

Approved for reprint 13th January, 1970.

WESTERN AUSTRALIA.

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# THE WEST AUSTRALIAN TRUSTEE EXECUTOR AND AGENCY COMPANY LIMITED.

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56° VICTORIÆ, PRIVATE ACT.

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(Affected by Act No. 113 of 1965.)

[As amended by the West Australian Trustee Executor and Agency Company Limited Act Amendment Acts of—

1923, assented to 22nd December, 1923;  
1925, assented to 17th October, 1925;  
1951, assented to 19th December, 1951;  
1955, assented to 5th December, 1955;  
1966, assented to 5th December, 1966;  
No. 12 of 1969, assented to 6th May, 1969;  
No. 71 of 1969, assented to 28th October, 1969,

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

**AN ACT to confer Powers upon the West Australian Trustee Executor and Agency Company, Limited.**

*[Assented to 13th January, 1893.]*

**WHEREAS** from the uncertainty of human life and from other causes great difficulty often arises in securing the services of suitable persons for the office of trustee executor and other similar offices: And whereas in order to secure the more certain discharge of the duties of such offices a company has been formed and incorporated under "The Joint Stock Companies Ordinance, 1858" by the name of the "West Australian Trustee Executor and Agency Company Limited" with the object among other purposes of affording persons the opportunity of obtaining the services of a permanent corporation for the performance of the duties of such offices and thus to remove much of the uncertainty and insecurity which attend the appointment of private individuals; And whereas

Preamble.

*The West Australian Trustee Executor and Agency Company Limited.*

it is expedient to enable the said incorporated Company to act as executor administrator and trustee and to perform and discharge all the duties of such offices and to receive remuneration for such duties and also to act as guardian of any lunatic or infant as receiver as committee of the estates of insane persons trustee of the estates of bankrupt or insolvent persons as agent under power of attorney and as guarantor or surety either solely or jointly with any person for any person appointed as administrator receiver guardian committee in lunacy or trustee in bankruptcy and to perform and discharge all the duties of such offices and to receive remuneration therefor: And whereas it is expedient to confer upon the said Company the powers and privileges hereinafter set forth in order to enable the said Company the more effectually and usefully to carry out the objects sought in its incorporation: Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of West Australia in its present Parliament assembled and by the authority of the same as follows:—

Interpreta-  
tion.  
Amended by  
1923 and 1951  
Amendment  
Acts.

1. In this Act unless the context otherwise indicates the following terms have the meanings set against them respectively—

“The Company”—The West Australian Trustee Executor and Agency Company, Limited.

“The Court”—The Supreme Court of Western Australia or any Judge thereof.

“Committee” includes the committee of the person or estate of a person found or declared to be insane or of unsound mind and incapable of managing himself or his affairs and includes a person undertaking the care and management of the property of a person incapable of managing his affairs or of the property of an insane patient.

“Trustee in Bankruptcy” includes the trustee of any assignment under the law relating to bankruptcy insolvency liquidation by arrangement or composition with creditors and also includes a liquidator and an official liquidator.

“The Treasurer”—The Treasurer of the State of Western Australia.

“Will”—Will Codicil or other Testamentary Writing.

2. Whenever the Company alone or jointly with any other person or corporation is named (either by its said registered title or in such manner that the Court shall be satisfied that the Company is intended) as executor in the last will of any testator or is named therein in such manner that if the Company were a private person it would be entitled to apply for and obtain probate as executor according to the tenor the Company may act as executor and the Company may apply for probate of the will of the testator and the Court may grant probate thereof to the Company and if such probate is granted the Company may perform and discharge all the acts and duties of an executor as fully and effectually as a private person may do when appointed executor.

Company may act as executor and obtain probate.

Amended by 1923 Amendment Act.

2A. Any person or persons named expressly or by implication as executors or executor who would be entitled to obtain probate of the will of any testator without reserving leave to any other person to apply for probate may instead of themselves or himself applying for probate authorise the said Company to apply to the Supreme Court for administration with the will annexed and administration with the will annexed may be granted to the said Company upon its own application when so authorised unless the testator shall by his will have expressed his desire that the office of executor should not be delegated or that the said Company should not act in the trusts of his will.

Persons entitled to probate may authorise Company to obtain administration with the will annexed.

Added by 1923 Amendment Act and renumbered by No. 12 of 1969.

