

2012

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Ms Meredith Hunter)

Financial Management (Investment) Legislation Amendment Bill 2012

Contents

	Page
Part 1	
Preliminary	
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
Part 2	
Financial Management Act 1996	
4 Investment of certain public money Section 38 (2)	3

Contents

		Page
5	New section 38 (10)	3
6	New sections 38A and 38B	3
7	Investment by territory authorities	
	Section 58 (2)	4
8	New section 58 (9)	4
9	New sections 58A and 58B	4
10	New part 9A	5
11	Dictionary, note 2	10
12	Dictionary, new definitions	11
Part 3	Territory Superannuation Provision Protection Act 2000	
13	Section 3	12
14	Investment of amounts in superannuation banking accounts	
	New section 11 (1A)	12
15	New section 11 (7)	12
16	New sections 11A to 11C	13
17	Dictionary, note 2	14
18	Dictionary, new definition of <i>investment direction</i>	14

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Financial Management (Investment) Legislation Amendment Bill 2012

A Bill for

An Act to amend the *Financial Management Act 1996* and the *Territory Superannuation Provision Protection Act 2000*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Financial Management (Investment) Legislation*
4 *Amendment Act 2012*.

5 **2 Commencement**

6 This Act commences on 1 July 2013.

7 *Note* The naming and commencement provisions automatically commence on
8 the notification day (see Legislation Act, s 75 (1)).

9 **3 Legislation amended**

10 This Act amends the *Financial Management Act 1996* and the
11 *Territory Superannuation Provision Protection Act 2000*.

Part 2 Financial Management Act 1996

4 Investment of certain public money Section 38 (2)

substitute

(2) However, an investment under this section—

(a) may only be made to increase or protect the financial wealth of the Territory; and

(b) must comply with any requirement in relation to the investment under an investment direction.

5 New section 38 (10)

insert

(10) This section is subject to section 38A.

6 New sections 38A and 38B

in part 5, insert

38A Prohibition on investment of certain public money

(1) The Treasurer must not invest any money held in the territory banking account or a directorate banking account in a prohibited investment.

Note **Prohibited investment**—see s 126.

(2) If the Treasurer becomes aware that an investment has become a prohibited investment, the Treasurer must divest the Territory of the investment as soon as reasonably practicable.

1 **38B Exercising security holder vote for investment**

2 If the Territory has a right to vote as a security holder in relation to
3 an investment made under section 38, the Territory must comply
4 with any requirement for voting in relation to the investment under
5 an investment direction.

6 **7 Investment by territory authorities**
7 **Section 58 (2)**

8 *substitute*

9 (2) However, an investment under this section—

10 (a) may only be made to increase or protect the financial wealth of
11 the territory authority; and

12 (b) must comply with any requirement in relation to the
13 investment under an investment direction.

14 **8 New section 58 (9)**

15 *insert*

16 (9) This section is subject to section 58A.

17 **9 New sections 58A and 58B**

18 *insert*

19 **58A Prohibition on investment by territory authorities**

20 (1) A territory authority must not invest funds of the authority in a
21 prohibited investment.

22 *Note Prohibited investment—see s 126.*

23 (2) If a territory authority becomes aware that an investment has
24 become a prohibited investment, the authority must divest itself of
25 the investment as soon as reasonably practicable.

1 **58B Exercising security holder vote for investment**

2 If a territory authority has a right to vote as a security holder in
3 relation to an investment made under section 58, the authority must
4 comply with any requirement for voting in relation to the investment
5 under an investment direction.

6 **10 New part 9A**

7 *insert*

8 **Part 9A Requirements for investment**

9 **126 Meaning of *prohibited investment***

10 (1) For this Act, an investment is a *prohibited investment* if—

- 11 (a) it includes investment in a relevant body; and
- 12 (b) the person responsible for investing an amount under an
13 investment law is satisfied on reasonable grounds that all or a
14 material part of the relevant body's revenue for the current
15 financial year is likely to be attributable to any of the following
16 activities:
- 17 (i) the manufacture or sale of tobacco;
- 18 (ii) the manufacture or sale of arms or armaments, their
19 components or software;
- 20 (iii) the manufacture or sale of cosmetics that are produced
21 using animal testing;
- 22 (iv) the manufacture or sale of products that are produced
23 using labour in breach of any international treaty or other
24 international agreement, in relation to labour and child
25 labour, to which Australia is a party.

- 1 (2) Also, an investment is a *prohibited investment* if it is an investment
2 prohibited under an investment direction.

