

## ADMINISTRATION AND PROBATE.

### No. 47 of 1967.

AN ACT to amend the *Administration and Probate Act 1935.* [24 November 1967.]

**B**E it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title and citation.

**1**—(1) This Act may be cited as the *Administration and Probate Act 1967.*

(2) The *Administration and Probate Act 1935*, as subsequently amended, is in this Act referred to as the Principal Act.

Succession on intestacy.

**2** Section forty-four of the Principal Act is amended by omitting from subsections (2), (3), and (4) thereof the words “ten thousand dollars” (wherever occurring) and substituting therefor, in each case, the words “seventeen thousand dollars”.

Application of amendment.

**3** The amendment effected by section two of this Act does not apply in relation to the estate of any person who died before the commencement of this Act.

## TRUSTEE COMPANIES (AMALGAMATION).

### No. 48 of 1967.

AN ACT to facilitate the amalgamation of certain trustee companies, to amend the *Trustee Companies Act 1953*, and for other purposes. [24 November 1967.]

Preamble.

**W**HEREAS the Perpetual Trustees, Executors, and Agency Company of Tasmania Limited (in this Act referred to as “the Perpetual Company”) and the National Executors and Trustees Company of Tasmania Limited (in this Act referred to as “the National Company”) are trustee companies within the meaning of the *Trustee Companies Act 1953* and are subject to the provisions of that Act:

And whereas by an agreement made the fifteenth day of September, 1967 (a copy of which is set forth in the schedule to this Act) those companies have agreed to amalgamate in accordance with and subject to the terms of the agreement:

And whereas, in accordance with the agreement, the agreement was approved by a special resolution passed at a general meeting of the shareholders of the National Company held on the sixteenth day of October, 1967 and by a special resolution passed at a general meeting of the shareholders of the Perpetual Company held on the nineteenth day of October, 1967:

And whereas it is expedient to authorize and facilitate the amalgamation of the companies in accordance with the agreement:

And whereas it is expedient to amend the *Trustee Companies Act 1953* in its application to the companies:

Be it therefore enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

**1**—(1) This Act may be cited as the *Trustee Companies (Amalgamation) Act 1967*. Short title and citation.

(2) The *Trustee Companies Act 1953*, as subsequently amended, is in this Act referred to as the Principal Act.

**2** In this Act, unless the contrary intention appears— Interpretation.

“the National Company” means the National Executors and Trustees Company of Tasmania Limited;

“the Perpetual Company” means the Perpetual Trustees, Executors, and Agency Company of Tasmania Limited;

“the scheduled agreement” means the agreement set forth in the schedule.

**3**—(1) Notwithstanding anything in the Principal Act or any other Act or in the memorandum or articles of association of the Perpetual Company or of the National Company the scheduled agreement is, subject to subsection (3) of this section, hereby ratified, validated, and approved and shall be binding upon all members of each of the said companies. Ratification of scheduled agreement.

(2) Without prejudice to the generality of the provisions of subsection (1) of this section, nothing in the Principal Act or any other Act, or in any memorandum or articles of association referred to in that subsection, shall be construed as preventing the Perpetual Company from holding such number of shares in the National Company as is necessary to give effect to the scheduled agreement.

(3) Notwithstanding anything in the scheduled agreement or the foregoing provisions of this section, no shares of the Perpetual Company shall be allotted to the shareholders of the National Company unless and until the capital of the former company has been divided into shares of three dollars.

(4) The provisions of subsection (3) of this section do not render the scheduled agreement null or void, but it has effect subject to those provisions.

Substitution  
of Perpetual  
Company for  
National  
Company.

**4**—(1) The rights, powers, capacities, authorities, duties, liabilities, and obligations as executor, administrator, trustee, receiver, committee, guardian, guarantor, surety, attorney, or agent of the National Company shall be transferred to the Perpetual Company on the allotment of shares by the Perpetual Company to the shareholders of the National Company in accordance with the provisions of the scheduled agreement, and all rights, powers, capacities, authorities, duties, liabilities, and obligations so transferred as aforesaid shall vest in the Perpetual Company and be exercisable by and binding upon it in the same manner and to the same extent as they were exercisable by and binding upon the National Company.

