



Western Australia

Trustee Companies Act 1987

## **Trustee Companies Regulations 1988**



# Trustee Companies Regulations 1988

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## **Trustee Companies Regulations 1988**

## **Part 1 — Preliminary**

*[Heading inserted: Gazette 4 Jan 2013 p. 6.]*

### **1. Citation**

These regulations may be cited as the *Trustee Companies Regulations 1988*<sup>1</sup>.

### **2. Commencement**

These regulations shall come into operation on the day on which the *Trustee Companies Act 1987* comes into operation<sup>1</sup>.

## Part 2 — Administrative matters

*[Heading inserted: Gazette 4 Jan 2013 p. 6.]*

### 3. Scale of charges to be published

- (1) A trustee company shall publish its scale of charges as required under the Act by making available free of charge —
  - (a) to any person who approaches the trustee company for the purpose of making a will which names the trustee company as executor; and
  - (b) to any person who requests a copy of the scale of charges of the trustee company, a copy of its current scale of charges and, where a notice has been published under subregulation (4), a copy of its proposed scale of charges.
- (2) A trustee company shall ensure that copies of its current scale of charges and, where a notice has been published under subregulation (4), copies of its proposed scale of charges are available free of charge at any office of the trustee company which is open to the public.
- (3) In addition to the statement required under section 18(9) of the Act the scale of charges as published under subregulations (1) and (2) shall include a statement to the effect that —
  - (a) the trustee company is entitled to the reimbursement of all disbursements properly made by the trustee company in the administration or management of an estate; and
  - (b) where an estate participates in an Estate Common Trust Fund the fee or commission set out in the scale of charges may apply.
- (4) Where a trustee company proposes to alter its scale of charges the trustee company shall cause to be published in the public notices section of a daily newspaper circulated throughout the State a notice —

- (a) stating that the trustee company proposes to alter its scale of charges with effect from a date specified in the notice;
  - (b) giving details of the proposed alteration to its scale of charges; and
  - (c) stating that copies of the proposed scale of charges are available upon request at any office of the trustee company.
- (5) A notice under subregulation (4) shall be published at least 14 days before the day on which the alteration is to come into effect.
- (6) The scale of charges as published under subregulations (1) and (2) and any notice under subregulation (4) shall be in print no smaller than 5 point Roman type face.

**4. Amount prescribed for the purposes of section 10**

For the purposes of section 10 of the Act the amount prescribed is \$50 000.

**5. Form of returns under section 33**

A statement lodged under section 33(1)(a) or (b) of the Act shall be —

- (a) made in accordance with Form 1 in the Schedule; and
- (b) accompanied by a balance sheet and a profit and loss account as set out in Form 2 in the Schedule.

**6. Completion of forms**

A form shall be completed in accordance with such directions and instructions as are specified in, or relate to, the form.

**7. Compliance with forms**

- (1) Strict compliance with the style of a form set out in the Schedule is not necessary, unless the Commissioner so requires.



- (2) Strict compliance with the substance of, and provision of the information required by, a form set out in the Schedule is necessary unless the Commissioner otherwise approves.

**8. Fee for lodgement of statement under section 33**

The fee for the lodgement of a statement under section 33(1)(a) or (b) is \$1 100.

*[Regulation 8 amended: Gazette 8 Nov 1991 p. 5717;  
31 Aug 1993 p. 4686.]*

## **Part 3 — Voluntary transfers of estate assets and liabilities**

*[Heading inserted: Gazette 4 Jan 2013 p. 7.]*

### **9. Purpose of this Part**

The purpose of this Part is to facilitate voluntary transfers of estate assets and liabilities under the Corporations Act Part 5D.6.

*[Regulation 9 inserted: Gazette 4 Jan 2013 p. 7.]*

### **10. Transfer of estate assets and liabilities**

- (1) This regulation applies if —
  - (a) ASIC makes a voluntary transfer determination under the Corporations Act section 601WBA that there is to be a transfer of estate assets and liabilities from a transferring company to a receiving company; and
  - (b) ASIC issues a certificate of transfer under the Corporations Act section 601WBG for the transfer; and
  - (c) either or both of the transferring company or the receiving company are registered in Western Australia.
- (2) When the certificate of transfer comes into force, the receiving company is taken to be the successor in law of the transferring company, to the extent of the transfer.
- (3) In particular —
  - (a) all the estate assets and liabilities of the transferring company become respectively the assets and liabilities of the receiving company without any transfer, conveyance or assignment; and
  - (b) to the extent of the transfer — the duties, obligations, immunities, rights and privileges applying to the transferring company apply to the receiving company.

