments to an extent that is appropriate to the circumstances of the trust;
- (g) the role of different investments or courses of action in the trust portfolio;
- (h) the costs, such as commissions and fees, of investment decisions or strategies;
- (i) the expected tax consequences of investment decisions or strategies.

Trustee  
liability

**4(1)** A trustee is not liable for a loss in connection with the investment of trust funds that arises from a decision or course of action that a trustee exercising reasonable skill and prudence and complying with section 3 could reasonably have made or adopted.

- (ii) *on which there is being erected such a building, structure or other improvement,*
- (iii) *which is serviced with the utilities necessary for such a building, structure or other improvement, but only when the land is being mortgaged for the purpose of erecting the building, structure or other improvement, or*
- (iv) *which is being used for agricultural purposes,*

*but does not include an estate in fee simple in mines or minerals held separately from the surface;*

- (d) *“securities” includes stock, debentures, bonds, shares and guaranteed investment certificates or receipts.*

*3(1) If a corporation was approved by the Lieutenant Governor in Council before July 1, 1966 and the approval is limited to a specified class of or classes of securities or to deposits, the corporation is, subject to subsection (2), an approved corporation for all purposes under section 5.*

*(2) Nothing in this section or section 5 shall be construed as enlarging the powers of an approved corporation in respect of the borrowing of money or the issuing of securities.*

*4(1) The Lieutenant Governor in Council may designate a corporation as an approved corporation when it is shown to his satisfaction that the corporation*

- (a) *is empowered to lend money on the security of real estate,*
- (b) *has a subscribed and paid-up permanent capital of which at least \$1 000 000 is unimpaired, and*
- (c) *has a reserve fund derived solely from earnings and amounting to at least 25% of its paid-up capital.*

*(2) The Lieutenant Governor in Council may revoke an order approving a corporation or designating an approved corporation when he is satisfied*

- (a) *that the corporation no longer has*
  - (i) *a subscribed and paid-up permanent capital of which at least \$1 000 000 is unimpaired, or*
  - (ii) *a reserve fund derived solely from earnings and amounting to at least 25% of its paid-up capital,*
- (b) *that the corporation is dissolved or is no longer carrying on business in Alberta,*
- (c) *that the corporation has not kept strictly within its legal powers in relation to borrowing and investment, or*

Delegation of investment authority

(2) A court assessing the damages payable by a trustee for a loss to the trust arising from the investment of trust funds may take into account the overall performance of the investments.

**5(1)** In this section, “agent” includes a stockbroker, investment dealer, investment counsel and any other person to whom investment responsibility is delegated by a trustee.

(2) A trustee may delegate to an agent the degree of authority with respect to the investment of trust funds that a prudent investor might delegate in accordance with ordinary investment practice.

(3) A trustee who delegates authority under subsection (2) shall exercise prudence in

- (a) selecting the agent,
- (b) establishing the terms of the delegated authority, and
- (c) monitoring the performance of the agent to ensure compliance with the terms of the delegation.

(4) A trustee who has delegated authority to an agent under subsection (2) and has complied with subsection (3) and the regulations is not liable for the decisions or actions of that agent.

(5) Where investment authority has been delegated to an agent by a trustee and the trust suffers a loss because of the agent’s breach of the terms of the agency contract, damages for the loss may be recovered from the agent in an action

- (a) by the trustee, or
- (b) by a beneficiary of the trust if the trustee fails to commence an action within a reasonable time after acquiring knowledge of the breach.

Purchase of mutual fund units and delegation

**6** Investment in a mutual fund or segregated fund or in a similar investment set out in the regulations is not a delegation of investment authority with respect to the investment of trust funds.

Recording of trust status

**7(1)** A trustee must ensure, so far as it is practicable to do so, that any record evidencing the trustee’s ownership of securities also indicates the trust relationship.

*(d) that it is in the public interest to do so,*

*but the revocation does not affect the propriety of deposits or investments made before the revocation.*

*(3) An approved corporation, other than a trust corporation, loan corporation or credit union, shall file with the Executive Director*

*(a) a balance sheet, operating statement and any other supporting schedules as required by the Executive Director,*

*(b) a certified copy of its balance sheet as of the close of each fiscal year and the auditor's report on it within 170 days from the date to which it is made up, and*

*(c) any other statements, reports or other information pertaining to its financial position or affairs that the Executive Director requires.*

*(4) The balance sheet, operating statement and other supporting schedules referred to in subsection (3)(a) shall*

*(a) be filed with the Executive Director at a time and on a quarterly or monthly basis as he requires, and*

*(b) be in a form and certified in a manner approved by the Executive Director.*

*(5) In this section, "Executive Director" means the Executive Director as defined or otherwise provided for under the Securities Act.*

*5 A trustee may invest any trust money in his hands, if the investment is in all other respects reasonable and proper, in any of the following:*

*(a) securities of the Government of Canada, the government of any province of Canada, any municipal corporation in any province of Canada, the Government of the United Kingdom or the Government of the United States of America;*

*(b) securities, the payment of the principal and interest of which is guaranteed by the Government of Canada, the government of a province of Canada, a municipal corporation in any province of Canada, the Government of the United Kingdom or the Government of the United States of America;*

*(c) debentures issued by a school division, school district, drainage district, hospital district or health region under the Regional Health Authorities Act in Alberta that are secured by or payable out of rates or taxes;*

*(d) bonds, debentures or other evidences of indebtedness of a corporation that are secured by the assignment to a trustee of payments that the Government of Canada or*

(2) Subsection (1) does not apply when the trustee is a trust corporation or the Teachers' Pension Plans Board of Trustees.

