

1995—No. 528

TRUSTEE ACT 1925—REGULATION

(Trustee Regulation 1995)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, on the recommendation of the Attorney General and with the concurrence of the Treasurer, and in pursuance of the Trustee Act 1925, has been pleased to make the Regulation set forth hereunder.

J. W. SHAW,
Attorney General.

Citation

1. This Regulation may be cited as the Trustee Regulation 1995.

Commencement

2. This Regulation commences on 1 September 1995.

Definition and notes

3. (1) In this Regulation, “the Act” means the Trustee Act 1925.

(2) Notes included in this Regulation do not form part of this Regulation.

Prescribed corporations for authorised trustee investments: sec. 14A

4. For the purposes of section 14A (2) (j) of the Act, the following corporations are prescribed:

- (a) any corporation that is registered as a society, and authorised to operate as a credit union or building society, under the Financial Institutions (NSW) Code;

(b) any corporation:

- (i) that is registered as a foreign society under the Financial Institutions (NSW) Code; and
- (ii) that is registered as a society, and authorised to operate as a credit union or building society, under the law of any other State or Territory corresponding to the Financial Institutions (NSW) Code,

to invest trust funds by way of deposit with certain credit unions and building societies.

**Prescribed securities other than debentures and promissory notes:
sec. 14A**

5. (1) For the purposes of section 14A (2) (m) of the Act, all securities (other than stocks and shares) that are denominated in Australian dollars are prescribed securities.

(2) For the purposes of section 14A (2) (m) (i) and (ii) of the Act, the following are prescribed credit rating organisations:

- (a) Standard and Poor's;
- (b) Moody's.

(3) For the purposes of section 14A (2) (m) (i) of the Act, the following are prescribed credit ratings of companies or other bodies:

- (a) "AAA", "AA+", "AA" and "AA—" ratings given by Standard and Poor's;
- (b) "Aaa", "Aa1", "Aa2" and "Aa3" ratings given by Moody's.

(4) Subclause (3) applies to debentures and promissory notes issued by a company or body which is given a prescribed credit rating only if those debentures or promissory notes are denominated in Australian dollars.

(5) For the purposes of section 14A (2) (m) (ii) of the Act, the following are prescribed credit ratings of securities:

- (a) "AAA", "AA+", "AA", "AA-", "A.1+", and "A.1" ratings given by Standard and Poor's;
- (b) "Aaa", "Aa1", "Aa2", "Aa3" and "Prime—1" ratings given by Moody's.

(6) Subclause (5) applies to debentures and promissory notes which are given a prescribed credit rating only if those debentures or promissory notes are denominated in Australian dollars.

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(7) In this clause:

“Moody’s” means Moody’s Investors Service, Inc.;

“Standard and Poor’s” means Standard and Poor’s (Australia) Pty. Ltd.

Note: The effect of this clause is to enable trustees, subject to the terms of the relevant trust, to invest in debentures, promissory notes and other securities that are issued by companies or bodies having specified credit ratings or that themselves have specified credit ratings.

Prescribed building societies for authorised trustee investments: sec. 14A

6. For the purposes of section 14A (2) (p) of the Act, any building society that is registered as a society, and authorised to operate as a building society, under the Financial Institutions (NSW) Code is a prescribed building society.

Note: The effect of this clause is to enable trustees, subject to the terms of the relevant trust, to invest in all NSW registered building societies.

Prescribed persons for the deposit of authorised securities: sec. 14C

7. For the purposes of section 14C (4) (a) of the Act, Austraclear Limited is a prescribed person.

Note: The effect of this clause is to enable a trustee to deposit securities that are payable to bearer with a specified person. Under section 14C (4) (a) of the Act, such securities may also be deposited with a bank.

Prescribed insurers: sec. 18

8. For the purposes of section 18 (3) of the Act, the following corporations are prescribed insurers:

A.F.G. Insurances Limited

Australian Mortgage Insurance Corporation Limited

Beneficial Insurance Company Limited

GIO Australia Pty. Limited

Guaranty Finance Insurance Pty. Limited

Home Owners Mortgage Equity Pty. Limited

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Housing Loans Insurance Corporation
 MGICA Ltd.
 Sun Alliance Mortgage Insurance Limited

Note: A trustee is not chargeable with a breach of trust arising from loans made on the security of property so long as the requirements of section 18 are complied with. One of the requirements is that the amount of a loan must not exceed two-thirds of the valuation of the property unless repayment of the loan is insured by a prescribed insurer. The effect of this clause is to prescribe insurers for that purpose.

Prescribed agents for receipts and payments: sec. 53

9. For the purposes of section 53 (4) of the Act, the following are prescribed persons and classes of persons:

Austraclear Limited
 Museum of Contemporary Art Limited
 Public Trustee
 trustee companies

Note: The effect of this clause is to enable trustees to employ specified persons to act on their behalf in the receipt and payment of money. Under section 53 (4) of the Act, banks, solicitors, stockbrokers and real estate agents may also be employed for that purpose.

Repeal

10. The Trustee Regulation 1988 is repealed.

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10. Repeal

EXPLANATORY NOTE

The object of this Regulation is to repeal and remake, with no changes in substance, the provisions of the Trustee Regulation 1988. The new Regulation deals with the following matters:

- (a) prescribing certain credit unions and building societies as corporations in which trustees may invest trust funds (clause 4);
- (b) prescribing securities in which trustees may invest trust funds and prescribing credit rating organisations and credit ratings for the purpose of enabling trustees to invest trust funds in those securities (clause 5);
- (c) prescribing certain New South Wales registered building societies in which trustees may invest trust funds (clause 6);
- (d) prescribing certain bodies in which trustees may deposit securities that are payable to bearer (clause 7);
- (e) prescribing certain bodies as approved insurers for the purposes of insuring repayment of loans secured by property (clause 8);
- (f) prescribing certain persons as agents for receiving payments and giving receipts in connection with the execution of trusts and the administration of estates (clause 9);
- (g) other matters of a machinery nature (clauses 1, 2, 3 and 10).

This Regulation is made under the Trustee Act 1925, including section 104A (the general regulation making power), and sections 14A, 14C, 18 and 53.

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.