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Persons entitled to obtain Letters of Administration with will annexed may authorise the Company to do so.

Substituted by 1923 Amendment Act.

3. It shall be lawful for any person or persons entitled to obtain letters of administration with the will of any testator annexed of the estate of such testator to authorise the Company either alone or jointly with any other corporation or any person to apply for and to obtain letters of administration with the will annexed which may be granted to the Company upon its own application when so authorised.

Persons entitled to administration on intestacy may authorise Company to obtain administration.

Amended by 1923 Amendment Act.

4. Any person entitled to obtain administration of the estate of any intestate may instead of himself applying authorise the Company alone or jointly with any other person or corporation so entitled to apply for administration of such estate and administration of such estate may be granted to the Company upon its own application when so authorised.

Without prejudice to rights of persons interested.

5. Nothing in the two last preceding sections contained shall be deemed to prejudice or affect the right of any person interested in the estate of any deceased person other than such persons in the said sections mentioned to apply for and obtain letters of administration with or without the will annexed in any of the cases in the said sections mentioned.

Company may perform acts which belong to office of administrator.

6. When the administration of any estate with or without the will annexed is granted to the Company the Company may perform and discharge all the acts and duties which belong to the office of administrator or administrator with the will annexed as the case may be.

The Company may hold property as joint tenant.  
Added by 1923 Amendment Act and renumbered by No. 12 of 1969.

6A. (1) The Company shall be capable of acquiring and holding any property in joint tenancy in the same manner as if it were an individual.

(2) Where the Company and an individual or the Company and another body corporate become entitled to any property under circumstances or by

virtue of any instrument which if the Company or other body corporate had been an individual would have created a joint tenancy they shall be entitled to the property as joint tenants.

(3) Where the Company or other body corporate is a joint tenant of any property then on its dissolution the property shall devolve on the other joint tenant.

6B. Where any property is now or hereafter becomes vested in the Company and an individual or in the Company and another body corporate to the intent that they should hold the same jointly in any fiduciary capacity or as mortgagees they shall be deemed to be joint tenants thereof and not tenants in common unless otherwise expressly provided.

Property vested in Company and another as Trustees etc. to be held in joint tenancy. Added by 1923 Amendment Act and renumbered by No. 12 of 1969.

7. In all cases in which the Company either alone or jointly with any other person or corporation is empowered under this Act to apply for probate or for letters of administration an affidavit made by the manager or secretary or any person acting as manager or secretary or by such other officer of the Company as may from time to time be appointed by the Board of Directors for that purpose shall be received and be acted upon instead of any affidavit required by any Act of Parliament Court or rule of Court to be made by persons making application for probate or letters of administration.

Affidavit by officers of Company to be received and acted upon in application for probate or administration. Substituted by 1923 Amendment Act.

8. In all cases in which probate or letters of administration shall be granted to the Company all the capital both paid and unpaid and all other assets of the Company shall be liable for the proper administration of the estate committed to the Company. The Company shall before obtaining any Grant of Probate of any Will or letters of administration possess a paid-up capital of not less than twelve thousand dollars of which paid-up capital not less than ten thousand dollars shall be invested by the Company in the name of the

Assets of Company to be liable for proper administration of estates and no bond to administer to be required when paid-up capital is \$12,000 of which \$10,000 is invested in Government securities. Amended by 1951 Amendment Act and No. 113 of 1965, s. 8.

Treasurer in or one more of the securities or investments hereinafter mentioned that is to say:—

In the purchase of bonds debentures treasury bills or other securities issued by the Government of the Commonwealth of Australia or by the Government of or any Municipal Corporation in Western Australia or upon fixed deposit in one or more joint stock bank or banks carrying on business in the said State or upon first mortgages of freehold real estates in the said State; provided that the amount advanced on mortgage of any one estate shall not exceed two-thirds of the value thereof and that before any such investment shall be made the same shall be approved in writing by the Treasurer. The Company may from time to time with the approval of the Treasurer as aforesaid vary the said investments or any of them into or for other or others of the nature hereby authorised. The title deeds documents and securities from time to time representing the said sum of ten thousand dollars shall be deposited with the Treasurer who shall hold the same upon trust for the Company but transferable to the Company only upon the joint consent of the Treasurer and the Company or upon the order of the Court or a Judge. The interest dividends and annual income of the said investments shall belong and be payable to the Company. When and so long as the said sum of ten thousand dollars or such other sum as may hereafter be prescribed and required by law shall remain invested and the securities for the same be deposited as aforesaid the Court may grant letters of administration to the Company without the bond required by law when administration is applied for by private persons provided that the amount of capital to be paid up and the sum to be invested as aforesaid may be hereafter increased as Parliament by any Act to be hereafter passed may prescribe.