Regulations

**8** The Minister may make regulations

- (a) determining similar investments for the purpose of section 6;
- (b) respecting the terms of a delegation of authority by a trustee to an agent under section 5.

Transitional

**9(1)** An instrument that creates a trust that is in effect on the coming into force of section 2 of the *Trustee Amendment Act, 2001* and that defines the investment powers of the trustee by express reference to this Act is to be read as defining those powers by reference to the Schedule to this Act.

(2) The Court of Queen's Bench on application may, on any terms and conditions that it considers appropriate, authorize the trustee of a trust referred to in subsection (1) to invest trust funds in accordance with sections 3 to 8.

(3) On an application under subsection (2) there is a presumption in favour of authorizing a trustee to invest trust funds in accordance with sections 3 to 8 if the court is satisfied that the trustee is willing and able to invest the trust funds in accordance with the standard of prudent investment set out in those sections, having regard to

- (a) the trustee's experience or expertise in investment matters,
- (b) any proposal by the trustee to obtain and consider investment advice, and
- (c) any other information that the court considers relevant.

(4) Where a provision of another enactment that is in force on the coming into force of section 2 of the *Trustee Amendment Act, 2001* defines the investment powers of a person or body by express reference to this Act, the provision is to be read as defining those powers by reference to the Schedule to this Act, until such time as the other enactment is amended to provide otherwise.



*the government of a province of Canada has agreed to make, if the payments are sufficient*

- (i) to meet the interest on all the bonds, debentures or other evidences of indebtedness outstanding as it falls due, and*
  - (ii) to meet the principal amount of all the bonds, debentures or other evidences of indebtedness on maturity;*
- (e) bonds, debentures or other evidences of indebtedness*
- (i) of a corporation incorporated under the laws of Canada or a province of Canada that has earned and paid*
    - (A) a dividend in each of the 5 years immediately preceding the date of investment at least equal to the specified annual rate on all of its preferred shares, or*
    - (B) a dividend in each year of a period of 5 years ended less than one year before the date of investment on its common shares of at least 4% of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid,*
- and*
- (ii) that are fully secured by a first mortgage, charge or hypothec to a trustee on any, or on any combination of the following assets,*
    - (A) improved real estate,*
    - (B) the plant or equipment of a corporation that is used in the transaction of its business, or*
    - (C) bonds, debentures or other evidence of indebtedness or shares of a class or classes authorized by this section;*
- (f) bonds, debentures or other evidences of indebtedness issued by a corporation incorporated in Canada if at the date of the investment or loan the preferred shares or common shares of that corporation are authorized investments under clause (j) or (k);*
- (g) guaranteed investment certificates or receipts of a trust corporation;*
- (i) bonds, debentures, notes or deposit receipts of an approved corporation;*



- (j) *preferred shares of any corporation incorporated under the laws of Canada or of a province of Canada that has earned and paid*
  - (i) *a dividend in each of the 5 years immediately preceding the date of investment at least equal to the specified annual rate on all of its preferred shares, or*
  - (ii) *a dividend in each year of a period of 5 years ended less than one year before the date of investment on its common shares of at least 4% of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid;*
- (k) *fully paid common shares of a corporation incorporated in Canada or the United States of America that during a period of 5 years that ended less than one year before the date of investment has either*
  - (i) *paid a dividend in each of those years on its common shares, or*
  - (ii) *had earnings in each of those years available for the payment of a dividend on its common shares,*  
  
*of at least 4% of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid or in which the corporation had earnings available for the payment of dividends, as the case may be;*
- (l) *shares of the Alberta Energy Company;*
- (m) *notes or deposit receipts of banks;*
- (n) *securities issued or guaranteed by the International Bank for Reconstruction and Development established by the Agreement for an International Bank for Reconstruction and Development, approved by the Bretton Woods Agreements Act (Canada), but only if the bonds, debentures or other securities are payable in the currency of Canada, the United Kingdom, any member of the British Commonwealth or the United States of America;*
- (o) *securities issued or guaranteed by Inter-American Development Bank or by Asian Development Bank, but only if the bonds, debentures or other securities are payable in the currency of Canada or the United States of America;*
- (p) *first mortgages, charges or hypothecs on improved real estate in Canada, but only if*
  - (i) *the loan does not exceed 75% of the value of the property at the time of the loan as established by a*



*report as to the value of the property made by a person whom the trustee reasonably believed to be a competent valuator, instructed and employed independently of any owner of the property, or*

*(ii) the loan is an insured loan under the National Housing Act, 1954 (Canada).*

*6(1) In determining market values of securities a trustee may rely on published market quotations of a recognized stock exchange in Canada or the United States of America.*

*(2) No corporation that is a trustee shall invest trust money in its own securities or lend money on the security of its own securities.*

*(3) In the case of an investment under section 5(e) the inclusion, as additional security under the mortgages, charges or hypothecs, of any other assets not of a class authorized by this Act as investments does not render the bonds, debentures or other evidences of indebtedness ineligible as an investment.*

*(4) No investment may be made under section 5(e), (i) or (j) that would at the time of making the investment cause the aggregate market value of the investments made under those clauses to exceed 35% of the market value at that time of the whole trust estate.*

