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SHOULD THE LIST OF AUTHORISED TRUSTEE INVEST- MENTS IN THE IRISH FREE STATE BE EXTENDED?

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1.—*The Securities now on the list of Trustee Investments.*

The prices of Irish Free State National Loans reached a high level in the summer of 1931. The First and Second 5% National Loans went to over £108, the Third 4½% National Loan went to £104; at the same time the 5% War Loan and 4½% Conversion Loan did not exceed £105, but the 5% Conversion Loan went to £108½. The citizens of Saorstát Eireann have good reason to be proud of this indication of the confidence which is felt in the stability and prosperity of the Free State, but it seems to me that the high prices of the National Loans are due to some extent to the small quantity of Free State Securities which are on the list of authorised Trustee Investments. The following is a complete list of such investments in October, 1931:—

Irish Free State Stocks which are Trustee Investments.

			Rate of Interest. %	Amount on 21st Oct., 1931. £
National Loan, 1935-45 ... ..	...	...	5	8,187,000
2nd National Loan, 1950-60 ... ..	...	...	5	6,775,000
3rd National Loan, 1950-70 ... ..	...	...	4½	5,928,000
*Land Bonds ... ..	...	...	4½	23,057,000
Agricultural Credit Corporation ... ..	...	...	5	500,000
				£44,447,000
Dublin Corporation, 1944 ... ..	...	...	3½	1,191,000
" " 1946-76 ... ..	...	...	5	1,118,000
" " 1950-70 ... ..	...	...	5	1,559,000
Dublin Port and Docks Board, 1962-85 ... ..	...	...	5	762,000
Cork Corporation ... ..	...	...	3½	62,000
" " 1928 ... ..	...	...	5	102,000
" " 1930 ... ..	...	...	5	106,000
" " 7 Stocks ... ..	...	...	3-3½	89,000
				£4,989,000

* These are Trustee Securities in Great Britain and Northern Ireland.

Trustee Investments.

*Bank of Ireland	...	...	17½	£2,769,000
*Gt. Northern Railway Debenture	...	...	4	2,342,000
Gt. Southern	"	"	4	8,324,000
City of Dublin Junction Railway Deb.	...	...	4	130,000
				<hr/> £10,796,000
*Gt. Northern Railway Gtd.	...	...	4	860,000
Gt. Southern Railway Gtd.	...	...	4	3,885,000
City of Dublin Junction Railway Gtd.	...	...	4	225,000
*Gt. Northern Railway Preference	...	...	4	1,999,000
Gt. Southern Railway Preference	...	...	4	5,069,000
				<hr/> £12,038,000

SUMMARY.

Government Stocks	...	...	£44,447,000	59.0	per cent.
Corporation Stocks	...	...	4,989,000	6.7	" "
Bank of Ireland	...	...	2,769,000	3.7	" "
Railway Debenture	...	...	10,796,000	14.5	" "
Railway Preference	...	...	12,038,000	16.1	" "
			<hr/> £75,039,000	<hr/> 100.0	

The Corporation Stocks lost their Trustee Status in Great Britain and Northern Ireland by the Trustee Act of 1925. The 4½% Land Bonds are a Free State security and are guaranteed by the British Government. The amount given above is the amount of Bonds issued, but the amount available to the public is only a part, between 8 and 9 millions.

A considerable quantity of the National Loans is held by the Government Departments, National Health Insurance, Post Office Savings Bank, Courts of Justice, Insurance Companies, Banks and Railway Companies.

Purchases for the Sinking Funds steadily reduce the totals. The amount of these stocks freely on sale is thus much less than the total issues. The total securities available for Trustee investments—apart from Government Stocks—is only about £18,500,000, omitting Railway Preference Stocks which at present would not be bought by Trustees. It is, therefore, important to consider in what directions the range of Trustee investments should be enlarged.

I recommend that to the list of authorised investments should be added some Free State Securities, some Securities in Northern Ireland and some in Foreign Countries and British Dominions. But before doing so I review the history of the law relating to Trustee securities in England—then state what the law now is in the Free State and draw attention to the English Trustee Act of 1925, and the report of the Trustee Securities Committee of 1928. I then give a sketch of the duties of the Public Trustee in the Irish Free State and of the Public Trustee in England. I then give suggestions for the extension of the list of authorised investments in the Irish Free State.