3 **127 Definitions—pt 9A**

4 In this part:

5 *investment*—

- 6 (a) means investment within the meaning of the Corporations Act,
7 section 9; but
8 (b) does not include a term deposit, bond or similar investment in
9 an authorised deposit-taking institution.

10 *investment direction*—see section 129D.

11 *investment law* means—

- 12 (a) section 38; or
13 (b) section 58; or
14 (c) the *Territory Superannuation Provision Protection Act 2000*,
15 section 11.

16 *relevant body* means—

- 17 (a) a company registered under the Corporations Act; or
18 (b) a disclosing entity under the Corporations Act; or
19 (c) a body under the Corporations Act; or
20 (d) a registered scheme under the Corporations Act; or
21 (e) an entity or scheme under a law of a foreign country that is
22 substantially similar to an entity or scheme mentioned in
23 paragraphs (a) to (d).

24 **128 Investment advisory board**

25 The investment advisory board is established.

1 **129 Functions of investment advisory board**

- 2 (1) The investment advisory board has the following functions:
- 3 (a) prepare and review investment directions;
- 4 (b) advise the Treasurer about investment and borrowing;
- 5 (c) any other function given to the board under a territory law.
- 6 (2) In exercising its functions, the investment advisory board must, as
- 7 far as practicable, ensure that public money is invested in a way that
- 8 promotes socially responsible and environmentally sustainable
- 9 development.

10 **129A Membership of investment advisory board**

- 11 (1) The investment advisory board is made up of—
- 12 (a) the director-general; and
- 13 (b) at least 3, but not more than 6, members appointed by the
- 14 Treasurer.

15 *Note 1* For the making of appointments (including acting appointments), see

16 the Legislation Act, pt 19.3.

17 *Note 2* In particular, a person may be appointed for a particular provision of a

18 law (see Legislation Act, s 7 (3)) and an appointment may be made by

19 naming a person or nominating the occupant of a position (see

20 Legislation Act, s 207).

21 *Note 3* Certain Ministerial appointments require consultation with an Assembly

22 committee and are disallowable (see Legislation Act, div 19.3.3).

- 23 (2) In appointing members to the investment advisory board, the
- 24 Treasurer must ensure the board includes people with substantial
- 25 experience or expertise in the following areas:
- 26 (a) investing in financial assets;
- 27 (b) managing investments in financial assets;

- 1 (c) responsible or ethical investing.
- 2 (3) The Treasurer must not appoint someone to the investment advisory
3 board unless satisfied on reasonable grounds that the person has
4 professional credibility and significant standing in his or her area of
5 experience or expertise.
- 6 (4) The chair of the investment advisory board is the director-general.

7 **129B Ending appointment of members**

8 The Minister may end the appointment of a member of the
9 investment advisory board appointed under section 129A (1) (b)—

- 10 (a) for misbehaviour; or
- 11 (b) if the member is convicted, or found guilty, in Australia of an
12 indictable offence; or
- 13 (c) if the member is convicted, or found guilty, outside Australia
14 of an offence that, if it had been committed in the ACT, would
15 be an indictable offence; or
- 16 (d) if the member is absent from 3 consecutive meetings of the
17 board, otherwise than on approved leave; or
- 18 (e) for physical or mental incapacity, if the incapacity substantially
19 affects the exercise of the member's functions.

20 *Note* A person's appointment also ends if the person resigns (see Legislation
21 Act, s 210).

22 **129C Investment advisory board procedures**

- 23 (1) Meetings of the investment advisory board are to be held when and
24 where it decides.
- 25 (2) However, the investment advisory board must meet at least once
26 each year.

- 1 (3) The investment advisory board may conduct its proceedings
2 (including its meetings) as it considers appropriate.

3 **129D Investment directions—investment in certain activities**

- 4 (1) The investment advisory board must prepare directions (an
5 *investment direction*) about—

6 (a) making investments, under an investment law, in relation to
7 relevant bodies with revenue attributable to a relevant activity;
8 and

9 (b) the Territory or a territory authority exercising a right to vote
10 as a security holder in relation to an investment made under an
11 investment law.

- 12 (2) The investment advisory board may prepare directions (also an
13 *investment direction*) about investing under an investment law
14 generally.

- 15 (3) An investment direction may prohibit stated investments or describe
16 the circumstances in which investments are prohibited.

- 17 (4) In preparing an investment direction, the investment advisory board
18 must give consideration to an obligation of the Territory under a
19 relevant territory law.