9. (1) In all cases where any court of justice or judge thereof or person has power to appoint any person as

- (a) trustee or
- (b) receiver or manager and receiver or
- (c) committee or
- (d) guardian of the estate or person of an infant or
- (e) trustee in bankruptcy or under the law relating to bankruptcy or winding up of companies or associations or
- (f) surety or guarantor

Company may be appointed trustee receiver committee or guardian of estate etc. Substituted by 1923 Amendment Act.

the Company may be so appointed.

(2) (a) Subject as hereinafter provided the Company may be appointed or may continue to act as sole trustee in all cases notwithstanding that it is provided by the terms of the instrument (if any) creating the trust or of any power or otherwise that there shall be more than one trustee to perform the trust.

(b) Where the Company and one or more individuals are co-trustees any one or more of such individuals may retire and the Company shall for the purposes of any Act now or hereafter in force relating to the retirement of trustees and the vesting of the trust property be deemed to be equivalent to two trustees.

(3) The Company shall not be appointed in any case in which the instrument creating the trust or power forbids the appointment of the Company.

(4) The Company shall not be appointed or be entitled to act as sole trustee in any case in which the instrument creating the trust or power expressly provides that there shall be another trustee in addition to the Company or that the Company shall not be appointed or act as sole trustee.

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(5) In every case in which the Company is appointed or acts in any of the offices in subsection one hereof mentioned all the capital of the Company both paid and unpaid and all other assets of the Company shall be liable for the proper discharge of the duties of such office.

(6) No bond recognisance or other security for the proper discharge of such duties shall be required to be given by or on behalf of the Company.

Company may act under power of attorney by manager or acting manager, secretary or two directors. Amended by 1923 Amendment Act.

10. The Company may act under any power of attorney by which the Company either alone or jointly or jointly and severally with any other corporation or person is appointed attorney by any person or by any company or corporation: And all the powers conferred upon the Company by any such power of attorney may be exercised and carried into execution by the manager acting manager secretary or any two of the directors of the Company but in all cases the capital both paid and unpaid and all other assets of the Company shall be liable for the due execution of the powers so conferred upon the Company but this section shall not authorise any person company or corporation to confer any power upon the Company which cannot be legally conferred upon a private person.

Company may be appointed to act temporarily for executor, administrator or trustee. Amended by 1923 Amendment Act.

11. Any executor or administrator or trustee may appoint the Company to act either alone or jointly with any other corporation or person as executor administrator or trustee in his stead and the Company if so appointed by deed filed in accordance with any law now or hereafter to be in force providing for the filing of powers of attorney may act within the scope of the authority conferred upon it as effectually as the executor administrator or trustee could have acted and may exercise all discretionary and other powers delegated by the principal as fully as the principal could have exercised them: And after the filing of such power



as aforesaid and before the registration of the death of the principal or of the revocation of the authority given by him in accordance with the law now or hereafter to be in force in that behalf every act of the Company within the scope of the authority conferred shall in favour of any person who shall deal with the Company *bona fide* and without notice of the death of the principal or of his revocation of the authority be valid and effectual notwithstanding the revocation by or death of the principal.

12. Any executor or administrator acting under any probate or administration whether granted before or after the coming into operation of this Act and any trustee receiver committee or guardian of any infant or lunatic with the consent of the Court may appoint the Company either alone or jointly with any other corporation or person to perform and discharge all the acts duties powers and discretions of such executor administrator trustee receiver committee or guardian as the case may be and the Company shall have power to perform and discharge all such acts duties powers and discretions accordingly: and in every such case all the capital both paid and unpaid and all other assets of the Company shall be liable for the proper discharge of such duties and the executor administrator trustee receiver committee or guardian so appointing the Company shall be released from liability in respect of all acts done by or omitted to be done by the Company acting under such appointment.

Executors,  
adminis-  
trators,  
trustees,  
receivers,  
committees  
and  
guardians  
may, with  
consent of  
the Court,  
appoint  
Company to  
discharge  
duties for  
them.