*(5) Investments made by the testator or settlor and retained by the trustee under the authority of the trust instrument and that come within any of the classes authorized by section 5(e), (i) or (j) may, notwithstanding subsection (4), be retained by him under the authority of the trust instrument.*

*(6) No sale or other liquidation of any investment made under section 5(e), (i) or (j) is required solely because of any change in the ratio between the market value of those investments and the market value of the whole trust estate.*

*(7) In case of investment under section 5(j) or (k), not more than 30% of the total issue of shares of any corporation may be purchased for any trust.*

*(8) No investment shall be made under section 5(k) that, at the time of making the investment, would cause the aggregate market value of the common shares held for any particular trust fund to exceed 15% of the market value of that trust fund at that time.*

*(9) No sale or other liquidation of common shares is required under this section solely because of any change in the ratio between the market value of those shares and the market value of the whole trust fund.*

*7 In addition to the investments authorized by section 5 or by the trust instrument (except when that instrument expressly prohibits the investment), a trustee may invest funds in any other securities that the Court of Queen's Bench on application in any particular case*



*approves as fit and proper, but nothing in this section relieves the trustee of his duty to take reasonable and proper care with respect to the investments so authorized.*

*8 A trustee may, pending the investment of any trust money, deposit it during a time that is reasonable in the circumstances*

*(a) in any bank or treasury branch,*

*(b) in any trust corporation,*

*(b.1) in any credit union,*

*(b.2) in any loan corporation, or*

*(c) in any approved corporation expressly empowered by statute to accept money for deposit.*

*9(1) Except in the case of a security that cannot be registered, a trustee who invests in securities shall require the securities to be registered in his name as the trustee for the particular trust for which the securities are held, and the securities may be transferred only on the books of the corporation in his name as trustee for that trust estate.*

*(2) This section does not apply when the trustee is a trust corporation or the Teachers' Pension Plans Board of Trustees.*

*10(1) The powers conferred by this Act relating to trustee investments are in addition to the powers conferred by the instrument, if any, creating the trust.*

*(2) Nothing in this Act relating to trustee investments authorizes a trustee to do any thing that he is in express terms forbidden to do or to omit to do any thing that he is in express terms directed to do by the instrument creating the trust.*

*11(1) A trustee in his discretion may*

*(a) call in any trust funds invested in securities other than those authorized by this Act and invest the funds in securities authorized by this Act, and*

*(b) vary any investments authorized by this Act.*

*(2) No trustee is liable for a breach of trust by reason only of his continuing to hold an investment that since the acquisition thereof by the trustee has ceased to be one authorized by the instrument of trust or by this Act.*

*(3) When a trustee has improperly advanced trust money on a mortgage that would at the time of the investment have been a proper investment in all respects for a less sum than was actually advanced, the security shall be deemed to be an authorized investment for that less sum and the trustee is only liable to make good the amount advanced in excess thereof with interest.*





*12(1) When a trustee holds securities of a corporation in which he has properly invested money under this Act, he may concur in any compromise, scheme or arrangement*

- (a) for the reconstruction of the corporation or for the winding-up or sale or distribution of its assets,*
- (b) for the sale of all or any part of the property and undertaking of the corporation to another corporation,*
- (c) for the amalgamation of the corporation with another corporation,*
- (d) for the release, modification or variation of any rights, privileges or liabilities attached to the securities or any of them, or*
- (e) whereby*
  - (i) all or a majority of the shares, stock, bonds, debentures and other securities of the corporation, or of any class thereof, are to be exchanged for shares, stock, bonds, debentures or other securities of another corporation, and*
  - (ii) the trustee is to accept the shares, stock, bonds, debentures or other securities of the other corporation allotted to him pursuant to the compromise, scheme or arrangement,*

*in like manner as if he were entitled to the securities beneficially and may, if the securities are in all other respects reasonable and proper investments, accept any securities of any denomination or description of the reconstructed or purchasing or new corporation in lieu of or in exchange for all or any of the original securities.*

*(2) A trustee is not responsible for any loss occasioned by any act or thing done in good faith under subsection (1) and he may, if the securities accepted thereunder are in all other respects reasonable and proper investments, retain them for any period for which he could have properly retained the original securities.*

*13(1) If any conditional or preferential right to subscribe for any securities in any company is offered to a trustee in respect of any holding in the company, he may, as to all or any of the securities,*

- (a) exercise that right and apply capital money subject to the trust in payment of the consideration, or renounce the right, or*
- (b) assign for the best consideration that can be reasonably obtained the benefit of that right, or the title thereto, to any person, including any beneficiary under the trust,*

*without being responsible for any loss occasioned by any act or thing so done by him in good faith.*

**3 The following is added as a Schedule to the Act:**

**SCHEDULE**

Definitions

**1** In this Schedule,

- (a) “debentures” includes debenture stock;
- (b) “improved real estate” means an estate in fee simple in land
  - (i) on which there exists a building, structure or other improvement used or capable of being used for residential, commercial or industrial purposes,
  - (ii) on which there is being erected such a building, structure or other improvement,
  - (iii) which is serviced with the utilities necessary for such a building, structure or other improvement, but only when the land is being mortgaged for the purpose of erecting the building, structure or other improvement, or
  - (iv) which is being used for agricultural purposes,but does not include an estate in fee simple in mines or minerals held separately from the surface;
- (c) “securities” includes stocks, debentures, bonds, shares and guaranteed investment certificates or receipts.

