

WEST AUSTRALIAN TRUSTEE EXECUTOR AND AGENCY COMPANY, LIMITED.

No. 52 of 1979.

AN ACT to amend sections one and five, to repeal section thirty of, and to repeal and re-enact with amendments section twenty-one of and the Second Schedule to, an Act passed in the fifty-sixth year of the reign of Her late Majesty Queen Victoria, intituled—

An Act to confer Powers upon the West Australian Trustee Executor and Agency Company, Limited,

and to make provision for the citation of that Act and for the administration of certain estates without an Order.

[Assented to 7th November, 1979.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *West Australian Trustee Executor and Agency Company, Limited, Act Amendment Act, 1979.*

Short title
and
citation.

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Reprinted as approved for reprint 13th January, 1970 and amended by Acts Nos. 85 of 1974 and 123 of 1976.

(2) In this Act the Act passed in the fifty-sixth year of the reign of Her late Majesty Queen Victoria intituled—

An Act to confer Powers upon the West Australian Trustee Executor and Agency Company, Limited.,

as from time to time amended, is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the *West Australian Trustees Limited Act, 1893-1979.*

(4) The principal Act is amended by inserting in the preamble, immediately after the passage “as follows:—” at the end thereof, a new paragraph as follows—

Short title to Act.

This Act shall be called and may be cited as the *West Australian Trustees Limited Act, 1893-1979.* .

Section 1 amended.

2. Section 1 of the principal Act is amended by deleting the interpretation of the term “The Company” and inserting in lieu thereof a new interpretation as follows—

“The Company” means the company registered under the Companies Act, 1961, by the name of “West Australian Trustees Limited” and formerly known by the name of The West Australian Trustee Executor and Agency Company, Limited. .

New section 4A added.

3. The principal Act is amended by inserting after section 4 a new section, to stand as section 4A, as follows—

Company may elect to administer certain estates without order.

4A. (1) Where any person has heretofore died or hereafter dies testate or intestate, in or out of Western Australia, leaving property in Western Australia the gross value of which as

estimated by the Company does not at the time of the election hereinafter mentioned exceed ten thousand dollars and no person has taken out probate or administration in Western Australia, the Company may, in all cases where it is entitled to apply for an order to administer or a grant of probate, in lieu of obtaining such order or grant, file in the office of the Court an election in writing setting forth the name, residence, and occupation (so far as then known to it) of the deceased, and the value of the property of the deceased as then known, and electing to administer.

(2) On such election being filed the Company shall be deemed to be the administrator of the whole of the property of the deceased person in all respects as if a grant of probate or letters of administration, as the case may be, had been regularly granted to it.

(3) The Company shall, as soon as is practicable thereafter, publish in the *Government Gazette* a notice that the Company has made such election, and such notice shall, subject to the provisions of subsection (4) and subsection (5) of this section, be conclusive evidence that the Company is rightfully entitled to administer the estate.

(4) Where after the filing of such an election the gross value of the property to be administered is found to exceed the sum of ten thousand dollars, or the property to which the election relates is found to include property outside the State, the Company shall, as soon as practicable thereafter, file in the office of the Court an affidavit made pursuant to section seven of this Act as to the facts, and thereupon such election shall cease to have effect and the Company shall proceed in the manner provided by the Administration Act, 1903, to seek an order to administer the estate.

(5) Where after the filing of such an election the Company finds that the person named in the notice who had been believed to have died intestate had died testate the Company shall, as soon as practicable, file in the office of the Court an affidavit made pursuant to section seven of this Act as to the facts, and thereupon such election shall cease to have effect accordingly, and the Company shall file with the Master its accounts of all transactions in the matter of the estate of the deceased person.

(6) Where an affidavit is filed pursuant to subsection (4) or subsection (5) of this section, the Company shall, as soon as is practicable thereafter, publish in the *Government Gazette* notice as to the revocation of the election to which the affidavit relates. .

Section 5 amended.

4. Section 5 of the principal Act is amended by deleting the words "in the two last preceding sections contained", in lines one and two, and inserting in lieu thereof the passage "contained in section three, section four, or section four A of this Act".

Section 21 repealed and re-enacted.

5. Section 21 of the principal Act is repealed and re-enacted with amendments as follows—

Limitations as to shares.