Amended by  
1923  
Amendment  
Act.

And if such appointment contains a declaration by the appointor to the effect that any real or personal property or any estate or interest therein then vested in the appointor in such capacity as aforesaid either alone or jointly with any other corporation or person shall vest in the Company that declaration shall without any conveyance transfer or assignment operate to vest in the Company the said real or personal property or

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estate or interest therein and the right to receive the same either solely or jointly with such other corporation or person as the case may require.

And for the purposes of registration of the said appointment the person or persons making the declaration shall be deemed the conveying or transferring party or parties and the conveyance or transfer shall be deemed to be made by him or them and the declaration upon registration shall be deemed and operate as a transfer under the Transfer of Land Act 1893 or a conveyance as the case may be.

Company may with consent of the Court be appointed a trustee.

13. Any trustee may with the consent of the Court to be obtained in the manner hereinafter mentioned appoint the Company to be trustee in his place. And whenever under any instrument appointing trustees a trustee or other person is authorised to appoint another person as a trustee he may with the consent of the Court to be obtained in the manner hereinafter mentioned appoint the Company to be such trustee. In every such case the Company may and shall perform and discharge all the acts and duties and shall be liable to all the obligations pertaining to the office of such trustee and all the capital both paid and unpaid and all other assets of the Company shall be liable for the proper discharge of such duties and the person so appointing the Company shall be released from liability in respect of all acts done by or omitted to be done by the Company acting under such appointment.

Application for consent to be by motion.

Amended by 1951 Amendment Act.

14. Every application for such consent as in the two preceding sections mentioned shall be by application to a Judge in Chambers: and the Court may require any person resident in Western Australia and entitled to the immediate receipt of any of the income or *corpus* of the estate in respect of which the application is made to be served with notice thereof and the costs of such application shall be in the discretion of the Court and may be

ordered to be paid out of the estate and such consent shall not be given in any case of a will in which the testator has expressed his wish that the trusts thereof shall not be delegated or that the Company shall not act therein.

15. In all cases in which the personal attendance of an executor administrator trustee receiver committee trustee in bankruptcy guardian of an infant or lunatic or guarantor or surety as aforesaid is required in a Court of Justice or elsewhere the Company shall be entitled to make such attendance in the person of the manager acting manager or secretary of the Company and the personal duties of executor administrator trustee receiver committee trustee in bankruptcy or guardian or such guarantor or surety as aforesaid may be discharged on behalf of the Company by the manager acting manager or secretary. And in every case where the Company obtains probate or letters of administration and also in every case where the Company is appointed and shall act as trustee receiver committee trustee in bankruptcy or guardian or as such guarantor or surety as aforesaid the manager acting manager or secretary as the case may be and the directors shall be individually and collectively in their own proper persons responsible to the Court and shall in their own proper persons be liable by process of attachment commitment for contempt or by other process to all Courts having jurisdiction in that behalf for the proper discharge of their duties and for obedience to the rules orders and decrees of such Courts in the same manner and to the same extent as if such manager acting manager or secretary as the case may be and directors had personally obtained probate or letters of administration or been appointed trustee receiver committee trustee in bankruptcy or guardian or as such guarantor or surety as aforesaid. But notwithstanding such personal responsibility of the said manager acting manager or secretary as the case may be and directors the capital both paid and unpaid and all the assets of

Manager or  
acting  
manager or  
secretary  
may attend  
on behalf of  
Company  
and with the  
directors  
and manager  
shall be  
personally  
responsible  
to Court.

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the Company shall remain liable for any pecuniary loss which may be occasioned or which may happen through any breach of trust or duty committed by the Company or any of its officers in respect of any office appointment or engagement held or entered upon by the Company.

Company  
to be paid a  
commission  
on moneys  
received  
by it.

Substituted  
by 1951  
Amendment  
Act.

Amended by  
1955  
Amendment  
Act and by  
No. 113 of  
1965, s. 8.