- (4) If the certificate of transfer includes provisions of a kind referred to in the Corporations Act section 601WBG(3) —
- (a) specifying that particular things are to happen or are taken to be the case — those things are taken to happen, or to be the case, in accordance with those provisions; or
  - (b) specifying a mechanism for determining things that are to happen or are taken to be the case — things determined in accordance with that mechanism are taken to happen, or to be the case, as determined in accordance with that mechanism.

*[Regulation 10 inserted: Gazette 4 Jan 2013 p. 7-8.]*

#### **11. Certificates evidencing operation of this Part**

- (1) An authorised ASIC officer may, by a certificate in writing signed by the officer, certify that a specific asset or liability has become an asset or liability of the receiving company under this Part.
- (2) For all purposes and in all proceedings, a certificate purporting to be issued under subregulation (1) is evidence of the matters certified.
- (3) ASIC is empowered to authorise, in writing, a person who is a member of ASIC, or of its staff, to issue certificates under this regulation.

*[Regulation 11 inserted: Gazette 4 Jan 2013 p. 8.]*

#### **12. Registration or record of transfer**

The Registrar of Titles, the Registrar of Deeds and Transfers and any other person or authority required or authorised under a law of the State to register or record transactions affecting assets or liabilities, or documents relating to such transactions, must, on application under this regulation accompanied by a certificate issued under regulation 11, register or record in an appropriate manner the transfer or transfers to which the certificate relates.

*[Regulation 12 inserted: Gazette 4 Jan 2013 p. 8.]*

**13. Exemption from State tax**

State tax is not payable in respect of a transfer of estate assets or liabilities facilitated under this Part.

*[Regulation 13 inserted: Gazette 4 Jan 2013 p. 8.]*

**Schedule**

[Regulation 5]

**Form 1**

*Trustee Companies Act 1987*

(Sections 33(1)(a) and (b))

**STATEMENT**

(1) { ..... (“the company”)  
I, .....  
(name of Managing Director)

or

(1) { We, .....  
(Principal Executive Officer)  
.....  
(Chief Financial Officer)  
.....  
(Director)  
.....  
(Director)

State —

That on (2) ..... (hereinafter referred to as “balance date”):

The authorised capital of the company was \$ ..... divided into  
..... shares of \$..... each.

The issued capital was made up of shares of \$..... each paid to  
\$..... per share.

The total amount of paid up capital was \$ .....

(1) The uncalled capital being \$ ..... per share and  
amounting to \$..... was made up as follows —

\$..... per share amounting to \$..... which may be  
called up at the discretion of the company.

\$..... per share amounting to \$..... which can only  
be called up on and for the purpose of the winding up of the company.

(1) Calls to the amount of \$..... per share amounting to  
\$..... had been made but remained unpaid and the  
shares had not been forfeited.

**Schedule**

The net tangible assets of the company (i.e. the amount calculated by deducting total liabilities from total tangible assets) amount to \$.....

That the following loans were obtained from financial institutions other than banks and insurance companies during the period of 6 months preceding the balance date.

Name of Institution	Amount of Loan \$'000	Term of Loan and Maturity Date	Interest Rate	Security (if applicable)

That the following contingent liabilities existed at balance date. (Show the amounts where they can be quantified)

\$'000

Guarantees of liabilities of related parties.....

Guarantees of liabilities of other persons.....

Other contingent liabilities.....

TOTAL \$ \_\_\_\_\_

That the guarantees of liabilities of related parties stated above were made up as follows:

Name of Related Party	Amount \$'000
TOTAL \$ _____	

Schedule

That the nature and amount of credit and standby facilities available to the company as at balance date, a summary of the restrictions affecting those facilities and the duration of each of those facilities were as described below:

Nature of Facility	Summary of Restrictions	Duration	Amount of Facility available to the Company \$'000	Amount of Facility unused at balance date \$'000
			TOTAL \$	

That, in our opinion, the balance sheet and the profit and loss account of the company annexed to this statement have been drawn up so as to give a true and fair view of the state of affairs of the company as at balance date and the profit or loss of the company for the period ended on that date.

That the classification of assets and liabilities and the valuation of assets in the balance sheet are based upon the company's intentions at balance date as to the use or disposal of those assets and the repayment of liabilities.