Application

**2** This Schedule applies if, by the express terms of this or any other enactment or by an instrument, it is stated to apply.

Authorized trustee investments

**3** A trustee may invest any trust money in the trustee’s hands, if the investment is in all other respects reasonable and proper, in any of the following:

- (a) securities of the Government of Canada, the government of any province or territory of Canada, any municipal corporation in any province or territory of Canada, the Government of the United

*(2) Notwithstanding subsection (1), the consideration for any such assignment shall be held as capital money of the trust.*

*(3) The powers conferred by this section may only be exercised with the consent of any person whose consent to a change of investment is required by law or by the instrument, if any, creating the trust.*

**3** Schedule.

Kingdom or the Government of the United States of America;

- (b) securities the payment of the principal and interest of which is guaranteed by the Government of Canada, the government of a province or territory of Canada, a municipal corporation in any province or territory of Canada, the Government of the United Kingdom or the Government of the United States of America;
- (c) debentures issued by a school division, school district, drainage district or hospital district health region under the *Regional Health Authorities Act* in Alberta that are secured by or payable out of rates or taxes;
- (d) bonds, debentures or other evidences of indebtedness of a corporation that are secured by the assignment to a trustee of payments that the Government of Canada or the government of a province or territory of Canada has agreed to make, if the payments are sufficient
  - (i) to meet the interest on all the bonds, debentures or other evidences of indebtedness outstanding as it falls due, and
  - (ii) to meet the principal amount of all the bonds, debentures or other evidences of indebtedness on maturity;
- (e) bonds, debentures or other evidences of indebtedness
  - (i) of a corporation incorporated under the laws of Canada or of a province or territory of Canada that has earned and paid
    - (A) a dividend in each of the 5 years immediately preceding the date of investment at least equal to the specified annual rate on all of its preferred shares, or
    - (B) a dividend in each year of a period of 5 years ended less than one year before the date of investment on its common shares of at least 4% of the average value at which the shares were carried in the capital stock



account of the corporation during the year in which the dividend was paid,

and

- (ii) that are fully secured by a first mortgage, charge or hypothec to a trustee on any, or on any combination, of the following assets,
  - (A) improved real estate,
  - (B) the plant or equipment of a corporation that is used in the transaction of its business, or
  - (C) bonds, debentures or other evidence of indebtedness or shares of a class or classes authorized by this section;
- (f) bonds, debentures or other evidences of indebtedness issued by a corporation incorporated in Canada if at the date of the investment or loan the preferred shares or common shares of that corporation are authorized investments under clause (i) or (j);
- (g) guaranteed investment certificates or receipts of a trust corporation;
- (h) bonds, debentures, notes or deposit receipts of a loan corporation, trust corporation or credit union;
- (i) preferred shares of any corporation incorporated under the laws of Canada or of a province or territory of Canada that has earned and paid
  - (i) a dividend in each of the 5 years immediately preceding the date of investment at least equal to the specified annual rate on all of its preferred shares, or
  - (ii) a dividend in each year of a period of 5 years ended less than one year before the date of investment on its common shares of at least 4% of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid;



- (j) fully paid common shares of a corporation incorporated in Canada or the United States of America that during a period of 5 years that ended less than one year before the date of investment has either
  - (i) paid a dividend in each of those years on its common shares, or
  - (ii) had earnings in each of those years available for the payment of a dividend on its common shares,  
  
of at least 4% of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid or in which the corporation had earnings available for the payment of dividends, as the case may be;
- (k) shares of the Alberta Energy Company;
- (l) notes or deposit receipts of banks;
- (m) securities issued or guaranteed by the International Bank for Reconstruction and Development established by the Agreement for an International Bank for Reconstruction and Development, approved by the *Bretton Woods and Related Agreements Act* (Canada), but only if the bonds, debentures or other securities are payable in the currency of Canada, the United Kingdom, any member of the British Commonwealth or the United States of America;
- (n) securities issued or guaranteed by Inter-American Development Bank or by Asian Development Bank, but only if the bonds, debentures or other securities are payable in the currency of Canada or the United States of America;
- (o) first mortgages, charges or hypothecs on improved real estate in Canada, but only if
  - (i) the loan does not exceed 75% of the value of the property at the time of the loan as established by a report as to the value of the property made by a person whom the trustee reasonably believed to be a competent valuator,





instructed and employed independently of any owner of the property, or

(ii) the loan is an insured loan under the *National Housing Act, 1954* (Canada) SC 1953-54 c23.

Restrictions on investments

**4(1)** In determining market values of securities a trustee may rely on published market quotations of a recognized stock exchange in Canada or the United States of America.

**(2)** No corporation that is a trustee shall invest trust money in its own securities or lend money on the security of its own securities.

**(3)** In the case of an investment under section 3(e) the inclusion, as additional security under the mortgages, charges or hypothecs, of any other assets not of a class authorized by this Schedule as investments does not render the bonds, debentures or other evidences of indebtedness ineligible as an investment.

**(4)** No investment may be made under section 3(e), (h) or (i) that would at the time of making the investment cause the aggregate market value of the investments made under those clauses to exceed 35% of the market value at that time of the whole trust estate.

**(5)** Investments made by the testator or settlor and retained by the trustee under the authority of the trust instrument that come within any of the classes authorized by section 3(e), (h) or (i) may, notwithstanding subsection (4), be retained by the trustee under the authority of the trust instrument.