* These are Trustee Securities in Great Britain and Northern Ireland.

2.—*Summary of the Acts relating to Trustee Investments in the United Kingdom.*

The first Act that specified the Investments which Trustees may hold was Lord St. Leonard's Act of 1859, 22 & 23 Vic. c. 35 (E. & I.). The investments it authorised were:—

1. Rent or heritable securities in Great Britain or Ireland.
2. Government Stocks of the United Kingdom.
3. The Stocks of the Bank of England and Ireland.
4. East India Stock.

Lord St. Leonard in his "Handbook of the Law of Property" says, "it is doubtful whether Ireland should have been included"; and Ellis, in his "Law of Trusts" 1894, says, "that Mortgages on land in Scotland or Ireland were not very desirable investments"; on the other hand, Mr. A. Birrell, in "Duties and Liabilities of Trustees", p. 43, 1896, says, "I am not aware that there is any reason to suppose that Mortgagees of Irish estates have of late years suffered proportionately any greater losses either of capital or interest than Mortgagees of English estates".

In the following year, 1860, the Law of Property Act (23 & 24 Vic. c. 38) (E. & I.) gave power to the Lord Chancellors of England and Ireland to make General Orders as to investment of cash under the control of the Court, specifying 3% Consolidated or Reduced or New Bank Annuities, or such other Stocks, Funds or Securities as they think fit, and this Act made it lawful for all Trustees to invest in any Stocks specified in the General Orders.

The first General Order was issued in February, 1861, followed by others in 1883 and 1888.

In 1875 the Local Loans Act (38 & 39 Vic. c. 83) (E.) gave to Trustees who can invest in Debenture Stock of any Railway or other Company, the same power to invest in any Debenture Stock issued under this Act.

In 1893 the Trustee Act (E. & I.) was passed and was the principal Act till superseded by the Trustee Act of 1925 which does not operate in Saorstát Eireann.

In 1896 the Judicial Trustee Act (E.) 59 & 60 Vic. c. 35, was passed. Mr. Lewin in his "Law of Trusts" says that by this Act "an entirely new class of Trustees was called into existence. Judicial Trustees are appointed by and act under, the control of the Court" and it is interesting to note that Mr. Lewin says that "Persons discharging similar functions . . . have for more than 150 years been appointed in Scotland, and are known as 'Judicial Factors'".

In 1900 the Colonial Stock Act (U.K.) was passed. It gave Trustee status to every Colonial Stock registered in the United Kingdom in accordance with the provisions of the Colonial Stock Acts, 1877 and 1882, as amended by this Act, and with respect to which the conditions prescribed by the Treasury have been observed. One of these conditions is that "any Colonial legislation which appears to the Imperial Government to alter any of the provisions affecting "the stock to the injury of the stockholder or to involve a departure from the original contract in regard to the stock, would properly be disallowed." It was because the Government of Saorstát

Eireann would not agree to this condition that the attempt to obtain Trustee Status in Great Britain for the 3rd National Loan failed, and it seems to me that our Government was right not to agree to any restriction upon its legislative powers.

The efficiency of this condition would have been put to the test had the Government of New South Wales persisted in their proposal to reduce the interest of the State Loans. An Act passed for this purpose would have been disallowed by the Governor and if the reduction of interest were enforced the whole of the N.S.W. Government Securities would have lost Trustee Status.

In 1903 the Irish Land Act 3 Ed. 7. c. 37, created the office of Public Trustee, and conferred upon him enlarged powers of investment of the proceeds of settled estates, authorising him to invest in bonds, debts or mortgages secured upon rates or taxes levied under Act of Parliament or Provisional Order by any Municipal Corporation or other Local authority, and in ground rents in the United Kingdom, not exceeding one-fourth of the annual value of a rack rent on the premises, and in Debentures or Mortgages of any Railway Company in the United Kingdom.

The Irish Land Act, 1909, 9 Ed. 7. c. 42, gave power to the Trustees of the settlement on request of the tenant for life to invest the purchase money with the sanction of the Public Trustee in:—

1. The Public Stock or funds or Government securities of any Foreign Government or State,
2. In Mortgages, Bonds or Debentures, charged on the undertaking of any Railway Company in the United States of America; Mexico; the Argentine Republic, or Canada, which has, for three years, paid a dividend on its Preference Stock (if any) or its ordinary Stock.

