

Investment Ordinance 1975 Amendment Ordinance 1995

No 20, 1995

An Ordinance to vary provisions in the Investment Ordinance 1975 relating to the investment of church trust property.

Whereas it is expedient that further provision be made for the investment of church trust property.

Now the Standing Committee of the Synod of the Diocese of Sydney in the name and place of the Synod Hereby Ordains Declares Directs and Rules as follows -

Citation

1. This ordinance may be cited as the "Investment Ordinance 1975 Amending Ordinance 1995".

Amendment of the Investment Ordinance 1975

2. The Investment Ordinance 1975 is amended as follows -
 - (a) by the substitution of the following for sub-paragraph 1(e)(iii) -
 - (iii) all property vested in the Board by virtue of clause 7(2);
 - (iv) all property -
 - (A) representing the moneys referred to in subparagraphs (i) and (ii) of this definition;
 - (B) referred to in subparagraph (iii) of this definition; or
 - (C) representing the proceeds referred to in subparagraph (v) of this definition; and";
 - (b) by re-numbering subparagraph 1(e)(iv) as 1(e)(v);
 - (c) by omitting the following matter from paragraph (h) of clause 1 -

"other than interests in the Fund which have been subsisting only during the three calendar months which immediately precede that month or during part of those three months";
 - (d) the insertion of the following new paragraphs at the end of clause 1 -
 - (k) 'Business Day' means a day on which banks are open for business in Sydney.
 - (l) 'Financial Accounts' means the statement of assets and liabilities of the Fund (by whatever name called) as at 30 June and 31 December in each financial year.
 - (m) 'Redemption Date' in respect of an interest referred to in a Redemption Notice, means that day which is 12 months after the Receipt Date or such later day as the units may be redeemed under clause 5 provided that if that day is not a Business Day, the Redemption Date is the next succeeding Business Day.
 - (n) 'Redemption Notice' has the meaning set out in clause 5(1).
 - (o) 'Receipt Date' means the date on which the Manager receives a Redemption Notice or if that day is not a Business Day, the next succeeding Business Day. "
 - (e) by omitting subclauses 2(1), (2) and (3) and inserting the following subclauses instead -
 - (1) In this clause -

V	is the aggregate of the values of all assets of the Fund as represented in the Financial Accounts of the Fund last approved by the Board;
CA	is the amount last estimated by the Board to be the cost of acquiring all land which is part of the assets of the Fund;
CD	is the amount last estimated by the Board to be the cost of disposing of all land which is part of the assets of the Fund;
L	is the amount of all liabilities of the Fund as represented in the Financial Accounts of the Fund last approved by the Board;
N	is the number of interests in the Fund as at 5 pm on the day of the Financial Accounts of the Fund last approved by the Board.
 - (2) On any date, the value of an interest in the Fund on an acquisition basis ("VIA") is to be determined in accordance with the following formula -
$$VIA = (V + CA - L)/N.$$
 - (3) On any date, the value of an interest in the Funds on a disposal basis ("VID") is equal to the amount determined in accordance with the following formula -
$$VID = (V - L - CD)/N."$$
 - (f) by omitting subclause 3(3) and inserting the following subclause instead -

"(3) This Ordinance may be cited as the 'Sydney Anglican Property Fund Ordinance 1975'."
 - (g) by the insertion of the following as paragraph 4(1)(a) -

"(a) applying in writing addressed and given to the Board or to the Manager and for one or more interests in the Fund;"
 - (h) by re-identifying paragraph 4(1)(a) and 4(1)(b) as paragraphs 4(1)(b) and 4(1)(c) respectively.
 - (i) by omitting clause 5 and inserting the following clause instead -

"Redemption of Interests

5. (1) A Trustee which desires to redeem one or more interests in the Fund shall do so by giving a written notice ('Redemption Notice') of such desire to the Manager in which the number of interests in the Fund of the Trustee which the Trustee desires to redeem is specified.

(2) Where a Redemption Notice is received by the Manager, the Manager, on the Redemption Date, must pay to the Trustee in respect of each interest specified in that Notice a sum equal to value of an interest in the fund on a disposal basis current on the Redemption Date.