20 **Examples**

- 21 • ACT greenhouse gas emissions targets under the *Climate Change and*
22 *Greenhouse Gas Reduction Act 2010*
23 • a human right under the *Human Rights Act 2004*

24 *Note* An example is part of the Act, is not exhaustive and may extend, but
25 does not limit, the meaning of the provision in which it appears (see
26 Legislation Act, s 126 and s 132).

- 27 (5) An investment direction must be reviewed at least once each year.

- 1 (6) An investment direction is a disallowable instrument.
- 2 *Note* A disallowable instrument must be notified, and presented to the
- 3 Legislative Assembly, under the Legislation Act.
- 4 (7) In this section:
- 5 ***gaming equipment***—see the *Gambling and Racing Control*
- 6 *Act 1999*, dictionary.
- 7 ***relevant activity***—each of the following is a ***relevant activity***:
- 8 (a) the manufacture or sale of gaming equipment, its components
- 9 or software;
- 10 (b) the operation of gambling facilities;
- 11 (c) the manufacture or sale of products that are produced using
- 12 intensive animal farming;
- 13 (d) the mining, processing or sale of uranium;
- 14 (e) the mining, processing or sale of coal;
- 15 (f) the extraction, processing or sale of crude oil;
- 16 (g) the manufacture or sale of timber products, including paper,
- 17 that are produced using timber harvested from—
- 18 (i) native old-growth forests; or
- 19 (ii) plants protected under the *Nature Conservation Act 1980*
- 20 or a law of another Australian or foreign jurisdiction
- 21 corresponding to that Act.

11 Dictionary, note 2

23 *insert*

- 24 • Corporations Act

- 1 **12 Dictionary, new definitions**
- 2 *insert*
- 3 *investment*, for part 9A (Requirements for investment)—see
- 4 section 127.
- 5 *investment advisory board* means the investment advisory board
- 6 established under section 128.
- 7 *investment direction*—see section 129D.
- 8 *investment law*, for part 9A (Requirements for investment)—see
- 9 section 127.
- 10 *prohibited investment*—see section 126.
- 11 *relevant body*, for part 9A (Requirements for investment)—see
- 12 section 127.

1 **Part 3** **Territory Superannuation**
2 **Provision Protection Act 2000**

3 **13 Section 3**

4 *substitute*

5 **3 Object of Act**

6 The object of this Act is to ensure that funds dedicated to meeting
7 the superannuation liabilities of the Territory, territory authorities
8 and territory-owned corporations—

- 9 (a) remain dedicated to meeting those liabilities; and
10 (b) are invested in a way that promotes socially responsible and
11 environmentally sustainable development.

12 **14 Investment of amounts in superannuation banking**
13 **accounts**
14 **New section 11 (1A)**

15 *substitute*

- 16 (1A) An investment under this section must comply with any requirement
17 in relation to the investment under an investment direction.

18 **15 New section 11 (7)**

19 *insert*

- 20 (7) This section is subject to section 11A and section 11B.

16 New sections 11A to 11C*insert***11A Prioritising investment of amounts in superannuation banking accounts**

(1) In deciding how to invest an amount in a superannuation banking account under section 11, the director-general must, if satisfied it is prudent, give priority to an investment of a kind identified in a guideline under this section over another investment.

(2) The investment advisory board may prepare guidelines for subsection (1) that identify kinds of investments in relevant bodies with revenue attributable to activities that improve environmental or social outcomes.

(3) A guideline is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(4) In this section:

investment advisory board—see the *Financial Management Act 1996*, dictionary.

relevant body—see the *Financial Management Act 1996*, section 127.

11B Prohibition on investment of amounts in superannuation banking accounts

(1) The director-general of the superannuation directorate must not invest an amount in a superannuation banking account in a prohibited investment.

1 (2) If the director-general of the superannuation directorate becomes
2 aware that an investment has become a prohibited investment, the
3 director-general must divest the Territory of the investment as soon
4 as reasonably practicable.

5 (3) In this section:

6 *prohibited investment*—see the *Financial Management Act 1996*,
7 section 126.

8 **11C Exercising security holder vote for investment**

9 If the Territory has a right to vote as a security holder in relation to
10 an investment made under section 11, the Territory must comply
11 with any requirement for voting in relation to the investment under
12 an investment direction.

13 **17 Dictionary, note 2**

14 *insert*

- 15 • Corporations Act

16 **18 Dictionary, new definition of *investment direction***

17 *insert*

18 *investment direction*—see the *Financial Management Act 1996*
19 section 129D.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 9 May 2012.

2 Notification

Notified under the Legislation Act on 2012.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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