**(6)** No sale or other liquidation of any investment made under section 3(e), (h) or (i) is required solely because of any change in the ratio between the market value of those investments and the market value of the whole trust estate.

**(7)** In case of an investment under section 3(i) or (j), not more than 30% of the total issue of shares of any corporation may be purchased for any trust.

**(8)** No investment shall be made under section 3(j) that, at the time of making the investment, would cause the aggregate market value of the common shares held for any particular trust fund to exceed 15% of the market value of that trust fund at that time.



**(9)** No sale or other liquidation of common shares is required under this section solely because of any change in the ratio between the market value of those shares and the market value of the whole trust fund.

Court approved trustee investments

**5** In addition to the investments authorized by section 3 or by the trust instrument (except when that instrument expressly prohibits the investment), a trustee may invest funds in any other securities that the Court of Queen's Bench on application in any particular case approves as fit and proper, but nothing in this section relieves the trustee of the trustee's duty to take reasonable and proper care with respect to the investments so authorized.

Deposit of trust funds

**6** A trustee may, pending the investment of any trust money, deposit it for a time that is reasonable in the circumstances

(a) in any bank or treasury branch,

(b) in any trust corporation,

(c) in any credit union, or

(d) in any loan corporation.

Registration of securities

**7(1)** Except in the case of a security that cannot be registered, a trustee who invests in securities shall require the securities to be registered in the trustee's name as the trustee for the particular trust for which the securities are held, and the securities may be transferred only on the books of the corporation in the trustee's name as trustee for that trust estate.

**(2)** This section does not apply when the trustee is a trust corporation or the Teachers' Pension Plans Board of Trustees.

Statutory powers of trustee

**8(1)** The powers conferred by this Schedule relating to trustee investments are in addition to the powers conferred by the instrument, if any, creating the trust.

**(2)** Nothing in this Schedule relating to trustee investments authorizes a trustee to do anything that the trustee is in express terms forbidden to do or to omit to do anything that the trustee is in express terms directed to do by the instrument creating the trust.



Variation of investments

**9(1)** A trustee in the trustee's discretion may

(a) call in any trust funds invested in securities other than those authorized by this Schedule and invest the funds in securities authorized by this Schedule, and

(b) vary any investments authorized by this Schedule.

(2) No trustee is liable for a breach of trust by reason only of the trustee's continuing to hold an investment that since its acquisition by the trustee has ceased to be one authorized by the instrument of trust or by this Schedule.

(3) When a trustee has improperly advanced trust money on a mortgage that would at the time of the investment have been a proper investment in all respects for a lesser sum than was actually advanced, the security is deemed to be an authorized investment for that lesser sum and the trustee is liable to make good only the amount advanced in excess of the lesser amount with interest.

Concurrence by trustee in corporate schemes

**10(1)** When a trustee holds securities of a corporation in which the trustee has properly invested money under this Schedule, the trustee may concur in any compromise, scheme or arrangement

(a) for the reconstruction of the corporation or for the winding-up or sale or distribution of its assets,

(b) for the sale of all or any part of the property and undertaking of the corporation to another corporation,

(c) for the amalgamation of the corporation with another corporation,

(d) for the release, modification or variation of any rights, privileges or liabilities attached to the securities or any of them, or

(e) whereby

(i) all or a majority of the shares, stock, bonds, debentures and other securities of the corporation, or of any class of them, are to be exchanged for shares, stock, bonds, debentures or other securities of another corporation, and



- (ii) the trustee is to accept the shares, stock, bonds, debentures or other securities of the other corporation allotted to the trustee pursuant to the compromise, scheme or arrangement,

in like manner as if the trustee were entitled to the securities beneficially and may, if the securities are in all other respects reasonable and proper investments, accept any securities of any denomination or description of the reconstructed or purchasing or new corporation instead of or in exchange for all or any of the original securities.

(2) A trustee is not responsible for any loss occasioned by any act or thing done in good faith under subsection (1) and the trustee may, if the securities accepted under subsection (1) are in all other respects reasonable and proper investments, retain them for any period for which the trustee could have properly retained the original securities.

Subscription  
for securities

**11(1)** If any conditional or preferential right to subscribe for any securities in any company is offered to a trustee in respect of any holding in the company, the trustee may, as to all or any of the securities,

- (a) exercise that right and apply capital money subject to the trust in payment of the consideration, or renounce the right, or
- (b) assign for the best consideration that can be reasonably obtained the benefit of that right, or the title to it, to any person, including any beneficiary under the trust,

without being responsible for any loss occasioned by any act or thing so done by the trustee in good faith.

(2) Notwithstanding subsection (1), the consideration for any such assignment shall be held as capital money of the trust.

(3) The powers conferred by this section may be exercised only with the consent of any person whose consent to a change of investment is required by law or by the instrument, if any, creating the trust.





Amends RSA  
1980 cA-12

**4(1) The *Agricultural Societies Act* is amended by this section.**

**(2) Section 28(1.2) is repealed and the following is substituted:**

(1.2) Subject to the regulations, the directors are authorized to invest the funds of the society that are not immediately required only in investments in which a trustee may invest trust money under the Schedule to the *Trustee Act*.