Also without consent of the Public Trustee the Trustees may invest in Debentures of any Railway in the United Kingdom which has, for five years, paid a dividend on its Preference Stock (if any), and in any Stocks, etc., issued by any County or Urban District Council in the United Kingdom under Statutory authority.

In 1906 in England the Public Trustee Act, 6 & 7 Ed. 7. c. 55 (E.) created the office of the Public Trustee, with the same powers of investment as ordinary Trustees, and with the power to administer estates of every kind and size. Section 4 of this Act created a new species of Trustee, called "Custodian Trustees," who have no share in the management of the Trust, but who take charge of all the investments. The Act also gives security to the Beneficiaries of the Trust by making the Consolidated Fund liable for any default of the Public Trustee which would have created liability in the case of a private trustee, a protection not granted to the Judicial Trustees appointed under the Act of 1896.

The Housing (Additional Powers) Act, 1919, 9 & 10 Geo. V, c. 99 (E. & I.) gave power to a Local Authority to issue Local Bonds with the consent of the Minister, and enacted that Sec. 1 of Trustee Act of 1893 shall have effect as though Local Bonds were included in it. This Act is referred to in the report of the Trustee Securities Committee with which I deal later.

3. *The Law Relating to Trustee Investments in the Irish Free State.*

The English Acts in force on 6th December, 1922—the principal Act being the Trustee Act, 1893—continue to operate in Saorstát Eireann till amended.

Section 18 of the Adaptation of Enactments Act, 1922, deals with the Government Securities of the United Kingdom and enacts that Trustee Status is given to Government Securities (1) of the late United Kingdom, (2) of Great Britain and (3) of Saorstát Eireann. There is no reference to Government Securities of Northern Ireland—they did not exist at the time. The Act of 1893 which continues in force in Saorstát Eireann specifies the Government Securities in which Trustees can invest and, of course, the Government Securities of Northern Ireland are not covered by that list. No addition to the securities in that Act can be made except by the Government of the Free State. In other words Ulster Loans are not at present Trustee Securities in the Irish Free State.

The General Order XXXV made under Section 36 of the Courts of Justice Act, 1924, takes the place of the previous General Order of the Supreme Court of the United Kingdom, and it adds to the list of Trustee Stocks Dublin Port and Docks Board 5 per cent. Stock, 1962-1985.

4. *The Law of Great Britain since 1922.*

The Trustee Act of 1925 is mainly a consolidating Act, but it put all India Stocks on the Trustee list, and also added the Securities of the Government of Northern Ireland.

This Act for the first time gives Trustees power to invest in Securities payable to Bearer on condition that the Securities be deposited for safe custody and collection of income with a Banker. This is important as many securities of foreign countries are in the form of Bearer Bonds (in some cases the securities are convertible from one form to the other). I recommend that these provisions should be adopted in the Irish Free State.

It might be wise not to permit a sole Trustee to hold Bearer bonds but he might be permitted to do so provided that the Trustee gets the Public Trustee to join with him in holding such bonds.

5. *The Trustee Securities Committee of 1928.*

A Committee was appointed by the Lord High Chancellor of England (Viset Cave) in July, 1926, "to consider in what securities trustees should be authorised to invest whether under or in pursuance of any general or special Act of Parliament." The Committee made their report in April, 1928, but nothing has been done to give effect to their recommendations. They point out the differences between the securities authorised by the law and those authorised by Orders of the Court. In the case of Railway Securities, to get Trustee Status the law requires the payment of a Dividend of 3% on Ordinary Shares for the previous 10 years, while the order of the Court only requires that "a" Dividend be paid for the same period. They also point out that under the provision that Trustee Status is conferred upon any investment made by the High Court, the list of Trustee Stocks is capable of indefinite extension. They recommend that without invalidating past transactions, in future Trustee Status should not follow the acts of the High Court. Local Loans are an important class of Stocks and Trustee Status is conferred on these securities, both by public and private Acts. They recommend that in future such status should be conferred only by Public Acts, and that the Local Loans Act of 1875 should be repealed, and that the operation of the Housing Act of 1919 should be much restricted. These recommendations should be adopted in the Free State.