21. (1) A person shall not in his own right at any one time hold, be entitled to, or control shares in the Company in an amount greater than the proportion of one share for every twenty shares issued by the Company.

(2) For the purposes of this section and the Second Schedule to this Act unless the context otherwise requires—

"ineligible holder" means a person who

- (a) contravenes the provisions of subsection (1) of this section; or
- (b) refuses or fails to furnish to the Directors of the Company, upon

being required by them to do so pursuant to the provisions of this Act, evidence satisfactory to them that he does not, or in relation to any transaction if that transaction were effected that he would not, contravene those provisions;

“related corporation” in relation to any other corporation means a corporation that would be deemed to be related to that other corporation by virtue of section six of the Companies Act, 1961; and

“transaction” means any, or any proposed, allotment, transfer, or transmission of shares in the Company,

and for the purposes of subsection (1) of this section a person may be taken to hold, be entitled to, or control shares notwithstanding the effect of the operation of this section and of the Second Schedule to this Act.

(3) A resolution of the Board of Directors of the Company for the time being at a duly constituted Board meeting as to the refusal or failure by any person to furnish evidence satisfactory to the Directors of the Company as to any matter in relation to which the Second Schedule to this Act requires such evidence to be furnished, is conclusive evidence of that refusal or failure.

(4) The Company may decline to register any transfer or transmission of shares in the Company in favour of a person who is or would thereby become an ineligible holder; save that by negotiation with the person wishing to effect the transaction the Directors of the Company may agree to register a transfer or transmission to an extent such as will not result in a contravention of the provisions of subsection (1) of this section and may thereafter register the transfer or transmission as so amended.

(5) The Directors of the Company may, in their discretion, refuse to allot shares to any person where—

- (a) that person is an ineligible holder; or
- (b) in the opinion of the Directors, the allotment would result in a contravention of the provisions of subsection (1) of this section.

(6) The Directors of the Company may, without assigning any reason, decline to register the transfer or transmission of any shares in the Company.

(7) For the purposes of this section—

- (a) the shares to which a person is entitled include—
 - (i) shares in which that person has a relevant interest; and
 - (ii) shares in which an associate of that person has a relevant interest;
- (b) a person shall be taken to have a relevant interest if he would have a relevant interest within the meaning of section six A of the Companies Act, 1961;
- (c) a reference to “an associate of a person” has the same meaning as it has by virtue of subsection (6) of that section for the purposes of subsection (5) of section one hundred and eighty A of the Companies Act, 1961;
- (d) the shares which a person controls include shares in respect to which he is in a position to exercise total or partial control of the voting rights attaching to those shares as a result of, or by means of, any trust, agreement, related corporation, arrangement, understand-

ing, practice, or other circumstance, whether or not having force by virtue of or based upon legal rights or equitable principles;

- (e) a person shall not be taken to control shares by reason only of his appointment (otherwise than for valuable consideration) as proxy or attorney for the holder of those shares, or by reason only of his appointment or his acting as a personal representative of the estate of a deceased person who was a shareholder or who was entitled to or controlled shares in the Company; and
- (f) the fact that a person by the operation of this section is taken to hold, be entitled to or control any share shall not exclude that share from being taken into account in determining whether any other person is an ineligible holder.

(8) The provisions of the Second Schedule to this Act apply to and in relation to—

- (a) the allotment, transfer, transmission, disposal, and registration, of shares in the Company; and
- (b) the shares of the Company, and persons concerned with those shares or matters relating to those shares. .

6. Section 30 of the principal Act is repealed.

Section 30
repealed.

7. The Second Schedule to the principal Act is repealed and re-enacted with amendments as follows—

Second
Schedule
repealed and
re-enacted.

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SECOND SCHEDULE.

1. Prior to making any allotment of shares in the Company, or to the registration of any transfer or transmission of shares in the Company, the Directors of the Company may by notice in writing require the

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proposed allottee, transferee or transmittee to furnish within fourteen days of the service of that notice evidence satisfactory to the Directors that the transaction will not result in a contravention of subsection (1) of section twenty-one of this Act.