**(3) Section 43(1.1) is amended by adding the following after clause (c):**

(c.1) respecting the investment of funds of the society for the purpose of section 28(1.2);

Amends RSA  
1980 cC-2

**5(1) The *Cemeteries Act* is amended by this section.**

**(2) Section 1 is amended**

**(a) by repealing clause (a) and substituting the following:**

(a) “authorized trustee” means the Public Trustee or a credit union, loan corporation, trust corporation or a corporation designated in the regulations;

**(b) by repealing clause (l.2).**

**(3) Section 41(1) is repealed and the following is substituted:**

Investment

**41(1)** Subject to section 42 and the regulations, the authorized trustee shall invest, on behalf of the owner, all perpetual care funds received by the trustee from an owner only in investments in which a trustee may invest trust money under the Schedule to the *Trustee Act*.

**(4) Section 55(4)(b) is repealed and the following is substituted:**

(b) may, subject to the regulations, invest the money only in investments in which a trustee may invest trust money under the Schedule to the *Trustee Act*.

4(1) Amends chapter A-12 of the Revised Statutes of Alberta 1980.

(2) Section 28(1.2) presently reads:

*(1.2) The directors are authorized to invest the funds of the society that are not immediately required in any investment in which a trustee may invest trust money under the Trustee Act.*

(3) Section 43(1.1)(c) presently reads:

*43(1) The Lieutenant Governor in Council may make regulations*  
*(c) governing the borrowings of societies;*

5(1) Amends chapter C-2 of the Revised Statutes of Alberta 1980.

(2) Section 1 presently reads in part:

*1 In this Act,*

*(a) "authorized trustee" means the Public Trustee or a trust corporation;*

*(1.2) "trust corporation" means an approved corporation as defined in section 2 of the Trustee Act or as designated by the regulations;*

(3) Section 41(1) presently reads:

*41(1) Subject to section 42, the authorized trustee shall invest, on behalf of the owner, in securities that are authorized investments for trustees under the Trustee Act, all perpetual care funds received by him from an owner.*

(4) Section 55(4) presently reads:

*(4) The authorized trustee*

*(a) shall deposit money received under subsection (1) in a pre-need assurance fund, and*

*(b) may invest the money in any investments authorized as trustee investments under the Trustee Act.*

**(5) Section 59.74(3) is amended by adding “, loan corporation” after “trust corporation” and by adding “or in a corporation designated in the regulations” after “in Alberta”.**

**(6) Section 60(1) is amended**

**(a) by adding the following after clause (j.1):**

(j.2) respecting the investment of

(i) perpetual care funds for the purpose of section 41(1), and

(ii) trust money for the purpose of section 55(4)(b);

**(b) by repealing clause (z.01) and substituting the following:**

(z.01) designating a corporation for the purposes of section 1(a) and 59.74(3);

Amends RSA  
1980 cC-22

**6(1) The *Condominium Property Act* is amended by this section.**

**(2) Section 35(1) is repealed and the following is substituted:**

Investments

**35(1)** Subject to section 30(3) and the regulations, a corporation may invest any funds not immediately required by it only in investments in which a trustee may invest trust money under the Schedule to the *Trustee Act*.

**(3) Section 73 is amended by adding the following after clause (d.2):**

(d.3) respecting the investment of money for the purpose of section 35(1);

Amends RSA  
1980 cC-26

**7 The *Corrections Act* is amended by repealing section 20(1)(a)(iv) and substituting the following:**

(iv) a credit union,

(5) Section 59.74(3) presently reads:

*(3) A regulatory board is deemed to hold all money collected under subsection(2) in trust and shall immediately deposit that money in a trust account in a bank, treasury branch, trust corporation or credit union in Alberta, separate and apart from any other money of the regulatory board.*

(6) Section 60(1) presently reads in part:

*60(1) The Minister may make regulations*

*(j.1) respecting the initial amount of a perpetual care fund that must be set aside for a cemetery, columbarium or mausoleum;*

*(z.01) designating a corporation as an approved trust corporation for the purposes of this Act;*

**6(1)** Amends chapter C-22 of the Revised Statutes of Alberta 1980.

(2) Section 35(1) presently reads:

*35(1) Subject to section 30(3), a corporation may invest any funds not immediately required by it only in those investments in which a trustee may invest under the Trustee Act.*

(3) Section 73 presently reads in part:

*73 The Lieutenant Governor in Council may make regulations*

*(d.2) authorizing the Minister to delegate to an association or organization referred to in clause (d.1) the carrying out of any function or duty under this Act;*

**7** Amends chapter C-26 of the Revised Statutes of Alberta 1980.  
Section 20(1)(a) presently reads:

*20(1) The earnings of a sentenced inmate engaged in an employment or training program shall be paid, less deductions required by law*

Amends RSA  
1980 cD-32

**8(1) The *Dependent Adults Act* is amended by this section.**

**(2) Section 29 is amended**

**(a) by repealing clause (b) and substituting the following:**

(b) invest any money in investments in which trustees are authorized to invest trust money under the Schedule to the *Trustee Act*;

**(b) in clause (c) by adding “Schedule to the” before “*Trustee Act*”.**

**(3) Section 30(i) is amended by adding “Schedule to the” before “*Trustee Act*”.**

Amends RSA  
1980 cE-3

**9(1) The *Election Finances and Contributions Disclosure Act* is amended by this section.**

**(2) Section 1(1)(i) is repealed and the following is substituted:**

(i) “financial institution” means a bank, a treasury branch, a credit union, a loan corporation or a trust corporation;

or by the regulations, to the director of the correctional institution to which the inmate is sentenced, who shall