That, in our opinion, at the date of this statement, there are reasonable grounds to believe that the company will be able to pay its debts as and when they fall due.

That during the period of 6 months preceding balance date:

There had been the following significant changes in the nature of the principal activities of the company (3) —

.....  
 .....  
 .....  
 .....

The following items, transactions or events of a material and unusual nature affected the results of the company's operations (3) —

.....  
 .....  
 .....

**Schedule**

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- (1) The provisions of the *Trustee Companies Act 1987* in respect of investment of monies held by the company on trust have/have not been complied with.
- (1) The company has/has not complied with all other requirements of the *Trustee Companies Act 1987*.
- (3) That the following matters or circumstances have arisen since balance date and have significantly affected or may significantly affect —
  - (a) the operations of the company;
  - (b) the results of those operations; or
  - (c) the state of affairs of the company, in subsequent periods:  
.....  
.....  
.....  
.....

Dated this.....day of.....20.....

.....  
Signature (Managing Director)

or

.....  
Signature (Principal Executive Officer)

.....  
Signature (Chief Financial Officer)

.....  
Signature (Director)

.....  
Signature (Director)

**Directions**

A balance sheet and profit and loss account for the relevant 6 month period are to be annexed.

**Instructions**

- (1) Delete as appropriate.
- (2) Specify last day of first half of financial year or last day of financial year of the company as appropriate.
- (3) If no change insert “nil”.



## Form 2

## Trustee Companies Act 1987

(Sections 33(1)(a) and (b))

.....	.....
(Name of Company)	(Date of statement)
BALANCE SHEET AS AT.....	
CURRENT ASSETS	\$'000
Cash at bank and on hand.....	
Bills receivable —	
bank accepted or endorsed (note 3).....	
other (note 3).....	
Investments in and loans to related parties (note 4).....	
investments (notes 3 and 5).....	
loans —	
secured (notes 1 and 3).....	
unsecured (note 3).....	
Other loans and deposits:	
secured (notes 1 and 3).....	
unsecured (note 3).....	
Government and semi-government securities (note 6).....	
Shares, units, options, debentures and convertible notes:	
quoted on a financial market — market value \$	
(notes 3, 5 and 7).....	
not quoted on a financial market (notes 3 and 7)	
Interests in partnerships, trusts and unincorporated joint ventures	
(notes 3 and 8).....	
Lease receivables (note 3).....	
Property held for resale (note 3).....	
Other current assets (notes 2 and 3).....	
	Total Current Assets _____
NON-CURRENT ASSETS	
Bills receivable.....	
bank accepted or endorsed (note 6).....	
other (note 6).....	
Investments in and loans to related parties (note 4).....	
investments (notes 5 and 6).....	

**Schedule**

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loans —	
Secured (notes 1 and 6).....	
unsecured (note 6).....	
Other loans and deposits —	
secured (notes 1 and 6).....	
unsecured (note 6).....	
Government and semi-government securities (note 6).....	
Shares, units, options, debentures and convertible notes quoted on a financial market — market value \$	
(notes 5, 6 and 7) .....	
not quoted on a financial market (notes 5 and 6)	
Interests in partnerships, trusts and unincorporated joint ventures (notes 6 and 8).....	
Lease receivables (note 6).....	
Property held for resale (note 6).....	
Property, plant and equipment (note 6).....	
Intangible assets (notes 2 and 6).....	
Other non-current assets, (notes 2 and 6).....	_____
Total Non-Current Assets	_____
Total Assets	_____
<b>CURRENT LIABILITIES</b>	
Bank overdrafts and bank loans —	
secured (note 1).....	
unsecured.....	
Loans from other financial institutions —	
secured (note 1).....	
unsecured.....	
Bills payable and liabilities under promissory notes.....	
Subordinated loans from related parties.....	
Clients' balances and deposits:	
secured (notes 1 and 2).....	
unsecured.....	
Trade creditors and accrued expenses.....	
Lease payables.....	
Provisions.....	
Income Tax.....	
Dividends.....	
Other.....	
Deferred income (notes 2 and 9).....	

