

South Australia



**ANZ EXECUTORS & TRUSTEE COMPANY (SOUTH AUSTRALIA)
LIMITED (TRANSFER OF BUSINESS) ACT 1996**

No. 78 of 1996

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Amendment of Trustee Companies Act 1988



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ELIZABETHAE II REGINAE

A.D. 1996

No. 78 of 1996

An Act to transfer certain business of ANZ Executors & Trustee Company (South Australia) Limited to ANZ Executors & Trustee Company Limited; to amend the Trustee Companies Act 1988; and for other purposes.

[Assented to 28 November 1996]

The Parliament of South Australia enacts as follows:

Short title

1. This Act may be cited as the *ANZ Executors & Trustee Company (South Australia) Limited (Transfer of Business) Act 1996*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. In this Act, unless the contrary intention appears—

"appointment" includes nomination;

"excluded items" means—

- (a) assets held by or for the subsidiary of which the subsidiary is the beneficial owner (other than assets included in the definition of "trust business of the subsidiary");
- (b) assets, undertakings or liabilities of the subsidiary in its business other than as a trustee;
- (c) rights of the subsidiary to security deposits or similar sums or assets lodged with a court, public officer or authority;
- (d) rights of the subsidiary to indemnity under insurance policies held by it otherwise than as a trustee;

- (e) in relation to the subsidiary's business as a trustee—
- (i) liabilities (whether present or future, certain or contingent, ascertained or sounding only in damages) of the subsidiary; or
 - (ii) claims (whether or not notified or ascertained) by persons against the subsidiary (or an officer of the subsidiary),
- in respect of breach of trust or fiduciary duty, the exercise of or the failure to exercise discretion as a trustee;

"trustee" means any of the following (whether appointed solely or jointly with another person):

- (a) trustee (including bare trustee or custodian trustee and whether originally so appointed, appointed under hand or seal or appointed by order of a court or otherwise);
- (b) executor of a will, or administrator of the estate, of a deceased person;
- (c) agent, attorney, manager or receiver;
- (d) guardian of a child, or administrator, committee, guardian or manager of the estate of a person who is unable to manage his or her own affairs;

"land" includes an estate in land;

"parent company" means ANZ Executors & Trustee Company Limited;

"subsidiary" means ANZ Executors & Trustee Company (South Australia) Limited;

"trust business of the subsidiary" means the business of the subsidiary as a trustee and includes—

- (a) assets held on trust by the subsidiary, including records, securities and other documents and information (whether recorded on paper, microfilm, magnetic tape or disc or otherwise held or maintained by the subsidiary as a trustee);
- (b) liabilities and obligations properly incurred by the subsidiary as a trustee, including undertakings to courts and public officers and authorities;
- (c) rights of indemnity of the subsidiary against trust assets in respect of liabilities properly incurred by the subsidiary as a trustee;
- (d) rights of the subsidiary as a trustee to commission, remuneration, fees and reimbursement for disbursements (whether billed or unbilled);

- (e) benefits and obligations under contracts of employment with employees of the subsidiary who are employed primarily in the trust business of the subsidiary, including obligations with respect to holiday pay, long service leave, sick leave and other benefits applicable to those employees other than the liability to make payments to a superannuation scheme that should have been, but have not been, made before the commencement of this Act;
- (f) benefits of and obligations under rental or leasing contracts in respect of computers used by the subsidiary in the trust business of the subsidiary;
- (g) the rights of the subsidiary in respect of the use of computer programs used by the subsidiary in the trust business of the subsidiary;
- (h) the corporate and accounting records of the subsidiary to the extent to which they relate to the trust business of the subsidiary;
- (i) the liability to perform further administration of any trust or other administration undertaken by the subsidiary;
- (j) assets of trusts and other appointments of the subsidiary in its business as a trustee;
- (k) all other assets and undertakings of the subsidiary being part of or incidental to or used in its business as a trustee,

but does not include the excluded items;

"will" includes codicil.

Transfer to parent company of subsidiary's trust business and appointments

4. (1) On the commencement of this Act, the trust business of the subsidiary as at that date is transferred to and vested in the parent company.

(2) In each case where the subsidiary is acting as a trustee, the parent company is appointed as the trustee in place of the subsidiary and the parent company—

- (a) is entitled to exercise any rights, powers, capacities or authorities in respect of or arising from each such appointment; and
- (b) to the extent provided in this Act, is obliged to discharge the liabilities and obligations of the subsidiary in respect of and arising from each such appointment.

(3) The subsidiary must account to the parent company for all assets and liabilities and obligations held or to which it is subject in its business as a trustee.

(4) An appointment of the subsidiary in a will, order of a court or instrument of any kind is to be taken to be an appointment of the parent company (whether the appointment was made before, on or after the commencement of this Act and whether the appointment is in effect on that date, takes effect after that date or has taken effect previously but some further act or thing is necessary to perfect the appointment or undertaking of the office).

(5) The production of a copy of this Act printed by the Government Printer is conclusive evidence in all courts and proceedings of the transfer of the trust business of the subsidiary and all property held by the subsidiary as a trustee to the parent company and of their vesting in the parent company and any such copy of this Act will, in relation to land or marketable securities, operate as a duly executed transfer by the subsidiary to the parent company of that land or those securities.

(6) If portion of the undertaking or property held by the subsidiary as a trustee is not vested in the parent company by virtue of this Act (whether because transfers of the portion are not governed by the law of this State or otherwise) despite the fact that the portion relates to the subsidiary's trust business in this State, the subsidiary must do all things necessary after the commencement of this Act to ensure that the portion is effectively and promptly transferred to the parent company.

(7) If, on the application of the parent company, it appears to a court to be necessary or proper having regard to the provisions of this Act, the parent company may be joined as a party to legal proceedings in addition to or instead of the subsidiary.

Evidence

5. (1) If an application is made by the parent company to register the vesting of property in the parent company and the application is accompanied by—

- (a) a certificate under subsection (2); and
- (b) the appropriate certificate of title or other instrument,

the Registrar-General must give effect in the Register Book kept under the *Real Property Act 1886* to the vesting by registering the parent company as proprietor of the property.

(2) A certificate under the seals of the parent company and the subsidiary to the effect that the estate of specified persons in land specified in the certificate is an estate vested by this Act in the parent company is, for the purposes of—

- (a) an application by the parent company to be registered under the *Real Property Act 1886* as the proprietor of that estate pursuant to the vesting; and
- (b) an application by the parent company or a successor in title of the parent company to bring land under the *Real Property Act 1886*; and
- (c) a transfer, conveyance, reconveyance, mortgage or other instrument or dealing in respect of land (whether or not under the *Real Property Act 1886*); and
- (d) creation of an easement or other interest in respect of land (whether or not under the *Real Property Act 1886*),

conclusive evidence of the matters so certified.

SCHEDULE

Amendment of Trustee Companies Act 1988

The *Trustee Companies Act 1988* is amended by striking out from schedule 1 "ANZ Executors & Trustee Company (South Australia) Limited".

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

E. J. NEAL Governor