2. The Directors of the Company may at any time by notice in writing require any person registered as a member of the Company to furnish within fourteen days of the service of that notice evidence satisfactory to the Directors—

- (a) that the shares registered in his name are held by him as the sole beneficial owner thereof, that he is solely entitled thereto, and that no other person is entitled thereto or to a beneficial interest therein, or, if that is not the case, as to the beneficial ownership of each such share and the person entitled thereto or to a beneficial interest therein including particulars of the name and address of each such other person, the extent of the entitlement or interest of that person and the circumstances giving rise to that entitlement or interest;
- (b) that the shares registered in his name are controlled solely by him and not by any other person, or, if that is not the case, as to the control of each such share, the name and address of each such other person and the particulars of the shares controlled by that person, the extent of that control, and the circumstances giving rise to that control; and
- (c) that he does not have a beneficial interest in, and is not entitled to, and does not have the control of, any shares in the Company other than the shares registered in his name, or, if that is not the case, as to the particulars of each such share, including particulars of the name and address of the registered holder thereof, the extent of his beneficial interest therein, entitlement thereto, or control and the circumstances giving rise thereto.

3. Where a person is served with a notice pursuant to the provisions of this Schedule and refuses or fails

within the period of fourteen days to furnish to the Directors of the Company all information sought by the Directors, then—

- (a) that person; and
- (b) the person registered as the holder of the shares to which the notice relates,

may be taken, unless the Directors are otherwise satisfied, to be an ineligible holder.

4. Where a person is an ineligible holder, the Directors may specify—

- (a) the shares which that person holds, is entitled to, or controls in excess of the proportion referred to in subsection (1) of section twenty-one of this Act; or
- (b) the shares in respect to which that person has refused or failed to satisfy the Directors, having been required so to do pursuant to this Schedule to this Act,

and in respect of the shares so specified all voting rights may, if the Directors so require, be suspended, and such specified shares shall not be taken into account in calculating the shareholding qualification of a Director of the Company.

5. (1) The Directors of the Company may by notice in writing to an ineligible holder require him—

- (a) to dispose of, to a person who has provided evidence satisfactory to the Directors that he is not an ineligible holder, such number of shares in the Company as will ensure that any contravention by him of the provisions of subsection (1) of section twenty-one of this Act ceases; or
- (b) to deliver the share certificates specified in the notice to the Company for the purpose of disposal in accordance with subclause (2) of this clause,

and where after the expiry of a period of one month from the date of service of that notice, or such longer period not exceeding six months as the Directors may allow, that ineligible holder has not complied with the requirements of the notice the Directors of the Company may in the manner provided for in subclause (2) of this clause procure the disposal of those shares.

(2) Where share certificates are delivered to the Company pursuant to subclause (1) of this clause for

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disposal by the Company, or where pursuant to that subclause the Directors of the Company are empowered to dispose of any shares the Directors may—

- (a) cause the shares, or any number of those shares, to be offered for sale;
- (b) sell shares so offered for sale;
- (c) appoint a person (who shall by virtue of this Act be deemed to be the authorised agent of the member for the purpose) to execute a transfer of such shares and to receive, account to the Company for, and give a good discharge in respect of, the purchase money; and
- (d) register a transfer relating to such a sale.

(3) Where a share certificate in respect of shares which are to be transferred under subclause (2) of this clause has not been delivered to the Company—

- (a) that certificate shall thereupon be deemed to be cancelled; and
- (b) the Company may issue a new certificate in respect of the shares to be so transferred.

(4) Purchase money received by the Directors pursuant to a sale effected under subclause (2) of this clause shall be applied in defraying all costs, expenses, commissions, and fees in respect of or incidental to that sale, and the balance, if any, may be dealt with as trust moneys and be paid into Court pursuant to section ninety-nine of the Trustees Act, 1962.

(5) Where the name of a transferee is entered in the share register consequent upon the sale of any share made in the exercise or purported exercise of the powers conferred by this clause, the validity of the exercise by the Company of the powers conferred by this Act in relation to that share shall not be questioned by any person.

6. A notice required by this Schedule to be given to any person may be in writing signed by the Manager or Secretary of the Company or some other person authorised by the Company in that behalf and may be delivered to that person personally or sent by prepaid post addressed to him at his address appearing in the share register or in the transfer or transmission of shares submitted by him to the Company. .