

THE WEST AUSTRALIAN
TRUSTEE EXECUTOR AND
AGENCY COMPANY LIMITED.

No. 123 of 1976.

AN ACT to amend The West Australian Trustee
Executor and Agency Company Limited Act,
1893-1974.

[Assented to 1st December, 1976.]

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, 1976.*

Short title
and
citation.

(2) In this Act The West Australian Trustee
Executor and Agency Company Limited Act, 1893-
1974 is referred to as the principal Act.

Reprinted
as approved
for reprint
13th Jan-
uary, 1970
and
amended
by Act
No. 85
of 1974.

(3) The principal Act as amended by this Act may be cited as *The West Australian Trustee Executor and Agency Company Limited Act, 1893-1976.*

Section 21
amended.

2. Section 21 of the principal Act is amended—

- (a) by adding after the section number “21.” the subsection designation “(1)”;
- (b) by deleting the word “member”, in line one, and inserting in lieu thereof the word “person”;
- (c) by adding after the word “hold” in the second line the words “or control”;
- (d) by adding after the word “Company” in line four the words “and no person shall have a beneficial interest in shares exceeding that number”; and
- (e) by adding new subsections as follows—

(2) In this section and in the Second Schedule to this Act—

- (a) “control” includes control as a result of, or by means of trusts, agreements, related corporations, arrangements, understandings or practices, whether or not having legal or equitable force, and whether or not based on legal or equitable rights and a person shall be deemed (but not to the exclusion of any other person) to control shares if he is in a position to exercise wholly or partially control of the voting rights attached to those shares;
- (b) derivatives of “control” shall be construed in accordance with paragraph (a) of this subsection; and

- (c) "related corporation" has the meaning ascribed thereto in section 5 of the Companies Act, 1961.

(3) Subject always to the provisions of subsection (2) of this section, a person shall not be deemed to control shares merely by reason of his appointment as proxy or attorney for the holder of those shares, or merely by reason of his appointment or his acting as a personal representative of the estate of a deceased person who was a shareholder or who had a beneficial interest in or who controlled shares in the company.

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

- (a) the holding or controlling, or the holding and controlling, of shares in the Company;
- (b) persons holding or controlling, or holding and controlling, any of those shares; and
- (c) the allocation, or the registration of any transfer or transmission or disposal, of all or any of those shares in circumstances specified in that Schedule. .

3. Section 25 of the principal Act is amended by deleting the words "schedule hereto", in lines five and six and inserting in lieu thereof the words "First Schedule to this Act".

Section 25
amended.

Schedule
amended.

4. The Schedule to the principal Act is amended by deleting the heading "SCHEDULE." and inserting in lieu thereof the following headings—

THE SCHEDULES.

FIRST SCHEDULE. .

Second
Schedule
added.

5. The principal Act is amended by adding at the end thereof the following Schedule—

SECOND SCHEDULE.

S. 21.

1. (1) No allotment, transfer or transmission of shares in the Company shall be made or registered which shall have the effect of causing a breach of any of the provisions of section 21 of this Act.

(2) Prior to making any allotment or the registration of any transfer or transmission of shares in the Company, but without prejudice to any power which the Directors of the Company may have to decline to register a transfer, the Directors of the Company may require the allottee, transferee or transmittee to provide a statutory declaration or other evidence satisfactory to them that the allotment, transfer or transmission will not involve a breach of any of the provisions of section 21 of this Act.

2. (1) The Directors of the Company may at any time and from time to time by notice in writing given in accordance with this clause require any person registered as a member of the Company to declare—

- (a) whether he holds all the shares registered in his name as a beneficial owner thereof and if not how otherwise and on whose behalf; and
- (b) whether any other person controls all or any of the shares registered in his name and if so the number of such shares and the name of the person who controls them; and
- (c) whether he is the beneficial owner of or has a beneficial interest in any shares other than the shares registered in his name and if so the number of such shares and the name of the registered holder.

(2) Every person to whom a notice has been given pursuant to the provisions of subclause (1) of this clause shall within fourteen days of the service of such notice furnish to the Company a statutory declaration setting forth—

- (a) whether or not he holds all the shares registered in his name as beneficial owner thereof, particulars of what person or persons is or are the beneficial owner or owners thereof, the address of each and every such person and the number of shares beneficially owned by each and every such person; and
- (b) whether any other person controls all or any of the shares registered in his name and in respect of any shares so controlled, particulars of what person or persons controls or control those shares, the address of each and every such person and the number of shares controlled by each and every such person.

3. (1) If any person holds or controls shares in the Company in contravention of any of the provisions of section 21 of this Act or if any person refuses or fails to furnish a declaration as required by the provisions of clause 2 of this Schedule in respect of any shares registered in his name, the Directors of the Company may procure the disposal of those shares in the manner provided in this clause.

(2) The Directors of the Company may cause the Company to give notice in writing to the holder of the shares referred to in subclause (1) of this clause requiring that the number of shares specified in the notice and held or controlled by the member at the time of giving the notice shall within one month or such longer period not exceeding three months as the Directors of the Company may determine be disposed of.

(3) A resolution of the Board of Directors of the Company for the time being at a duly constituted Board meeting shall be conclusive evidence of the existence of the circumstances set out in subclause (1) of this clause.

(4) If the requirements of the notice are not complied with by the member within the time therein limited the Directors of the Company may—

- (a) cause the number of shares held or controlled by the member which were specified in the notice, or any lesser number, to be sold;

- (b) appoint a person on behalf of the member the holder of such shares to execute a transfer or transfers of the shares and to receive and give a good discharge for the purchase money;
- (c) register the transfer or transfers consequent upon the sale notwithstanding that the share certificate or certificates to such shares may not have been delivered to the Company and issue a new certificate to the transferee or transferees in which event the previous certificate or certificates shall for all purposes be deemed to have been cancelled.

(5) The purchase money received under paragraph (b) of subclause (4) of this clause shall be held in trust for the member or former member.

(6) After the name of the transferee has been entered in the register in purported exercise of the powers conferred by this clause, the validity of the proceedings shall not be questioned by any person.

(7) Any notice required by this Act to be given to any person may be in writing signed by the Manager or Secretary of the Company and 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 of shares submitted by him to the Company. .