(2) On the allotment of shares referred to in subsection (1) of this section any estate in land or any other property held by or vested in the National Company as executor, administrator, trustee, receiver, committee, guardian, guarantor, surety, attorney or agent, is, subject to subsection (1) of this section, transferred to and vested in the Perpetual Company.

(3) Where any person dies, whether before or after the commencement of this Act, having by his will appointed the National Company as executor or trustee of his will, and probate of the will has not been granted, the Perpetual Company has the same right to a grant of probate of the will, or to have the trust estate transferred to or vested in it, as the National Company would have had if the scheduled agreement had not been made and this Act had not been passed.

(4) Where any person—

(a) named as executor who would be entitled to obtain probate of the will of any testator who has died before the commencement of this Act; or

(b) entitled to obtain administration of the estate of an intestate who has died before the commencement of this Act,

authorizes or has authorized the National Company to apply to the Supreme Court for administration, with or without the will annexed, under the provisions of the Principal Act, the Perpetual Company has the same right to apply for a grant of administration, with or without the will annexed, as the National Company would have had if the scheduled agreement had not been made and this Act had not been passed.

Winding up  
of the  
National  
Company.

**5** When all the shares in the National Company have been transferred to and vested in the Perpetual Company the National Company may be voluntarily wound up under the provisions of the *Companies Act 1962*.

**6** The Principal Act is amended—

Amendment  
of Principal  
Act in  
relation to  
the Perpetual  
Company.

- (a) by inserting in section three, after subsection (1) thereof, the following subsection:—

“(1A) Where the name of the Perpetual Trustees, Executors, and Agency Company of Tasmania Limited is changed in pursuance of the agreement set forth in the schedule to the *Trustee Companies (Amalgamation) Act 1967* that change does not affect the operation of this Act in relation to that company, and, when the name of that company is so changed, references in this Act to the name of that company shall be construed as references to its name as so changed.”;

- (b) by inserting in the fourth schedule, after the word “Company” in sub-clause (i) of clause (a) of sub-paragraph (1) of paragraph 1 thereof, the words “of Tasmania”;
- (c) by omitting from paragraph 2 of that schedule the word “The” (first occurring) and substituting therefor the words “Subject to paragraph 3 of this schedule, the”; and
- (d) by adding at the end of that schedule the following paragraphs:—

“3. Notwithstanding anything in paragraph 2 of this schedule the capital of the Perpetual Trustees, Executors, and Agency Company of Tasmania Limited may be divided into shares of an amount less than ten dollars, and, if it is so divided, the provisions of paragraph 2 of this schedule do not apply to the company or the shareholders thereof and the following provisions (subject to paragraph 4 of this schedule) apply in their stead, namely:—

- (a) The capital of the company shall be divided into shares of an equal amount, not being an amount less than three dollars, and the total amount of the share capital of the company shall not be less than three hundred thousand dollars;
- (b) A member shall not hold in his own right shares of a total amount of more than fifteen thousand dollars;
- (c) Not more than one-third of the amount of each share shall be called up except in the event, and for the purposes, of the winding up of the company;
- (d) Upon the winding up of the company each person who then is, or has been, a member of the company is liable to contribute to the assets of the company to the extent of an amount equivalent

to two-thirds of the amount of each share of which he then is the holder or has been the holder within the period of one year (or, in the case of a director, the period of two years) next before the commencement of the winding up; and

- (e) The contribution for which any person is liable pursuant to sub-paragraph (d) of this paragraph, is payable in addition to any amount that is unpaid on the shares in respect of which he is so liable.

“4 Until the allotment of shares to the shareholders of National Executors and Trustees Company of Tasmania Limited in accordance with the agreement set forth in the schedule to the *Trustee Companies (Amalgamation) Act 1967* paragraph 3 of this schedule has effect as if—

- (a) in clause (a) thereof for the words ‘three hundred thousand dollars’ there were substituted the words ‘one hundred and fifty thousand dollars’; and

- (b) in clause (b) thereof for the words ‘fifteen thousand dollars’ there were substituted the words ‘seven thousand five hundred dollars’.”

Amendments  
of Principal  
Act  
consequential  
on dissolution  
of the  
National  
Company.

