

63. Interpretation in Part IIIB

(1) In this Part —

“conveyance on sale” includes —

- (a) every instrument and decree or order of any court or of the Commissioner of Titles, whereby any property or any estate or interest in any property on the sale thereof is transferred to or vested in the purchaser or any other person on his behalf or by his direction;
- (b) every transfer or assignment of a lease of any lands; and
- (c) every decree or order of any court or of the Commissioner of Titles for, or having the effect of an order for, foreclosure;

“discretionary trustee” means a trustee of any property over which any person has a power of appointment which was not created by will;

“trustee” means a trustee who is not a discretionary trustee or a unit trustee;

“unit trustee” means a trustee of a unit trust scheme; and

“unit trust scheme” means a private unit trust scheme within the meaning in subsection (2).

(1a) In sections 63AE and 63AF —

“disposition” has the same meaning as it has in section 73D.

(1b) In sections 63AB, 63AC, 63AD, 63AE and 63AF —

“unit” has the same meaning as it has in section 73D.

(2) A unit trust scheme is a private unit trust scheme if at the time of any conveyance, transfer or disposition of a unit or sub-unit —

(a) the unit trust scheme is not —

- (i) one to which Division 11 (sections 1451 to 1465) of Part 11.2 of the Corporations Law applied by reason of section 1452 of that Law; or
- (ii) a managed investment scheme registered under section 601EB of the Corporations Act,

or is a scheme referred to in subparagraph (i) or (ii) but no units have been issued to the public or an insufficient number of persons is beneficially entitled to units under the scheme; and

(b) the unit trust scheme —

- (i) is not an approved deposit fund or a pooled superannuation trust within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth; or
- (ii) is an approved deposit fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth but no units have been issued to the public or an insufficient number of persons is beneficially entitled to units under the scheme.

(3) An insufficient number of persons is beneficially entitled to units under a unit trust scheme if —

(a) fewer than 50 persons are so entitled; or

- (b) 20 or fewer persons are so entitled to 75% or more of the total issued units under the scheme.
- (4) For the purposes of subsection (2)(a)(ii) and (b)(ii) one person shall be treated as being beneficially entitled to all units held by a person and any related person namely —
- (a) where the first-mentioned person is a corporation —
 - (i) another corporation that is a related corporation;
 - (ii) a person who is beneficially entitled to more than one-half of the issued share capital of the corporation;
- or
- (b) a trustee of any trust (including a unit trust scheme) if —
 - (i) in the case of a discretionary trust as defined in section 76, the first-mentioned person may benefit from that trust; or
 - (ii) the share or interest of the first-mentioned person in the trust, whether vested or contingent, constitutes more than one-half of the trust property or of the issued units in the unit trust scheme,
- and subparagraph (i) shall be construed in accordance with section 76(6).

[Section 63 inserted by No. 37 of 1979 s. 41; amended by No. 112 of 1982 s. 5; No. 33 of 1987 s. 15; No. 39 of 1994 s. 21; No. 48 of 1996 s. 44; No. 24 of 1999 s. 4; No. 3 of 2001 s. 18; No. 10 of 2001 s. 167; No. 36 of 2001 s. 26; No. 2 of 2003 s. 32.]