The Committee concludes by recommending that the list of authorised securities should be formed by a combination of the two codes now in force *without any addition*. They justify this by saying that the amount of Trustee Investments is sufficient to meet the needs of Trustees and they say that "such benefit as is derived from the status of Trustee Investments ought to be retained for the largest public activities such as those of the State, rather than for sectional or local interests"

The position in the Irish Free State is quite different. The available investments are totally inadequate to meet the demand for Trustee Securities, so it is imperative to consider whether there are any Securities in the Free State which can be safely given the status of Trustee Investments.

6. *The Office of Public Trustee.*

I have already given an account of the creation of the offices of Public Trustee in Ireland in 1903, and in England in 1906. I now recommend that the Public Trustee in Ireland should be given the functions of the Public Trustee in England, that is to say, that he should have the power to act in all cases, and for estates of all sizes.

In March 1931 the Public Trustee in England had the administration of 28,081 estates, and the investments under his charge amounted to £313,878,729, including 124 cases of Custodian Trusteeship, value £2,667,697. In Great Britain and Northern Ireland the Savings Bank Act of 1929 made it compulsory on every Trustee Savings Bank to appoint 4 Custodian Trustees to take charge of the property of the Bank.

The Public Trustee in the Free State should retain his present powers of investing money in securities other than those at present open to private Trustees. Mr. Franks, the present holder of the office, has given me a list of over 70 securities in which he has allowed investments to be made. The majority of these are the Government Securities of Foreign States and portions of States, but they include some securities of Railways and Public Authorities in foreign countries.

I recommend that private Trustees should be authorised to invest in securities in addition to those that may be added to the present list by an Act of the Oireachtas, provided they obtain the consent of the Public Trustee. I have given already the securities specified in the Irish Land Act of 1909, but the list would require complete revision in connection with the extension of the range of investments which I now propose.

In my opinion it is very desirable in the first place to increase investments in Free State Securities, and one way to accomplish this is to remove the obstacle presented by the small total of Free State Securities at present available, but I also recommend the extension of the Trustee list to some securities in Northern Ireland, and in foreign countries

7. *Extension of the List of Authorised Trustee Investments.*

The following is a list of Securities which might be added to the list, first Free State Securities and second Securities of Northern

Ireland. As regards these latter I am of opinion that an increase of the holding of such securities by the citizens of the Free State would tend to promote the feeling of solidarity of interest of Northern and Southern Ireland. I do not recommend any addition to the list of British Securities, because that field of investment is already so great that additions to it are unnecessary.

In support of these proposals I would call attention to the actual practice of some Public Boards. The following is an extract from the constitution of one of these Boards. It gives considerable power to go beyond the investments laid down by law.

“The Board may from time to time invest in the bonds, debentures, or mortgages of any municipal, commercial, or other joint stock company or corporation, carrying on business or constituted for any purpose in the United Kingdom or any colony or dependency thereof.”

I have examined the lists of investments in the accounts published by several public bodies, with the following result. Their investments include Securities of Manufacturing and Commercial Companies; of Dominion Railways and Tramways; Foreign Governments and Railways; Banks; Oil, Rubber and Tea Companies; Local Authorities, etc.

SECURITIES WHICH MIGHT BE ADDED TO THE TRUSTEE LIST.

FREE STATE SECURITIES.

		Rate of Interest	Amount
	<i>Corporations.</i>	%	
Bray Township ...	...	3 $\frac{3}{4}$	£54,190
Blackrock and Kingstown Drainage	...	3 $\frac{1}{2}$	39,200
Kingstown Urban District	...	3 $\frac{3}{4}$	57,025
Pembroke Urban District, 1914-1944	...	3 $\frac{1}{4}$	55,770
Pembroke Urban District, 1978	...	5	71,280
Rathmines and Rathgar Township	...	3 $\frac{1}{2}$	280,173
Rathmines and Pembroke Drainage, 1938	...	4	62,045
Waterford (1914-52) Redeemable Stock	...	3 $\frac{1}{4}$	224,374

These Stocks are not at present Trustee Stocks because the populations of the towns are under 50,000, which is the limit laid down in the Trustee Act of 1893. The Scotch Law has no such limitation, so that there is the anomaly that the Stocks of 7 or 8 towns such as Harrogate, Torquay, etc., are available for Trustees in Scotland, but not in England or Ireland.