(3) Notwithstanding any other provision of this ordinance, a Trustee which has given a Redemption Notice may not require an interest referred to in the Notice to be redeemed if to do so would mean that the number of interests in the Fund redeemed in the financial year then current would exceed 10% of the number of interests in the Fund on the first day of that financial year.

(4) Where the redemption of an interest is precluded by subclause (3) or this subclause that interest is to be redeemed on the first Business Day in the next financial year provided that if the redemption of the interest on that day would result in a contravention of subclause (3) the interest is to be redeemed on the first Business Day in the first financial year thereafter where the redemption of the interest on that day would not result in a contravention of subclause (3) or this subclause.

(5) For the purposes of the application of subclauses (3) and (4) interests shall be redeemed in the same order in which Redemption Notices in respect of those interest are received by the Manager. If Redemption Notices are received at the same time, the order of redemption of the interests specified in those Notices shall be determined by the Manager.

(6) The Manager, in its discretion, may pay any sum (or part thereof) which is payable by the Manager to a Trustee under this clause prior to the day on which that sum (or part) is payable."

(j) by inserting a new clause 5A after clause 5 as follows -

"Permanent Interests

5A. (1) No Trustee may give a Redemption Notice in respect of a Permanent Interest unless the Standing Committee, by resolution, gives its consent thereto.

(2) Any consent of the Standing Committee may be given subject to any condition or conditions including, but without limiting the generality of the foregoing -

(a) conditions as to the investment of the amount paid to the Trustee by the Manager; or

(b) conditions as to the purposes to which the amount paid to the Trustee by the Manager may be put.

(3) All conditions shall be effective and binding on the Trustee as if they were contained in this Ordinance.;"

(k) by substituting the following for clause 7 -

"7 (1) The Board is hereby authorised and empowered to acquire one or more interests in the Fund and to realise, from time to time, any interests so acquired. The provisions of clauses 4 and 5 shall apply to the Board except that -

(a) if, at the time the Board acquires such interest or interests, the Board is the Manager, then -

(i) instead of depositing any sum, it shall be sufficient for the Board to appropriate an amount in its books; and

(ii) any written notice to be given pursuant to clause 5 shall be given by the Board to the Secretary of the Standing Committee; and

(b) in lieu of making a payment under paragraph 4(1)(b), the Board may -

(I) specify, in its application, land vested in it with a value equal to the value (or an integral multiple thereof) of an interest in the Fund on an acquisition basis as at the date on which the written application is given; or

(ii) specify, in its application, land vested in it and deposit with the Manager a sum such that the aggregate of the value of the land and the sum is equal to the value (or an integral multiple thereof) of an interest in the Fund on an acquisition basis as at the date on which the written application is given, provided that -

(A) if the land is mortgaged, the value of the land must be reduced by the amount secured by the mortgage;

(B) if the Board is not the Manager at the time when such application is given, the Board may not make the application without the consent of the Manager; and

(C) if the Board is the Manager at the time when such application is given, the Board may not make the application without the consent of the Standing Committee (given in a resolution) after the Board has disclosed to the Standing Committee the basis on which the Board has determined the value of the land intended to be specified in the application.

(2) If an application is made under this clause the Manager may thereafter note in the register kept under clause 8 that the Board holds the interest or interests applied for in the application.

(3) If, in any application made under this clause, the Board requests that the interests applied for be issued to a Trustee named in the application and which has consented to being named in the application -

- (a) the Manager must give effect to that request; and
- (b) the interests, when issued, must be held upon the same trusts as the trusts on which the Board held the relevant land or the relevant land and sum.”;

(l) by amending clause 10 as follows -

- (1) by omitting paragraph (2)(a) and inserting the following instead -
“the purchase of real or leasehold estate situated within Australia.”; and
- (2) by omitting paragraph (a) to the proviso and inserting the following instead -
“(a) the purchase of real or leasehold estate situated within Australia.”;

