

WESTERN AUSTRALIA

TRUSTEE COMPANIES AMENDMENT ACT 1994

No. 42 of 1994

AN ACT to amend the *Trustee Companies Act 1987*.

[Assented to 31 August 1994.]

The Parliament of Western Australia enacts as follows:

Short title

- 1.** This Act may be cited as the *Trustee Companies Amendment Act 1994*.

Commencement

2. This Act comes into operation on the day on which it receives the Royal Assent.

Principal Act

3. In this Act, the *Trustee Companies Act 1987** is referred to as the principal Act.

[* *Act No. 111 of 1987.*

For subsequent amendments, see 1992 Index to Legislation of Western Australia, Table 1, pp. 216-7, and Gazette 24 September 1993 at pp. 5251-2.]

Section 3 amended

4. (1) Section 3 (1) of the principal Act is amended by —

- (a) inserting a comma before “in relation to” in each of the definitions of “board of directors”, “publish” and “published”;
- (b) deleting the definition of “registered company auditor” and substituting the following definition —

“
 “registered company auditor” has the
 same meaning as it has in the
 Corporations Law;
”;

- (c) deleting the definition of “related corporation” and substituting the following definition —

“
 “related body corporate” has the same
 meaning as it has in the Corporations
 Law;
”;

and

- (d) deleting the definition of “voting share” and substituting the following definition —

“

“**voting share**” has the same meaning as it has in the Corporations Law;

”.

- (2) Section 3 of the principal Act is amended by repealing subsection (3) and substituting the following subsection —

“

(3) A person is an associate of another person for the purposes of this Act if, by reason of Division 2 of Part 1.2 of the Corporations Law, the person would be an associate of the other person for the purposes of the Corporations Law.

”.

- (3) Section 3 (6) of the principal Act is amended by deleting paragraph (b) and substituting the following paragraph —

“

(b) a person has a relevant interest in a share in a trustee company if, by reason of Division 5 of Part 1.2 of the Corporations Law, the person would have a relevant interest in that share for the purposes of the Corporations Law.

”.

- (4) Section 3 (8) of the principal Act is amended by deleting “*Companies (Acquisition of Shares) (Western Australia) Code*” and substituting the following —

“ Corporations Law ”.

Section 19 amended**5. Section 19 of the principal Act is amended —**

- (a) in subsection (4) by deleting “The funds” and substituting the following —

“

Subject to subsections (4a), (4b) and (4c),
the funds

”;

and

- (b) by inserting after subsection (4) the following subsections —

“

(4a) Subject to subsections (4b) and (4c), a trustee company may, in the conduct and administration of an Estate Common Trust Fund, enter into an agreement or arrangement to effect any of the following transactions —

- (a) a forward interest rate agreement;
- (b) an interest rate swap;
- (c) a forward interest rate swap;
- (d) an interest rate cap, an interest rate collar or an interest rate floor;
- (e) an option for interest rate management purposes;

- (f) any transaction which is a combination of 2 or more transactions permitted under this subsection.

(4b) A trustee company may only exercise the powers conferred on it by subsection (4a) (in subsection (4c) called **“derivative powers”**) —

- (a) for the purpose of hedging or managing exposure arising out of the risk of adverse variations —

- (i) in the costs of the borrowing or raising of money by the trustee company; or

- (ii) in the revenue obtainable by the trustee company from investments made or financial accommodation provided by the trustee company,

and not for any speculative purpose; and

- (b) in compliance with —

- (i) its equitable and other duties as a trustee under the law of Western Australia; and

- (ii) a credit policy formulated and, if applicable, varied by it under subsection (4c).

(4c) A trustee company —

- (a) shall formulate a prudent credit policy setting out the manner in which, and the controls subject to which, it will exercise its derivative powers and comply with that credit policy;
- (b) shall ensure that the exercise of its derivative powers, and compliance by it with the credit policy formulated by it under this subsection, are monitored on a daily basis; and
- (c) may from time to time vary a credit policy formulated by it under this subsection.

”.