Other amounts payable:		
secured (notes 1 and 2).....		
unsecured (note 2).....		_____
	Total Current Liabilities	_____
<b>NON-CURRENT LIABILITIES</b>		
Bank overdrafts and bank loans —		
secured (note 1).....		
unsecured.....		
Loans from other financial institutions —		
secured (note 1).....		
unsecured.....		
Bills payable and liabilities under promissory notes.....		
Subordinated loans from related parties.....		
Clients' balances and deposits:		
secured (notes 1 and 2).....		
unsecured.....		
Lease payables.....		
Provisions		
Income Tax.....		
Other.....		
Deferred income (notes 2 and 9).....		
Other amounts payable:		
secured (notes 1 and 2).....		
unsecured (note 1).....		_____
	Total Non-Current Liabilities	_____
	Total Liabilities	_____
	Net Assets/Shareholders' Funds	_____
	(Total assets less total liabilities)	_____
	Less: Intangible Assets	_____
	Net Tangible Assets	_____
	Profit and Loss Account for the Period	
	From	to
Operating profit (loss).....		
Income Tax.....		_____
Operating profit (loss) after income tax.....		
Profit (loss) on extraordinary items after income tax.....		_____
Net profit (loss).....		_____

**Schedule**

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Definitions

1. “Current assets” means cash or other assets which would in the normal course of business be consumed or converted into cash within 12 months of balance date.
2. “Non-current assets” means assets which would in the normal course of business be consumed or converted into cash after 12 months of balance date.
3. “Current liabilities” means liabilities which in the normal course of business would be due and payable within 12 months of balance date.
4. “Non-current liabilities” means liabilities which would in the normal course of business be due and payable after 12 months of balance date.

Notes

1. Indicate the nature and extent of security by broad categories.
2. Provide details of major components if the total amount is material.
3. State at lower of cost and net realizable value.
4. “Related parties” includes —
  - (a) a related corporation;
  - (b)
    - (i) a director;
    - (ii) an executive officer, or
    - (iii) a secretary,of the reporting company or of a related corporation, their relatives (including a de facto partner) and companies controlled by them, and any unincorporated association (including trading trusts) where a material beneficial interest is held by those parties or any combination of those parties;
  - (c) any party which can significantly influence the management or operating policies of the reporting company;
  - (d) any party whose management or operating policies are able to be significantly influenced by the reporting company or a director, executive officer or secretary of the reporting company; and
  - (e) any party whose management or operating policies are able to be significantly influenced by a third party which is in a position to exercise a similar influence on the reporting party.“Unincorporated associations” means unincorporated joint ventures, partnerships, trusts or any other forms of unincorporated associations.
5. Indicate types of investments by broad categories.

6. State at cost or valuation less amounts written off or provided for depreciation or permanent diminution in value.
7. "Financial market" has the meaning given by the *Corporations Act 2001* of the Commonwealth.
8. Indicate the nature and extent of the interests by broad categories.
9. Any unearned income shall not be included in any estimate of the gross amount of any class of debts unless the amount of unearned income so included is shown as a deduction from the estimate of the gross amount of the class of debts concerned.

*[Form 2 amended: Gazette 6 Jun 2003 p. 2025; 30 Jun 2003 p. 2635.]*

*[Schedule amended: Gazette 6 Jun 2003 p. 2025; 30 Jun 2003 p. 2635.]*

**Notes**

- <sup>1</sup> This is a compilation of the *Trustee Companies Regulations 1988* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

**Compilation table**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Trustee Companies Regulations 1988</i>	26 Aug 1988 p. 3284-9	1 Sep 1988 (see r. 2 and <i>Gazette</i> 26 Aug 1988 p. 3284)
<i>Trustee Companies Amendment Regulations 1991</i>	8 Nov 1991 p. 5717	8 Nov 1991
<i>Trustee Companies Amendment Regulations 1993</i>	31 Aug 1993 p. 4686	1 Sep 1993 (see r. 2)
<i>Corporations (Consequential Amendments) (FSR) Regulations 2003 Pt. 5</i>	6 Jun 2003 p. 2023-6	11 Mar 2002 (see r. 2 and Cwlth <i>Gazette</i> 24 Oct 2001 No. GN42)
<i>Equality of Status Subsidiary Legislation Amendment Regulations 2003 Pt. 40</i>	30 Jun 2003 p. 2581-638	1 Jul 2003 (see r. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<b>Reprint 1: The Trustee Companies Regulations 1988 as at 24 Oct 2003</b> (includes amendments listed above)		
<i>Trustee Companies Amendment Regulations 2012</i>	4 Jan 2013 p. 6-8	r. 1 and 2: 4 Jan 2013 (see r. 2(a)); Regulations other than r. 1 and 2: 5 Jan 2013 (see r. 2(b))