(m) by omitting clause 11(1) and inserting the following instead -

“(1) In relation to the Fund, the Board shall have the powers and authorities specified in clauses 11, 12(b), (c) and (d) and 13 of the Glebe Administration Ordinance 1930 as if those powers and authorities were set out in full in this Ordinance subject to the following conditions -

- (a) the Board may only exercise the power to borrow specified in clause 12(b) if at the time of the exercise of that power the amount of the liabilities of the Fund, when aggregated with the amount proposed to be borrowed, does not exceed an amount equal to 30% of the aggregate of the values of all assets of the Fund as represented in the Financial Accounts of the Fund last approved by the Board; and
- (b) the Board shall not sell or agree to sell any land which forms part of the Fund or borrow any sum or sums of money on the security thereof unless the proposed sale or borrowing has been approved by the Manager.”;

(n) by omitting clause 11(2);

(o) by omitting clause 12;

(p) by amending clause 16 as follows -

- (1) the following matter is omitted from paragraph (b) -
“and of the rate of interest last determined by the Manager, prior to such request, pursuant to clause 21”;
- (2) at the end of paragraph (b) the matter “,” is omitted and the matter “; and” is inserted instead; and
- (3) a new paragraph (c) is inserted as follows -
“(c) the prescribed rate of interest last determined by the Manager under clause 21”;

(q) by amending clause 18 as follows -

- (1) by omitting the first word “Each” and inserting the following instead -
“Subject to clause 18A, each”; and
- (2) by inserting the matter “clause 18A and” after the words “pursuant to”;
- (3) by inserting the word “complete” before the word “calendar” where twice appearing; and
- (4) by omitting the matter “(if any) in excess of three (3)”;

(r) by inserting a new clause 18A after clause 18 as follows -

“Income Payments in Respect of Redeemed Interests

18A. (1) Where an interest is redeemed during a financial year, the Manager, in its sole discretion, may pay to the Trustee which held that interest, on the day that interest is redeemed, in lieu of making any payment under clause 18 in respect of the financial year during which the interest is redeemed, an amount (“I”) calculated in accordance with the following formula -

$$I = 0.75 \times \frac{A \times C}{B} - D$$

where

A is the distributable income of the Fund in the financial year immediately preceding the financial year in which the interest was redeemed (the “previous financial year”);

B is the total denominator for the previous financial year;

C is the number of complete calendar months in the financial year in which the interest is redeemed during which the interest has been in existence;

D is the amount (if any) paid by the Manager under clause 19 on account of the distributable income of the Fund for the financial year in which the interest is redeemed.

(2) Where a payment is made under clause 18A(1), no payment shall be made under clause 18 in respect of the redeemed interest for the financial year in which the interest was redeemed; and

(s) by omitting clause 21 and inserting the following instead -

“21 (1) Where an interest in the Fund is acquired on a day other than the first day of a calendar month, the Manager shall pay interest on the sum deposited with the Manager to acquire the interest calculated at the prescribed rate from the date on which the said sum was deposited to the last day of that calendar month.

(2) Where an interest is redeemed on a day other than the last day of a calendar month, the Manager shall pay interest on the value of the interest on a disposal basis on the day the interest is redeemed calculated at the prescribed rate from the first day of the calendar month in which the interest is redeemed until (but not including) the date of redemption.

(3) In this clause "prescribed rate" means such rate (per annum) as the Manager may have last determined for the purposes of this clause."

Transitional

3. (1) The following transitional provisions apply -
- (a) the amendments made by paragraphs (q) and (r) of clause 2 apply in relation to interests in the Fund redeemed on or after 1 January 1996;
 - (b) the amendments made by paragraphs (c), (p) and (s) of clause 2 commence on 1 January 1996; and
 - (c) all other provisions of this ordinance commence on the day on which this ordinance receives the assent of the Archbishop.
- (2) Terms used in this clause which are defined in the Investment Ordinance 1975 have the same meaning as in that ordinance.

I Certify that the Ordinance as printed is in accordance with the Ordinance as reported.

N.M. Cameron
Chairman of Committees

I Certify that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on 29 August 1995.

W.G.S. Gotley
Secretary

I Assent to this Ordinance.

R.H. Goodhew
Archbishop of Sydney
29/8/1995