

**1998**

**CHAPTER 40**

An Act to amend *The Trustee Act* and to make consequential amendments to other Acts

(Assented to June 11, 1998)

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

**Short title**

**1** This Act may be cited as *The Trustee Amendment Act, 1998*.

**R.S.S. 1978, c.T-23 amended**

**2** *The Trustee Act* is amended in the manner set forth in this Act.

**New sections 3 to 3.3**

**3 Section 3 is repealed and the following substituted:**

**“Investment**

**3(1)** A trustee may invest trust property in any form of property or security in which a reasonable, prudent investor would invest, including a security issued by a mutual fund as defined in *The Securities Act, 1988* or similar investments.

(2) Subsection (1) does not authorize a trustee to invest trust property in a manner that is inconsistent with the instrument creating the trust.

(3) In planning the investment of trust property, a trustee shall have regard to the following factors in addition to any others that are relevant in the circumstances:

- (a) general economic conditions;
- (b) the possible effects of inflation or deflation;
- (c) the expected tax consequences of investment decisions or strategies;
- (d) the role that each investment or course of action plays within the overall portfolio of trust property;
- (e) the expected total return from income and appreciation of capital;
- (f) other resources of the beneficiaries;
- (g) needs for liquidity, regularity of income and preservation or appreciation of capital;

(h) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

**“Standard of care**

**3.1** In investing trust property, a trustee must exercise the care, skill, diligence and judgment that a reasonable, prudent investor would exercise in making investments.

**“Investment diversity**

**3.2** A trustee must diversify the investment of trust property to an extent that is appropriate having regard to:

- (a) the terms on which the trust property is held; and
- (b) general economic and investment market conditions.

**“Investment advice**

**3.3(1)** A trustee may obtain advice respecting the investment of trust property.

(2) A trustee is not in breach of trust for relying on advice obtained pursuant to subsection (1) if a reasonable, prudent investor would rely on the advice in comparable circumstances”.

**Section 4 amended**

**4 Subsections 4(3) to (8) are repealed.**

**New section 5**

**5 Section 5 is repealed and the following substituted:**

**“Additional assets**

**5(1)** In addition to the investments authorized by section 3 or by the instrument creating the trust, a trustee may, except where the instrument creating the trust expressly prohibits it, invest in any other property or security that a judge of the Court of Queen's Bench, on application in any particular case, approves as fit and proper.

(2) Nothing in subsection (1) relieves the trustee of his or her duty to exercise care, skill, diligence and judgment with respect to investments authorized pursuant to subsection (1)”.

**Section 9 amended**

**6 Subsections 9(1) and (3) are repealed.**

**Section 10 amended**

**7(1) Subsection 10(1) is amended in the portion following clause (d) by striking out “in all other respects reasonable and proper investments” and substituting “investments authorized by section 3”.**

**(2) Subsection 10(2) is amended by striking out “in all other respects reasonable and proper investments” and substituting “investments authorized by section 3”.**

**Section 11 repealed**

**8 Section 11 is repealed.**

**Section 12 repealed**

**9 Section 12 is repealed.**

**Section 13 amended**

**10 Section 13 is amended by striking out** “, nor for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through his own wilful default”.

**New section 44**

**11 Section 44 is repealed and the following substituted:**

**“Appointment of agents by trustees for certain purposes**

**44(1)** In this section, ‘agent’ includes a stock broker, investment dealer, investment counsellor 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 property that a reasonable, prudent investor would delegate in accordance with ordinary business practice.

(3) A trustee who delegates authority pursuant to subsection (2) must exercise prudence and diligence in:

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

(4) In performing a delegated function, an agent owes a duty to the trustee and to the beneficiaries to exercise reasonable care to comply with the terms of the delegation.

(5) A trustee who complies with subsection (3) is not liable for the decisions or actions of the agent to whom the authority was delegated.

(6) This section does not authorize a trustee to delegate authority where the terms of the trust expressly prohibit the trustee from delegating authority to make investments.

(7) Investment in a security issued by a mutual fund as defined in *The Securities Act, 1988* or in a similar investment is not a delegation of authority with respect to the investment of trust property”.

**New sections 57.1 and 57.2**

**12 The following sections are added after section 57:**

**“Trustee’s liability**

**57.1** A trustee is not liable for a loss arising from the investment of trust property if the conduct of the trustee that led to the loss conformed to a plan or strategy for the investment of the trust property that included reasonable assessments of risk and return and that a reasonable, prudent investor would adopt under comparable circumstances.

**“Damage assessment**

**57.2** A court assessing the damages payable by a trustee for a loss arising from the investment of trust property may take into account the overall performance of the investments”.

S.S. 1996, c.C-37.3 amended

**13 Clause 161(10)(b) of *The Co-operatives Act, 1996* is repealed and the following substituted:**

“(b) invest the money in the manner authorized by section 3 of *The Trustee Act*”.

S.S. 1979, c.M-11.1 amended

**14 Subsection 68(4) of *The Meewasin Valley Authority Act* is repealed.**

S.S. 1988-89, c.M-23.2 amended

**15 Clause 21(b) of *The Municipal Board Act* is repealed and the following substituted:**

“(b) invest the funds in the manner authorized by section 3 of *The Trustee Act*”.

R.S.S. 1978, c.M-39 amended

**16 Clause 14(h) of *The Mutual Medical and Hospital Benefit Associations Act* is repealed and the following substituted:**

“(h) make investments in the manner authorized by section 3 of *The Trustee Act*”.

R.S.S. 1978, c.W-4 amended

**17 Section 64 of *The Wascana Centre Act* is repealed.**

**Coming into force**

**18 This Act comes into force on assent.**