

**PROPOSED AMENDMENTS TO THE TRUSTEES INVESTMENT ACT, CAP T22 LFN 2004**

S/NO	SECTION	CURRENT PROVISION	PROPOSED AMENDMENT	JUSTIFICATION
1	Section 2.1	Limits the exercise of the Trustees Investment discretion to only Federal and State Government Bonds, Corporate Bonds and Stocks	<p>The Section should be modified to include investments in Real Estate, Money Market Placements with Deposit Money Banks and Collective Investment Schemes.</p> <p>It should also state that where suitable, the Trustee may also invest in Private Equity, Commodities and Hedge Funds.</p> <p>Mutual Funds should also be added. Minimum ratings should however be stipulated for the permissible Mutual Funds.</p>	<p>The rationale is to ensure that Trust investments also benefit from the enhanced returns or the risk diversification benefits that Real Estate, Money Market Placements with Deposit Money Banks and Collective Investment Schemes may provide.</p> <p>Additionally, some Trust Investments (such as foundations and endowments) may have a long term horizon and investments in Private Equity, Commodities and Hedge Funds may be appropriate investment vehicles.</p> <p>As an example, Section 3 of Part II of the Trustees Act (UK), 2000 provides that;</p> <p>“Subject to the provisions of this Part, a Trustee may make any kind of investment that he could make if he were absolutely entitled to the assets of the Trust”.</p>

2	Section 2 (1) (b)	This Act shall apply to.....securities hereafter created or issued by or on behalf of the Government of a State which are declared by the President by notice in the <i>Federal Gazette</i> to be securities to which this Act applies.	It is proposed that the reference to the additional requirements for the President to publish the declaration in the <i>Federal Gazette</i> be deleted. On the other hand, a saving clause should be included such that the President or the Minister as the case may be can in the future designate other forms of securities or investment as eligible securities or investment that trustees can invest trust funds from time to time.	This adds additional layer of obligation (which may take many months to achieve) for State Bonds that have been approved by the Federal Government.
3	Section 2 (1) (d)	This Act shall apply to.....Debentures and fully paid-up shares of any company incorporated by and registered under the Companies and Allied Matters Act (other than a private company within the meaning of that Act).	<p>Given the evolving activities in today's market, it is expedient to amend this subsection to include the securities of private companies and all forms of securities as may be published from time to time.</p> <p>The amendment should provide for some minimum turnover or asset threshold that such private company should have for it to qualify as a security a trustee can invest in.</p> <p>SEC should be given the responsibility to determine the minimum threshold from time to time.</p>	It is in line with best practice
4	Section 2(2)(b)	This section provides that only stocks listed in the Lagos	Lagos Stock Exchange no longer exists. It is suggested that the	The universe of investible assets should be expanded to avail

		Stock Exchange shall be invested in by the Trustee	expression 'Lagos State Exchange' be amended to read "The Nigerian Stock Exchange and any other Exchange licenced by the Securities and Exchange Commission".	the Trustees with a wide range of stocks to invest in.
5	Section 2(2)(c)	This section provides that the Trustees investment must be in stocks that have paid dividends in the last three financial years and the dividends paid in each of those years must be at least 5% of the nominal value of those shares	We propose an amendment to provide that the company to be invested in should have a history of reinvesting the undistributed profit in the company's business to enhance shareholder value and the value of the company in the long run.	Growth companies/stocks and IPOs are by this provision excluded from the Trustee's investment universe. This may hamper the Trustees' ability to meet certain goals of their clients
6	Section 2(3) (a)	.....the value of the part of the trust fund invested in the exercise of that power to exceed one-third of the total value of the fund;	The restriction created in section 2 (3)a of the Act should be relaxed. The provision should read "No investment shall be made in exercise of the power conferred by subsection 1 (b) (c) and (d) of this section if the investment would cause....."-	Securities issued by the FGN bear lower risk compared with other types of securities. There is little justification in placing FGN securities on the same pedestal with other types of securities in this context. In precluding Trust Funds from investing anything more than one third of their assets in FGN Securities, section 2(3)a is in our view overly restrictive.  The suggested insertion removes this clog.
7	Section 2(3)(c)	This section provides that no more than 5% of the Trust	The provision should be amended to enhance the investment in fixed	Equity investment is risky and leaving it at 5% will enhance