16. In addition to all moneys properly expended by the Company and chargeable against any estate heretofore or hereafter committed to the administration or management of the Company as executor, administrator, trustee, receiver, committee, trustee in bankruptcy or guardian, or as such guarantor or surety as aforesaid, or as attorney, the Company shall be entitled to charge, retain or receive against from or out of such estate—

- (a) a commission, to be fixed from time to time by the directors of the Company, not being less than fifty dollars and not exceeding four dollars for every one hundred dollars of the gross value of such estate and a commission of five dollars for every one hundred dollars of income from such estate;
- (b) a fee (according to the value of the services rendered) for the preparation of income and land taxation returns, the inspection and report upon real estate, the arrangement of insurances, and the keeping of books of account (including the preparation of balance sheets and profit and loss accounts) in respect of any business;
- (c) in respect of any business wholly belonging to, or in which an interest as partner is held by, the estate an additional fee at the rate per annum of one-half of one per centum of the whole, or, as the case may be, such proportional part as the interest of the estate bears to the whole, of the book values of the assets employed in such business.

Such commission and fees shall be received and accepted by the Company as a full recompense and remuneration for acting as aforesaid, and no other charges beyond the said commission and fees shall be made by the Company, but if in any case the Court shall be of opinion that any commission or fee charged is excessive, it shall be competent for the Court to review and reduce the same, provided that commission chargeable under paragraph (a) of this subsection shall not exceed the amount of the scale of commission published by the Company from time to time, but so that this subsection shall not prevent the charging of any commission or fee directed by a testator or a settlor in lieu of such commission.

17. In all cases in which the Company shall be appointed executor administrator trustee receiver committee trustee in bankruptcy or guardian of any infant or lunatic or attorney under power the Company shall in addition to the liabilities and restrictions imposed by this Act be subject in all respects to the same control and liable to removal as a private person who may be appointed executor administrator trustee receiver committee trustee in bankruptcy guardian or attorney is subject to. And all persons who may claim relief against the Company for any act done or assumed to be done or in respect of any act omitted to be done by the Company its directors or officers under any of the powers conferred by this Act may proceed in the Court or in any other Court of competent jurisdiction either by action or other ordinary procedure of such Court or in any summary way by motion against the Company or against any of the directors or officers of the Company and such Court may make and enforce such order in such manner as to such Court shall seem just.

Company may be removed from office by Court and provisions for relief against company or directors.

18. If any trustee *cestui que trust* executor or legatee administrator or wife husband or next of kin or creditor or infant entitled to or interested in

Order for account on application of trustee *cestui que trust* &c.

any estate which shall have come (or shall hereafter come) into the possession or under the control of the Company shall be unable after demand in writing made to the manager acting manager or secretary of the Company to obtain a sufficient account of the property and assets of which such estate shall consist and of the disposal and expenditure thereof or thereout such trustee *cestui que trust* executor or legatee administrator or wife husband or next of kin or infant or creditor shall be entitled to apply to the Court or to any Judge thereof upon motion after notice to the Company but without action or petition for an account; and if the Court or Judge shall be of opinion that no sufficient account has been rendered by the Company the Court or Judge shall order such account to be rendered by the Company as to the Court or Judge shall seem just or if the Court or Judge shall think that no sufficient case has been established to require the Company to furnish an account the Court or Judge may dismiss the application; and the Court or Judge shall have power in all cases to make such order as to costs either against the Company or against the applicant or as to payment of costs out of the estate as to the Court or Judge shall seem right.

Supreme Court or Judge may order audit in any estate committed to Company.

19. The Court or a Judge on application under the last preceding section may order in addition to or in substitution for any account to be rendered by the Company that a person to be named in such order shall examine the books and accounts of the Company in reference to the estate as to which the order is made and in that case the Company shall deliver to the person named in such order a list of all books kept by the Company and shall produce to such person at all reasonable times when required the said books and all accounts vouchers papers and other documents of the Company and shall afford to him all necessary information and all other necessary facilities for enabling him to make the said examination. And the Court or Judge shall have the same power as to the costs of

such examination as is given by the last preceding section in reference to costs of or occasioned by the application under that section.

20. So long as any estate in respect of which the Company is executor administrator trustee receiver committee trustee in bankruptcy or guardian shall remain in whole or in part unadministered it shall not be lawful to proceed to wind up the Company voluntarily unless with the sanction of the Court or a Judge; and any person interested in such estate or who may have any claim in respect thereof may apply to the Court or to a Judge in a summary way by motion to restrain any director or any shareholder from disposing of any share which such director or shareholder may hold in the Company or to restrain the winding up voluntarily of the Company and the Court or Judge shall in any and every such case have power to make such order in the matter as the circumstances of each case shall appear to such Court or Judge to require.