- (a) deposit the earnings in trust on behalf of the inmate in
  - (i) a bank,
  - (ii) a treasury branch,
  - (iii) a loan corporation or trust corporation, or
  - (iv) a corporation designated as an approved corporation under the Trustee Act if it is empowered to accept money for deposit,

**8(1)** Amends chapter D-32 of the Revised Statutes of Alberta 1980.

(2) Section 29 presently reads in part:

*29 Subject to any restriction or condition imposed by the Court, a trustee may, in respect of the estate of the dependent adult under his trusteeship and without obtaining the authority or direction of the Court, do all or any of the following:*

- (b) invest any money in investments in which trustees are authorized to invest trust money under the Trustee Act;
- (c) deposit any money in the manner in which trust money can be deposited under the Trustee Act;

(3) Section 30(i) presently reads:

*30 The Court may on any terms and conditions it considers appropriate, authorize a trustee to do all or any of the following in respect of the estate of a dependent adult under his trusteeship:*

- (i) notwithstanding the Trustee Act, invest funds in any securities and assets that the Court approves;

**9(1)** Amends chapter E-3 of the Revised Statutes of Alberta 1980.

(2) Section 1(1)(i) presently reads:

*1(1) In this Act,*

- (i) “financial institution” means a bank, a treasury branch, a credit union, a loan corporation, a trust corporation or a corporation designated as an approved corporation under the Trustee Act that is expressly empowered by statute to accept money for deposit;

Amends RSA  
1980 cF-22.7

**10(1) The *Funeral Services Act* is amended by this section.**

**(2) Section 1(o) is repealed and the following is substituting:**

- (o) “trust corporation” means a credit union, a loan corporation or a trust corporation or a corporation designated in the regulations.

**(3) Section 6(3)(b) is repealed and the following is substituted:**

- (b) may, subject to the regulations, invest the money only in investments in which a trustee may invest trust money under the Schedule to the *Trustee Act*.

**(4) Section 23(1) is amended**

**(a) by adding the following after clause (a):**

- (a.1) respecting the investing of money for the purpose of section 6(3)(b);

**(b) by repealing clause (b) and substituting the following:**

- (b) designating a corporation for the purpose of section 1(o);

Amends RSA  
1980 cH-8

**11 The *Historical Resources Act* is amended in section 37(g) by adding “Schedule to the” before “*Trustee Act*”.**

Amends RSA  
1980 cI-7

**12 The *Interpretation Act* is amended in section 25(1)(b) by striking out “by section 5 of the *Trustee Act*” and substituting “under the Schedule to the *Trustee Act*”.**



**10(1)** Amends chapter F-22.7 of the Revised Statutes of Alberta 1980.

(2) Section 1(o) presently reads:

*1 In this Act,*

(o) *“trust corporation” means an approved corporation as defined in section 2 of the Trustee Act or as designated by the regulations.*

(3) Section 6(3) presently reads:

(3) *An authorized trustee*

(a) *shall deposit money received under subsection (1) in a special fund provided by the authorized trustee by agreement with the licensee, and*

(b) *may invest the money in any investments authorized as trustee investments under the Trustee Act.*

(4) Section 23(1) presently reads in part:

*23(1) The Minister may make regulations*

(a) *designating any business or any description or class of business as a business or a description or class of business to which this Act applies;*

(b) *designating a corporation as an approved trust corporation for the purposes of this Act;*

**11** Amends chapter H-8 of the Revised Statutes of Alberta 1980.

*37 In furtherance of its objects, the Foundation has power*

(g) *to invest its funds in the classes of securities trustees are permitted to invest in under the Trustee Act;*

**12** Amends chapter I-7 of the Revised Statutes of Alberta 1980.  
Section 25(1)(b) presently reads:

*25(1) In an enactment,*

(b) *“authorized trustee investment” means an investment authorized by section 5 of the Trustee Act;*

Amends RSA  
1980 cL-24

**13(1) The *Livestock and Livestock Products Act* is amended by this section.**

**(2) Section 14.5(2) is repealed and the following is substituted:**

(2) The Tribunal may invest the levies it receives and any interest earned on the levies

(a) subject to the regulations, in investments in which a trustee may invest trust money under the Schedule to the *Trustee Act*, or

(b) if the Tribunal is designated as a depositor of the Fund, in the Consolidated Cash Investment Trust Fund.

**(3) Section 15 is amended by adding the following after clause (a):**

(a.1) respecting the investment of levies for the purpose of section 14.5(2)(a);

Amends RSA  
1980 cO-8

**14(1) The *Opticians Act* is amended by this section.**

**(2) Section 6(2) is repealed and the following is substituted:**

(2) Notwithstanding subsection (1) and subject to the regulations, the Association may invest any portion of its funds not required for its immediate purposes only in investments in which a trustee may invest trust money under the Schedule to the *Trustee Act*.

**(3) Section 13(1) is amended by adding the following after clause (o):**

(p) respecting the investment of funds for the purpose of section 6(2).