		Investments shall be placed in a single stock by the Trustees	income and other securities.	the safety and diversification of investment and the diversification suggested will spread any potential risk.
8	TIA	TIA	<p>It is imperative that we reform the Trustee Investments Act to regulate the following, specific areas of Trust Law, amongst others:</p> <ol style="list-style-type: none"> <li>1. The duty of care imposed upon trustees</li> <li>trustees' power of investment</li> <li>2. The power to appoint nominees and agents</li> <li>3. The power to acquire land</li> <li>4. The power to receive remuneration</li> </ol>	To align with best practice.
9	Schedule	<p>This section deals with securities to which the Act applies. They include:</p> <ol style="list-style-type: none"> <li>1. The Nigerian Coal Corporation (NCC)</li> <li>2. The National Electric Power Authority (NEPA)</li> <li>3. The Nigerian Ports Authority (NPA)</li> <li>4. The Nigerian Railway Corporation (NRC)</li> </ol>	<p>The reform should reflect the provision of Section 312(1) of the ISA which states as follows <i>"Notwithstanding the provisions of this [Investments and Securities] Act, the relevant provisions of all existing enactments including the Trustees Investments Act. . . . shall be read with such modifications as to bring them into conformity with the provisions of this [Investments and Securities] Act in relation to capital market matters."</i></p> <p>It is further proposed that the new regime should provide for Local</p>	<p>These four entities were/are statutory corporations without securities for sale. In any case, the NCC virtually exists in law only; the law establishing NEPA has been repealed vide section 99 of the Electric Power Sector Reform Act of 2005 and the successor companies created out of the Power Holding Company of Nigeria (PHCN) are being privatized; the terminals of the NPA are in private hands by virtue of the concessions entered into from March 2005 and NRC is just</p>

			Government Council to invest property held by the Council in accordance with a scheme approved by the Minister of Finance and the Investments and Securities Act shall not affect dealings in such schemes.	being revived.  Furthermore, this will align with Section 11 of the UK Act which provides for Local Authority Investment. This section authorized Local Authorities to invest property held by the Authority in accordance with a scheme submitted by an association of local authorities and approved by the Treasury. Such a scheme may apply to a specified authority or to a specified class of authorities
10	Section 4	A trustee shall not be liable for breach of trust by reason only of his continuing to hold an investment which has at any time ceased to be an investment authorised by the provisions of this Act.	We propose the insertion of the following clauses:  (i) The Trustees shall not be liable for making any investment authorized by the provisions of this Act in the manner provided in this Act or for any loss resulting from any such investment so made whether due to depreciation, fluctuations on exchange rate (where investments are made in foreign currencies) or otherwise;  (ii) The Trustees shall not be liable for any act pursuant to or under this Act,	To provide better protection for trustees in the exercise of their professional duties.

			<p>save only for any breach of trust committed by it, provided that nothing contained in this Act shall exempt the Trustees from or indemnify it against any liability for breach of trust where either of the Trustees fails to show the degree of care and diligence required of it, having regard to the provisions of this Act conferring on it any powers, authorities or discretions.</p>	
11	Section 5	<p>The Minister of the Government of the Federation responsible for finance may by regulations provide for the application of this act, subject to such additions, alterations or omissions as may be specified by the regulations—</p> <p>(a) in cases where a company is amalgamated with or acquired or controlled by or has its business taken over by another company;</p> <p>(b) in cases where shares are issued in place of the payment of the whole or</p>	<p>The powers granted in section 5 to the Federal Minister of Finance to make regulations should be extended to (in consultation with the Securities and Exchange Commission) make regulations reviewing the list of qualified investments for Trustees.</p>	<p>This would eliminate the need to approach the National Assembly for re-enactment or amendment of the Act each time developments in the financial market necessitates a review of permissible investments for Trustees. A consultative procedure with the SEC is less cumbersome and time consuming than a re-enactment or amendment of the law by the National Assembly.</p>

		part of any dividend; and the regulations may make different provision for different circumstances.		
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