Voluntary winding up of Company or disposal of shares may be restrained by Supreme Court or Judge.

21. No member shall, in his own right at any time, hold shares in the Company amounting to more than one share for every twenty shares issued by the Company.

Limitation of number of shares to be held by member. Substituted by 1966 Amendment Act.

21A. (1) The Company may, in addition to other modes of investment permitted by law for investment of trust moneys (unless expressly prohibited by the instrument creating the trust), invest trust moneys as part of a fund to be called a "Common Trust Fund," which may be established by and kept in the books of the Company.

Common trust fund. Added by 1951 Amendment Act.

(2) The moneys constituting the Common Trust Fund may be invested in any of the modes of investment permitted by law for the investment of trust moneys.

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Company Limited.*

(3) Investments made from moneys forming part of the Common Trust Fund shall not be made in the name or on account of, nor shall they belong to, any particular estate, trust, property, or person, but the Company shall keep an account in its books showing at all times the current amount for the time being at credit in the Common Trust Fund on account of each estate, trust, property or person.

(4) Any capital profits or losses upon realisation of any investment in the Common Trust Fund shall be credited or debited (as the case may require) to the Common Trust Fund and be rateably added to or deducted from the several amounts at credit in the account referred to in paragraph (3) of this subsection at the time of such realisation.

(5) The Company may, in its discretion, at any time withdraw from the Common Trust Fund any amount at credit in the Common Trust Fund on account of any estate, trust, property or person.

(6) In respect of each amount withdrawn from the Common Trust Fund, the estate, trust, property or person in respect of which such withdrawal is made shall, as from the date of such withdrawal, cease to have any claim to accruing income from the Common Trust Fund.

(7) If for the purpose of providing for any withdrawal any investment is realised, then, for the purpose of this section, that part of the moneys arising from such realisation as is equal to the amount of interest accrued on such investment shall be deemed to be income of the Common Trust Fund and the balance shall be deemed to be capital.

(8) As on the first day of every month during which there shall be any withdrawal from the Common Trust Fund the Company shall determine the value of the investments in the Common Trust Fund (without regard to accrued income thereon) and shall adjust as necessary the account referred



to in paragraph (3) of this section, and each withdrawal from the Common Trust Fund during any month shall be effected on the basis of such valuation.

(9) At quarterly intervals the Company shall distribute the income from time to time received from the investments constituting the Common Trust Fund between the estates, trusts, properties and persons entitled thereto according to their shares and interests.

21B. In any case in which the Company shall, as trustee for the investment thereof, hold moneys belonging to more than one estate, it shall be lawful for the Company to invest such moneys as one fund in one or more investments of the nature for the time being authorised by law or by the instrument creating the trust, and to distribute the income arising therefrom rateably among the several estates to which the moneys so invested shall belong; and any loss arising from any such investment shall likewise be borne rateably by the same several estates.

Contributory  
investments.  
Added by  
1951  
Amendment  
Act.

21C. Division 5 of Part IV of the Companies Act, 1961-1966 shall not apply to and shall be deemed never to have applied to a Common Trust Fund or other common fund established by the Company or to any interest in any such fund.

Division 5  
Part IV  
Companies  
Act not to  
apply in  
certain  
cases.  
Added by  
No. 71 of  
1969, s. 2.

22. All moneys which form part of any estate of which at any time the Company shall be executor administrator trustee receiver committee trustee in bankruptcy or guardian and which moneys shall remain unclaimed by the person entitled to the same for a period of five years after the time when the same shall have become payable to such person except where payment has been or shall be restrained by the injunction of some Court of competent jurisdiction shall be paid by the Company to the Treasurer to be placed to the credit of a fund to be called the "Testamentary and Trust

Moneys  
remaining  
unclaimed  
for five years  
to be paid to  
Treasurer.

Amended by  
No. 113 of  
1965, s. 8.