Section 20 amended**6. Section 20 of the principal Act is amended —**

- (a) in subsection (4) by deleting “The funds” and substituting the following —

“

Subject to subsections (4a), (4b) and (4c),
the funds

”;

and

- (b) by inserting after subsection (4) the following subsections —

“

(4a) Subject to subsections (4b) and
(4c), a trustee company may, in the conduct

and administration of an Investment Common Trust Fund, enter into an agreement or arrangement to effect any of the following transactions —

- (a) a forward interest rate agreement;
- (b) an interest rate swap;
- (c) a forward interest rate swap;
- (d) an interest rate cap, an interest rate collar or an interest rate floor;
- (e) an option for interest rate management purposes;
- (f) any transaction which is a combination of 2 or more transactions permitted under this subsection.

(4b) A trustee company may only exercise the powers conferred on it by subsection (4a) (in subsection (4c) called **“derivative powers”**) —

- (a) for the purpose of hedging or managing exposure arising out of the risk of adverse variations —
 - (i) in the costs of the borrowing or raising of money by the trustee company; or

- (ii) in the revenue obtainable by the trustee company from investments made or financial accommodation provided by the trustee company,

and not for any speculative purpose; and

- (b) in compliance with —

- (i) its equitable and other duties as a trustee under the law of Western Australia; and

- (ii) a credit policy formulated and, if applicable, varied by it under subsection (4c).

- (4c) A trustee company —

- (a) shall formulate a prudent credit policy setting out the manner in which, and the controls subject to which, it will exercise its derivative powers and comply with that credit policy;
- (b) shall ensure that the exercise of its derivative powers, and compliance by it with the credit policy formulated by it under this subsection, are monitored on a daily basis; and
- (c) may from time to time vary a credit policy formulated by it under this subsection.

Section 21 amended

7. Section 21 (1) of the principal Act is amended by deleting “Division 6 of Part IV of the *Companies (Western Australia) Code*” and substituting the following —

“ Division 5 of Part 7.12 of the Corporations Law ”.

Section 27 amended

8. Section 27 (5) of the principal Act is amended by deleting “moneys received under section 6 of the *Unclaimed Moneys Act 1912*” and substituting the following —

“
prescribed retained money is dealt with under the
Unclaimed Money Act 1990
”.

Section 29 amended

9. Section 29 (1) of the principal Act is amended by deleting “*Companies (Western Australia) Code*” and substituting the following —

“ Corporations Law ”.

Section 30 amended

10. Section 30 of the principal Act is amended by deleting “related corporation” and substituting the following —

“ related body corporate ”.

Section 34 repealed and section 34 substituted

11. Section 34 of the principal Act is repealed and the following section is substituted —

“

Audit requirements

34. (1) Without prejudice to the obligations imposed with respect to audit by the Corporations Law, a trustee company shall —

- (a) in respect of each financial year cause to be audited by a registered company auditor the accounts and registers of investments of every Estate Common Trust Fund and Investment Common Trust Fund conducted by the trustee company, and the registered company auditor shall report to the board of directors of the trustee company whether or not —

- (i) there has been any contravention of any of the provisions of this Act; and
 - (ii) that audit has disclosed any defects or irregularities in those accounts and registers;

and

- (b) forthwith after formulating or varying a credit policy under section 19 (4c) or 20 (4c) furnish to its registered company auditor a copy of the credit policy or variation.

(2) A registered company auditor who, having been furnished under subsection (1) (b) with a copy of a credit policy or variation, detects any defect or

irregularity in complying with that credit policy or the relevant credit policy as varied, as the case requires, shall forthwith report that defect or irregularity to the board of directors of the trustee company concerned.

”.

Section 35 amended

12. Section 35 (7) of the principal Act is amended by deleting “*Companies (Western Australia) Code*” and substituting the following —

“ Corporations Law ”.

Section 36 amended

13. Section 36 of the principal Act is amended by deleting —

- (a) “*Companies (Acquisition of Shares) (Western Australia) Code*” where it first occurs and substituting the following —

“ Corporations Law ”; and

- (b) paragraph (a) and substituting the following paragraph —

“

- (a) that is an acquisition of shares to or in relation to which section 615 of that Law does not apply by reason of section 622, 624, 625, 626, 627, 628, 629, 630, 631 or 632 of that Law;

”.