

Western Australia

**Trustee Companies (Commonwealth
Regulation) Amendment Act 2011**

As at 04 Oct 2011

No. 39 of 2011

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Trustee Companies (Commonwealth Regulation) Amendment Act 2011

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Western Australia

Trustee Companies (Commonwealth Regulation) Amendment Act 2011

No. 39 of 2011

An Act —

- **to amend the *Trustee Companies Act 1987* to facilitate the regulation of trustee companies by the Commonwealth; and**
 - **as a consequence, to make certain transitional arrangements and to amend the *Trustees Act 1962*,**
- and for related purposes.**

[Assented to 4 October 2011]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Trustee Companies (Commonwealth Regulation) Amendment Act 2011*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Part 2 — *Trustee Companies Act 1987* amended

3. Act amended

This Part amends the *Trustee Companies Act 1987*.

4. Section 3 amended

- (1) In section 3(1) delete the definitions of:

accounting records

books

Estate Common Trust Fund

Investment Common Trust Fund

publish

published

registered company auditor

related body corporate

trustee company

voting share

- (2) In section 3(1) insert in alphabetical order:

trustee company means a licensed trustee company as defined in the Corporations Act section 601RAA;

- (3) Delete section 3(2) to (8).

5. Section 4 deleted

Delete section 4.

6. Parts III and IV deleted

Delete Parts III and IV.

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7. Heading to Part V deleted

Delete the heading to Part V.

8. Sections 24 to 26 deleted

Delete sections 24 to 26.

9. Sections 28 to 34 deleted

Delete sections 28 to 34.

10. Part VI deleted

Delete Part VI.

11. Part III inserted

Before Part VII insert:

**Part III — Transfer of estate assets
and liabilities**

Division 1 — Preliminary

28. Terms used in Corporations Act have the same meaning in this Part

If a term is given a meaning in the Corporations Act, it has the same meaning in this Part unless the contrary intention appears in this Part.

Division 2 — Compulsory transfers

29. Compulsory transfers

- (1) The purpose of this section is to facilitate compulsory transfers of estate assets and liabilities under the Corporations Act Part 5D.6.

- (2) This section applies if —
- (a) ASIC cancels the licence of a trustee company (the *transferring company*) and makes a determination under the Corporations Act section 601WBA that there is to be a transfer of estate assets and liabilities from the transferring company to another licensed trustee company (the *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.
- (3) 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.
- (4) In particular —
- (a) if the transfer is a total transfer — all the 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) if the transfer is a partial transfer — all the assets and liabilities of the transferring company that are included in the list (referred to in the Corporations Act section 601WBG(2)(c)) included in, or attached to, the certificate of transfer become respectively assets and liabilities of the receiving company without any transfer, conveyance or assignment; and

- (c) to the extent of the transfer — the duties, obligations, immunities, rights and privileges applying to the transferring company apply to the receiving company.
- (5) 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.

30. Certificates evidencing operation of Division

- (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 Division.
- (2) For all purposes and in all proceedings, a certificate purporting to be issued under subsection (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 section.

31. 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 section accompanied by a certificate issued under section 30, register or record in an appropriate manner the transfer or transfers to which the certificate relates.

32. Exemption from State tax

- (1) In this section —
State tax includes duty chargeable under the *Duties Act 2008* and any other tax, duty, fee, levy or charge under a law of the State.
- (2) State tax is not payable in respect of a compulsory transfer of estate assets or liabilities facilitated under this Division.

Division 3 — Voluntary transfers

33. Voluntary transfers

- (1) The Governor may make regulations to facilitate the voluntary transfer of estate assets and liabilities from one trustee company (the *transferring company*) to another trustee company (the *receiving company*) if ASIC has made a determination under the Corporations Act allowing the transfer.
- (2) Without limiting the generality of subsection (1), the regulations may —
 - (a) give effect to the transfer of estate assets and liabilities from the transferring company to the receiving company; and
 - (b) provide that the receiving company is to be taken to be the successor in law in relation to estate assets and liabilities of the transferring company, to the extent of the transfer; and

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- (c) provide for the liquidation or dissolution of the transferring company; and
 - (d) provide for the identification of estate assets or liabilities of the transferring company; and
 - (e) provide for the transfer of estate assets and liabilities of the transferring company; and
 - (f) provide for the registration or recording of the transfer (with or without formal application) by the Registrar of Titles or any other person or authority; and
 - (g) provide for evidence of matters relating to the transfer; and
 - (h) provide for relief from the consequences of anything done or allowed under regulations made under this section; and
 - (i) provide for payment, or exemption from payment, of a State tax, as defined in section 32(1), in respect of the transfer; and
 - (j) provide for any other matter of a savings or transitional nature consequent on the transfer; and
 - (k) provide for and give effect to the transfer of duties, obligations, immunities, rights and privileges of the transferring company from the transferring company to the receiving company.
- (3) Regulations made under this section have effect despite anything in a contract, deed, undertaking, agreement or other instrument.

