

Bill No. 61 of 2009

THE INDIAN TRUSTS (AMENDMENT) BILL, 2009

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BILL

further to amend the Indian Trusts Act, 1882.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Indian Trusts (Amendment) Act, 2009.

Short title and commencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2 of 1882.

2. For section 20 of the Indian Trusts Act, 1882, (hereinafter referred to as the principal Act), the following section shall be substituted, namely:—

Substitution of new section for section 20.

10 “20. Where the trust-property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on any security or class of securities expressly authorised by the instrument of trust, or by the Central Government, by notification in the Official Gazette:

Investment of trust-money.

15 Provided that, where there is a person competent to contract and entitled in possession to receive the income of the trust-property for his life, or for any greater estate, no investment on any security or class of securities mentioned above shall be made without his consent in writing:

Provided further that no such consent shall be required where such investment is made in the securities of the Government.

Explanation.—For the purposes of this section, the securities, both the principal whereof and the interest whereon shall have been fully and unconditionally guaranteed by the Central Government or the State Government, shall be deemed to be securities of such Government.” 5

Amendment
of Section
20A.

3. In section 20A of the Principal Act, in the proviso,—

- (i) the words, brackets and letters “clauses (c) and (d) of” shall be omitted;
- (ii) for the words “said clauses”, the words “said section” shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The Indian Trusts Act, 1882 (2 of 1882) provides the law relating to Private Trusts and Trustees. Section 20 of the Act states where the trust property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound, subject to any direction contained in the instrument of trust, to invest the money in securities enumerated in clauses (a) to (f) of the said section. Clause (a) of section 20 provides for investing the trust money in promissory notes, debentures, stock and other securities of the United Kingdom of Great Britain and Ireland and clause (b) for bonds, debentures, and annuities charged or secured by Parliament of the United Kingdom. The Law Commission of India, in its 17th Report has, *inter alia*, recommended for amendment of section 20 and for deletion of the provisions for the securities which have become obsolete.

2. The Indian Trusts (Amendment) Bill, 2009 seeks to amend section 20 and empowers the Government to notify a class of securities, for the purposes of investing trust money and it does away with the requirement of case to case approval by the Government of “any security” and provides to the trustees greater autonomy and flexibility to take decisions on investment of trust money based on their assessment of the risk return tradeoff and the relevant provisions of the trust deed. It would be consistent with the current economic environment and the present shift from a merit based regulatory regime to a disclosure based regulatory regime.

3. The Bill seeks to enable the Central Government to notify a class of securities for the purposes of investment of trust money by the trustees in such securities and it deletes reference to the outdated and obsolete securities from the Act.

4. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 21st July, 2009.

PRANAB MUKHERJEE.

ANNEXURE

EXTRACTS FROM THE INDIAN TRUSTS ACT, 1882

(2 OF 1882)

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Investment of trust-money.

20. Where the trust-property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on the following securities, and on no others:—

(a) in promissory notes, debentures, stock or other securities of any State Government or of the Central Government, or of the United Kingdom of Great Britain and Ireland:

Provided that securities, both the principal whereof and the interest whereon shall have been fully and unconditionally guaranteed by any such Government, shall be deemed, for the purposes of this clause, to be securities of such Government;

(b) in bonds, debentures and annuities charged or secured by the Parliament of the United Kingdom before the fifteenth day of August, 1947 on the revenues of India or of the Governor-General in Council or of any Province:

Provided that, after the fifteenth day of February, 1916, no money shall be invested in any such annuity being a terminable annuity unless a sinking fund has been established in connection with such annuity; but nothing in this proviso shall apply to investments made before the date aforesaid;

(bb) in India three and a half per cent., stock, India three per cent., stock, India two and a half per cent. stock or any other capital stock which before the 15th day of August, 1947, was issued by the Secretary of State for India in Council under the authority of an Act of Parliament of the United Kingdom and charged on the revenues of India or which was issued by the Secretary of State on behalf of the Governor-General in Council under the provisions of Part XIII of the Government of India Act, 1935;

(c) in stock or debentures of, or shares in, Railway or other Companies the interest whereon shall have been guaranteed by the Secretary of State for India in Council or by the Central Government or in debentures of the Bombay Provincial Co-operative Bank, Limited, the interest whereon shall have been guaranteed, by the Secretary of State for India in Council or the State Government of Bombay;

(d) in debentures or other securities for money issued, under the authority of any Central Act or Provincial Act or State Act, by or on behalf of any municipal body, port trust or city improvement trust in any presidency-town or in Rangoon Town, or by or on behalf of the trustees of the port of Karachi:

Provided that after the 31st day of March, 1948, no money shall be invested in any securities issued by or on behalf of a municipal body, port trust or city improvement trust in Rangoon Town, or by or on behalf of the trustees of the port of Karachi;

(e) on a first mortgage of immovable property situate in any part of the territories to which this Act extends: Provided that the property is not a leasehold for a term of years and that the value of the property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the mortgage-money;

(ee) in units issued by the Unit Trust of India under any unit scheme made under section 21 of the Unit Trust of India Act, 1963; or

52 of 1963.

(f) on any other security expressly authorised by the instrument of trust, or by the Central Government by notification in the Official Gazette, or by any rule which the High Court may from time to time prescribe in this behalf:

Provided that, where there is a person competent to contract and entitled in possession to receive the income of the trust-property for his life, or for any greater estate, no investment on any security mentioned or referred to in clauses (d), (e) and (f) shall be made without his consent in writing.

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20A. (1) A trustee may invest in any of the securities mentioned or referred to in section 20, notwithstanding that the same may be redeemable and that the price exceeds the redemption value:

Power to purchase redeemable stock at a premium.

Provided that a trustee may not purchase at a price exceeding its redemption value any security mentioned or referred to in clauses (c) and (d) of section 20 which is liable to be redeemed within fifteen years of the date of purchase at par or at some other fixed rate, or purchase any such security as is mentioned or referred to in the said clauses which is liable to be redeemed at par or at some other fixed rate at a price exceeding fifteen per centum above par or such other fixed rate.

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LOK SABHA

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further to amend the Indian Trusts Act, 1882.

(Shri Pranab Mukherjee, Minister of Finance)