Amends RSA  
1980 cP-11

**15(1) The *Podiatry Act* is amended by this section.**

**(2) Section 3(2) is repealed and the following is substituted:**

(2) Subject to the regulations, the Association may invest any of the funds of the Association that are not required for the immediate purposes of the Association only in

**13(1)** Amends chapter L-24 of the Revised Statutes of Alberta 1980.

(2) Section 14.5(2) presently reads:

*(2) The Tribunal may invest the levies it receives and any interest earned on the levies only in*

*(a) investments in which trustees are permitted to invest trust money under the Trustee Act, or*

*(b) the Consolidated Cash Investment Trust Fund if the Tribunal is designated as a depositor of the CCITF.*

(3) Section 15 presently reads in part:

*15 The Lieutenant Governor in Council may make regulations*

*(a) respecting the management of the Tribunal's funds;*

**14(1)** Amends chapter O-8 of the Revised Statutes of Alberta 1980.

(2) Section 6(2) presently reads:

*(2) Notwithstanding subsection (1), the Association may invest in any securities specified in section 5 of the Trustee Act any portion of its funds not required for its immediate purposes.*

(3) Section 13(1) presently reads in part:

*13(1) The council may make regulations*

*(o) requiring members to carry professional liability insurance and governing the minimum to be carried.*

**15(1)** Amends chapter P-11 of the Revised Statutes of Alberta 1980.

(2) Section 3(2) presently reads:

*(2) The Association may invest any of the funds of the Association that are not required for the immediate purposes of the Association in securities specified in section 5 of the Trustee Act.*

investments in which a trustee may invest trust money under the Schedule to the *Trustee Act*.

**(3) Section 4(1) is amended by adding the following after clause (g):**

(g.1) the investment of funds for the purpose of section 3(2);

Amends SA  
1991 cP-13.5

**16 The Powers of Attorney Act is amended by adding the following after section 7:**

Application of  
Trustee Act

**7.1** Sections 2 to 8 of the *Trustee Act* apply to an attorney exercising a power of investment under an enduring power of attorney.

Amends RSA  
1980 cP-36

**17(1) The Public Trustee Act is amended by this section.**

**(2) Section 26(3) is repealed and the following is substituted:**

(3) The common fund must be invested in any investments in which a trustee may invest trust money under the Schedule to the *Trustee Act* and not otherwise.

**(3) Section 27(5) is repealed and the following is substituted:**

(5) Money in the special reserve fund must be invested in any investments in which a trustee may invest trust money under the Schedule to the *Trustee Act* and not otherwise.

Amends SA  
1995 cR-4.5

**18(1) The Real Estate Act is amended by this section.**

**(2) Section 57(1) is repealed and the following is substituted:**

Investment  
and insurance

**57(1)** Subject to the regulations, the Council may invest any part of the Fund not currently required for disposition only in investments in which a trustee may invest trust money under the Schedule to the *Trustee Act*.

**(3) Section 83(2) is amended by adding the following after clause (f):**

(3) Section 4(1) presently reads in part:

*4(1) Subject to the approval of the Lieutenant Governor in Council, the Association may pass by-laws not inconsistent with this Act respecting*

*(g) the time, place and conduct of the annual and other meetings of the Association;*

**16** Amends chapter P-13.5 of the Statutes of Alberta, 1991. Application of Trustee Act.

**17(1)** Amends chapter P-36 of the Revised Statutes of Alberta 1980.

(2) Section 26(3) presently reads:

*(3) The common fund shall be invested in any of the investments authorized by the Trustee Act and not otherwise.*

(3) Section 27(5) presently reads:

*(5) Money in the special reserve fund may be invested in securities authorized by the Trustee Act for the investment of trust funds.*

**18(1)** Amends chapter R-4.5 of the Statutes of Alberta, 1995.

(2) Section 57(1) presently reads:

*57(1) The Council may invest any part of the Fund not currently required for disposition in any security or class of securities in which trustees are permitted to invest trust funds under the Trustee Act.*

(3) Section 83(2) presently reads in part:

*(2) The Minister may make regulations*

(f.1) respecting the investment of funds for the purpose of section 57(1);

Amends SA  
1991 cS-0.5

**19(1) The *Safety Codes Act* is amended by this section.**

**(2) Section 21(3) is repealed and the following is substituted:**

(3) Any money that is derived from donations that is not immediately required for the operation of the Council may, subject to the regulations, be invested only in investments in which a trustee may invest trust money under the Schedule to the *Trustee Act*.

(3.1) Subsection (3) is subject to any trust or condition that applies to the donation.

**(3) Section 61(1) is amended by adding the following after clause (i):**

(i.1) respecting the investment of money for the purpose of section 21(3);

Amends SA  
1988 cS-3.1

**20(1) The *School Act* is amended by this section.**

**(2) Section 44(2)(c) is repealed and the following is substituted:**

(c) invest only in any investments in which a trustee may invest trust money under the Schedule to the *Trustee Act* or as otherwise permitted by the Minister;

**21 This Act comes into force on Proclamation.**

*(f) respecting the limits of liability of the Fund;*

**19(1)** Amends chapter S-0.5 of the Statutes of Alberta, 1991.

(2) Section 21(3) presently reads:

*(3) Any money that is derived from donations that is not immediately required for the operation of the Council may, subject to any trust or condition to which the money is subject, be invested in investments in which trustees are authorized to invest money under the Trustee Act.*

(3) Section 61(1) presently reads in part:

*61(1) The Lieutenant Governor in Council may make regulations*

*(i) governing the provision of identification of safety codes officers and the use of the identification;*

**20(1)** Amends chapter S-3.1 of the Statutes of Alberta, 1988.

(2) Section 44(2) presently reads in part:

*(2) A board may*

*(c) invest only in investments authorized by section 5 of the Trustee Act or as otherwise permitted by the Minister;*

**21** Coming into force.