Division 4 — Relationship of Part with other laws

34. Relationship of Part with other laws

- (1) This Part has effect despite anything in a contract, deed, undertaking, agreement or other instrument.

- (2) Nothing done by or under this Part —
- (a) places a receiving company, a transferring company or another person in breach of contract or confidence or otherwise makes any of them guilty of a civil wrong; or
 - (b) places a receiving company, a transferring company or another person in breach of —
 - (i) a law of the State; or
 - (ii) a contractual provision prohibiting, restricting or regulating the assignment or transfer of an asset or liability or the disclosure of information;
- or
- (c) releases a surety, wholly or partly, from all or any of the surety's obligations.
- (3) Without limiting subsection (1), if, apart from this section, the advice or consent of a person would be necessary in a particular respect, the advice is taken to have been obtained or the consent is taken to have been given.

12. Sections 39 and 40 deleted

Delete sections 39 and 40.

13. Section 42 deleted

Delete section 42.

14. Sections 46 to 48 deleted

Delete sections 46 to 48.

15. Part VIII inserted

After Part VII insert:

**Part VIII — Transitional provisions for the
Trustee Companies (Commonwealth Regulation)
Amendment Act 2011**

46. Term used: amending Act

In this Part —

amending Act means the *Trustee Companies (Commonwealth Regulation) Amendment Act 2011*.

47. Transitional provisions

- (1) Immediately before the commencement of section 4 of the amending Act a trustee company was a body corporate listed in Schedule 1 (a *Schedule 1 trustee company*).
- (2) After the commencement of section 4 of the amending Act, a trustee company means a licensed trustee company as defined in the Corporations Act section 601RAA.
- (3) Each of the Schedule 1 trustee companies is, and was before the repeal of Schedule 1 by section 16 of the amending Act, a licensed trustee company as defined in the Corporations Act section 601RAA.
- (4) Accordingly —
 - (a) the repeal of Schedule 1 does not affect the appointment of a Schedule 1 trustee company made before the repeal as —
 - (i) the executor of a will, or the administrator of an estate of a deceased person; or

- (ii) a trustee, agent, attorney, manager or receiver; or
 - (iii) the guardian of the estate of a minor; or
 - (iv) a surety or guarantor; or
 - (v) the administrator, committee, guardian or manager of the estate of a person who is unable to manage his or her own affairs;
- and
- (b) this Act, as amended by the amending Act, continues to apply to a Schedule 1 trustee company; and
 - (c) except to the extent of any inconsistency with the Corporations Act —
 - (i) any duties, obligations, immunities, rights and privileges of a Schedule 1 trustee company arising before the repeal of that Schedule are not affected by the repeal; and
 - (ii) the assets and liabilities of a Schedule 1 trustee company are not affected by the repeal; and
 - (iii) any action taken or notice given by a Schedule 1 trustee company before the repeal of that Schedule or the amendment of this Act by the amending Act is not affected by the repeal or amendment;
- and
- (d) proceedings relating to a Schedule 1 trustee company that have been commenced but not determined before the repeal of that Schedule are not affected by the repeal.

48. Regulations for transitional matters

(1) In this section —

commencement day means —

- (a) in the case of transitional regulations made under subsection (2)(a) — the day on which the amending provision commences; or
- (b) in the case of transitional regulations made under subsection (2)(b) — the day on which the Commonwealth provision commences;

gazettal day means the day on which transitional regulations are published in the *Gazette*;

transitional matter means a matter of a transitional, savings or application nature;

transitional regulations means regulations made under subsection (2).

(2) Regulations made under this Act may prescribe anything else required, necessary or convenient to be prescribed in relation to a transitional matter in connection with —

- (a) the amendment of this Act by a provision of the amending Act (the **amending provision**); or
- (b) the interaction between this Act and a provision of an Act of the Commonwealth (the **Commonwealth provision**).

(3) If transitional regulations provide that a state of affairs is to be taken to have existed, or not to have existed, on and from a day (the **operative day**) that is earlier than Gazettal day, the regulations have effect according to their terms as long as the operative day is not earlier than the commencement day.

- (4) If regulations contain a provision referred to in subsection (3), the provision does not operate so as to —
- (a) affect in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before Gazettal day; or
 - (b) impose liabilities on any person (other than the State or an authority of the State), in respect of anything done or omitted to be done before Gazettal day.

16. Schedules 1 to 3 deleted

Delete Schedules 1 to 3.

Part 3 — Consequential amendment to the *Trustees Act 1962*

17. Act amended

This Part amends the *Trustees Act 1962*.

18. Section 6 amended

In section 6(1) in the definition of *trustee corporation* delete “corporation authorised by any Act of the Parliament of a State to administer the estates of deceased persons and other trust estates;” and insert:

trustee company under the *Trustee Companies Act 1987*;

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