Fund" distinguishing the particular estates in respect of which such moneys shall have been paid and such moneys shall bear interest at the rate of three per centum per annum until invested as herein directed; and it shall be lawful for the Treasurer from time to time to invest such moneys in the purchase of Government debentures or stock to be placed to the credit of the said "Testamentary and Trust Fund" distinguishing in the ledger the particular estate in respect of which such moneys have been invested. And the interest payable on such debentures or stock shall be placed to the credit of the said fund and the Treasurer's said account in the ledger shall be an official and not a nominal account and in all transfers of the said debentures and stock by the Treasurer he shall be so styled without any name addition or description and he shall not sign any such transfers or pay over any of the moneys standing to the credit of the said fund unless an order of the Court or a Judge directing such transfer and specifying the amount of money debentures or stock and the name description and addition of the person to whom it is to be transferred and paid or an order of such Court or Judge directing a sale of such debentures or stock and specifying the amount of money to be raised by such sale and the name description and addition of the person to whom the proceeds of such sale are to be paid shall be left at the office of the Treasurer nor in this latter case until he has received the purchase money of the debentures or stock to be sold. And the Company shall at the end of every six months deliver to the Treasurer a statement of all such unclaimed moneys which during the preceding six months shall have been in its hands and distinguishing the several estates in respect of which the same have been received and setting out the dates and amounts of the several payments of the same under this section and if the said moneys or any part thereof have not been paid to the Treasurer as aforesaid stating the reason for the delay of such payments. If default is made in compliance with the foregoing provision of this section the Company

Statement of unclaimed moneys to be furnished to the Treasurer.

Penalty.

shall be liable to a penalty not exceeding ten dollars for every day while such default continues and every director manager or acting manager of the Company who knowingly and wilfully authorises or permits such default shall incur the like penalty.

23. Any person who shall be entitled to any stock debentures or moneys which shall at any time form part of the said "Testamentary and Trust Fund" shall be entitled to apply to the Court or a Judge upon a petition in a summary way without action for such order as in the last preceding section referred to; and service of such petition shall be made upon such persons as the Court shall direct; and every order made upon any such petition shall have the same authority and effect and shall be enforced and subject to rehearing and appeal in the same manner as if the same had been made in a suit regularly instituted in the Court; and if it shall appear to the Court expedient so to do the Court may direct any action or suit to be instituted for the purpose of determining any questions arising upon such petition as the Court may think fit. No person shall be entitled to make any such application after the expiration of six years from the time when such moneys were paid to the Treasurer as aforesaid but no time during which the person entitled to make such application shall have been an infant or *feme covert* or of unsound mind or beyond seas shall be taken into account in estimating the said period of six years. And in all cases in which the Treasurer may see fit to appear upon such petition he shall be entitled to such costs against the applicant or out of the fund as the Court or Judge may direct.

Persons entitled to moneys in "Testamentary and Trust Fund" may apply to the Supreme Court or Judge within six years.

24. If the Treasurer shall be unable after demand in writing to the manager acting manager or secretary of the Company to obtain a sufficient account of the property and assets of which any or every estate included in or which ought to be or to have been included in the hereinbefore

Order for account on application of Treasurer.

mentioned statement of unclaimed moneys shall consist and of the disposal and expenditure thereof or thereout the Treasurer shall be entitled to apply to the Court or a Judge upon motion after notice to the Company but without action or petition for an account and if the Court or Judge shall be of opinion that no sufficient account has been rendered by the Company the Court or Judge shall order such account to be rendered by the Company as to the Court or Judge shall seem just or if the Court or Judge shall think that no sufficient case has been established to require the Company to furnish an account the Court or Judge may dismiss the application and the Court or Judge shall have power in all cases to make such order as to costs either against the Company or against the applicant or as to payment of costs out of the estate as to the Court or Judge shall seem right.

Returns to be made by Company. Amended by No. 113 of 1965, s. 8.

25. The manager acting manager or secretary of the Company shall during the months of June and December in every year during which the Company carries on business make before some Justice a declaration in the form contained in the Schedule hereto or as near thereto as circumstances will admit and a copy of such declaration shall be put up in a conspicuous place in the registered office of the Company and in every branch office or place where the business of the Company is carried on and shall be given to any member or creditor of the Company who applies for the same. If default is made in compliance with the provisions of this section the Company shall be liable to a penalty not exceeding ten dollars for every day while such default continues and every director manager or secretary of the Company (as the case may be) who knowingly and wilfully authorises or permits such default shall incur the like penalty.

Act not to preclude other companies from applying for similar powers to those conferred by this Act.

26. Nothing in this Act contained shall be deemed to give to the Company any *locus standi* to oppose the granting of similar powers to those conferred upon the Company by this Act to any

other company or to corporations generally or to claim or to seek compensation in consequence of such powers being conferred upon any other company or upon corporations generally.