Other Public Bodies.

		Rate of Interest	Amount
		%	
Dublin Port and Docks Board, 1959	...	3 $\frac{1}{4}$	£289,059
Dublin Port and Docks Board (Dublin Bridge 1970-1990)	...	5	50,000
Cork Harbour Board	...	6	107,255
Sligo Harbour Mortgage Bonds, 1920-1945	...	4	56,000
Waterford Harbour Commissioners, Gtd. Mortgages	...	5	50,000

*Trustee Investments.**Miscellaneous Securities.*

Alliance Gas Co. Debentures	...	...	4	£374,000
British and Irish S. P. Co. Part. Pref.	...	...	6	1,500,000
Dublin United Tramways (1896) Deb.	...	...	3½	300,000
Dublin Artisans Dwellings (Shares)	...	...	6	270,000
Irish Civil Service Building Society (Shares)	...	...	7	120,000
Guinness (A.) Son and Co. Cum. Pref.	...	...	6	2,000,000
Burke (E. & J.), Deb.	...	...	6	500,000
Mooney (J. G.), Deb.	...	...	4½	32,460
Thom (Alex) and Co., Deb.	...	...	4½	69,000

Securities in Northern Ireland.

Ulster Loans, 1945-1975	...	...	4½	£4,000,000
Ulster Loans 1960-1960	...	...	5	2,000,000
Belfast Harbour Commissioners	...	...	3½	1,332,922
Londonderry, 1922-1957	...	...	3	83,541
Robinson and Cleaver, Deb.	...	...	4	200,000
Davidson and Co., Deb.	...	...	5	70,000
McCaw, Stevenson and Orr, Deb.	...	...	4½	50,000
Arnott (John) and Co., Deb.	...	...	4½	35,540

The above list is submitted for consideration only. I am not definitely asserting that these securities should be put on the Trustee List. Each Stock must be considered on its own merits and those approved should be put into 2 classes. Class *one* stocks which should be added to the Trustee List by statute, class *two* stocks which should be subject to the approval of the Public Trustee. An advantage of requiring the approval of the Public Trustee is that the Statutory list is permanent till amended, while the Public Trustee would be able to consider and give effect at once to changes affecting each security.

I would remind you that one of the first principles of safe investment is to spread investments over a wide field, so as to diminish the risk that arises when a large proportion of savings is concentrated on investments of one class. The distribution should take into account geographical facts as well as the nature of the investment. For this reason I recommend that power should be given to invest in securities of foreign countries, not only in Government securities but also in those of Local authorities and Public utilities, such as those relating to the supply of Water, Electricity, etc. It is in connection with these that the knowledge and experience of the Public Trustee should be made available to the general public. I think that the results of the operations of the Public Trustees in the past both in Ireland and England justify the extension of the system.

The following are some of the foreign countries whose Securities yield less than 5%, at the prices at the end of August 1931: United States, France, Belgium, Denmark, Holland, Norway, and Sweden. Also the Stocks of a good many Dominions and some foreign Corporations stood at prices yielding less than 5% at the end of August and are worth considering.

In this connection it is worth noting that on December 31st, 1930, the par value of Free State Securities held by the Finance Minister against the Post Office Savings Bank Deposits was £1,243,214, and the par value of British Government Securities was £2,985,035. I suggest that some of this cash might be invested in foreign instead of British securities.

This paper was planned before Great Britain suspended the Gold Standard. I have not attempted to discuss the effect of this upon the value of Trustee Securities.

As the change of conditions affects all securities, I think that the relative values of many securities will be unchanged. But the effects on the stocks of Corporations, for example, in Foreign Countries (e.g. the cities of Bergen, Oslo, Stockholm, Buenos Ayres, Toronto and Johannesburg) will be very different under new exchange conditions.

This is a further reason for making investment in such stocks subject to the approval of the Public Trustee.

I now invite criticism on my proposals. It is quite possible that there may be some errors and omissions in my statements as to the law and the lists of securities. I shall welcome any corrections, as I am aware that my enquiries are far from complete.