27. Where by any will or settlement a testator or settlor shall direct that any practising solicitor shall conduct the legal business of his estate such solicitor shall be entitled to act therein accordingly; but in such case the Company shall not be liable for the negligence *mis-feasance non-feasance* or misconduct of such solicitor and such solicitor may be removed by order of the Court or a Judge upon the application of the Company or of any person interested in the said estate upon cause shown and then and in such case the Court or Judge may appoint the solicitor of the Company to conduct such legal business.

Testators and settlors may appoint their own solicitors.

28. (1) The Company shall not without the prior consent in writing of the Treasurer of the State sell, exchange, transfer, mortgage, charge or otherwise dispose of the property belonging to it situate in Saint George's Terrace Perth in the State and being portion of Perth Town Lot L14 and being part of the land comprised in deposited diagram 187 and being the whole of the land comprised in Certificate of Title Volume 360 Folio 144.

Certain property of company held as security for due performance by company of its duties as executor or administrator. Substituted by 1966 Amendment Act.

(2) The consent of the Treasurer shall not be unreasonably withheld, where the security referred to in the next succeeding subsection is preserved, in the case of any proposed mortgage or charge over the property referred to in subsection (1) of this section to secure the repayment of any advances or loans applied or to be applied in or towards the cost of—

- (a) erecting any building;
- (b) effecting any additions or structural alterations to any building; or
- (c) carrying out any other improvements of a permanent nature,

on that property.

*The West Australian Trustee Executor and Agency Company Limited.*

(3) The property referred to in subsection (1) of this section shall be by force of this section a security for the due performance by the Company of the duties of the offices of executor and administrator under any grant obtained in pursuance of this Act and if the Company is wound up the net proceeds of the sale of that property, after satisfying the amount of any advances or loans referred to in subsection (2) of this section that is owing and unpaid, shall be applied in satisfaction, *pari passu*, of any claims established by any persons entitled as beneficiaries under any probate or letters of administration granted to the Company; and in addition to the said security the persons so entitled shall be at liberty to rank as ordinary creditors of the Company for any balance if those net proceeds shall be insufficient to satisfy the claims so established.

Incorporation and powers of Company except as far as specifically altered to remain.

29. Excepting so far as is herein expressly provided the Company shall have the same powers and privileges and be subject to the same restrictions liabilities and penalties as it is subject to under its present incorporation and this Act shall not otherwise affect the incorporation of the Company.

Orders of Court subject to appeal. Added by 1923 Amendment Act and renumbered by No. 12 of 1969.

29A. Every order made by any Court under this Act shall be subject to appeal in the same manner and under the same conditions as other orders of the Court.

Short Title of Act. Amended by No. 71 of 1969.

30. This Act shall be called and may be cited as *The West Australian Trustee Executor and Agency Company Limited Act, 1893-1969.*

SCHEDULE.

Amended by  
No. 113 of  
1965, s. 8.

[Referred to in Section 25.]

*The West Australian Trustee Executor and Agency  
Company Limited.*

I, \_\_\_\_\_ do solemnly  
[manager, secretary, or as the case may be]  
and sincerely declare:—

That the liability of the members is limited.

That the capital of the Company is \$ \_\_\_\_\_ divided  
into \_\_\_\_\_ shares of \$5 each.

That the number of shares issued is \_\_\_\_\_

That calls to the amount of \_\_\_\_\_ per share have  
been made under which the sum of \$ \_\_\_\_\_ has been  
received.

That the liabilities of the Company on the last day  
of \_\_\_\_\_ last were—

Debts owing to sundry persons by the Company, viz.:—

On Judgment \$ \_\_\_\_\_  
On Specialty \$ \_\_\_\_\_  
On notes or bills \$ \_\_\_\_\_  
On simple contracts \$ \_\_\_\_\_  
On estimated liabilities \$ \_\_\_\_\_

That the assets of the Company on that day were—

Government securities \$ \_\_\_\_\_  
Bills of Exchange and Promissory Notes \$ \_\_\_\_\_  
Cash at Bankers \$ \_\_\_\_\_  
Other securities \$ \_\_\_\_\_

And I make this solemn declaration by virtue of Section  
106 of the Evidence Act, 1906.