**7—(1) The Principal Act is amended—**

- (a) by omitting from the second schedule the words “The National Executors and Trustees Company of Tasmania Limited.”; and
- (b) by omitting sub-clause (iii) of clause (a) of sub-paragraph (1) of paragraph 1 of the fourth schedule.

(2) This section commences on the dissolution of the National Company.

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**THE SCHEDULE.**

(Section 2.)

**THE SCHEDULED AGREEMENT.**

AN AGREEMENT made the 15th day of September One thousand nine hundred and sixty seven BETWEEN THE PERPETUAL TRUSTEES EXECUTORS AND AGENCY COMPANY OF TASMANIA LIMITED whose registered office is at 127 Macquarie Street Hobart in Tasmania (hereinafter called “Perpetual”) of the one part and NATIONAL EXECUTORS AND TRUSTEES COMPANY OF TASMANIA LIMITED whose registered office is at 151 Macquarie Street Hobart in Tasmania (hereinafter called “National”) of the other part WHEREAS both Companies were respectively incorporated under the Companies Act 1869 and were subsequently made subject to and regulated by

private Act of the Parliament of Tasmania but both of such private Acts have been repealed by The Trustee Companies Act 1953 and both Companies are now Trustee Companies within the meaning of Section 3 of the last mentioned Act AND WHEREAS the nominal capital of Perpetual is Two hundred thousand dollars (\$200,000.00) divided into Twenty thousand shares of Ten dollars (\$10.00) each the whole of which shares have now been issued and stand credited in the books as having been paid to Five dollars (\$5.00) each AND WHEREAS subject to the due completion of this Agreement and the enactment of the necessary legislation hereinafter referred to it is intended to increase the nominal capital of Perpetual to Nine hundred and ninety nine thousand nine hundred and ninety nine dollars (\$999,999.00) divided into Three hundred and thirty three thousand three hundred and thirty three shares of Three dollars (\$3.00) each of which One hundred thousand (being the shares representing the present issued shares) will be credited as paid up to One dollar (\$1.00) each and such of the remainder as are issued from time to time will be issued on the terms that they will be paid up on issue to One dollar (\$1.00) each and otherwise in accordance with the provisions of "The Trustee Companies Act 1953" AND WHEREAS the nominal capital of National is Twenty thousand shares of Ten dollars (\$10.00) each the whole of which shares have been issued and stand credited in the books as having been paid up to Two dollars (\$2.00) each AND WHEREAS Perpetual and National are desirous of amalgamating upon the terms and conditions hereinafter contained AND WHEREAS it is intended to submit this Agreement to the shareholders of Perpetual and National respectively for their approval by special resolution AND WHEREAS to facilitate the amalgamation of the Companies and the proposed alteration to the capital of Perpetual it is necessary that legislation be passed by the Parliament of the State of Tasmania (including the repeal or amendment of certain provisions of The Trustee Companies Act 1953) NOW IT IS HEREBY AGREED as follows:—

1. Perpetual and National shall:—

- (a) Within sixty (60) days from the date hereof submit this agreement to a general meeting of their respective shareholders for approval by special resolution;
- (b) Following the approval as aforesaid Perpetual and National shall seek to have enacted by the Parliament of the State of Tasmania legislation to facilitate their amalgamation upon the terms and conditions hereinafter contained (including such repeals and amendments of The Trustee Companies Act as aforesaid)

If the said approval is obtained as aforesaid but the necessary legislation has not been enacted within twelve (12) months of the date hereof or within such further period as the parties may mutually agree upon, then the following provisions shall be null and void.

2. THE said amalgamation of Perpetual and National shall be effected by:—

- (i) The allotment to each of the shareholders of National of two ordinary Ten dollar (\$10.00) shares in the capital of Perpetual credited as having been paid up to Five Dollars (\$5.00) (or if the proposed increase and subdivision of shares into shares of Three dollars (\$3.00) each hereinbefore referred to shall have taken place then of ten ordinary Three dollar (\$3.00) shares credited as having been paid up to One dollar (\$1.00) and ranking *pari passu* in all respect with the then existing ordinary shares of Perpetual (save and except as to dividend) in exchange for each seven ordinary shares paid up to Two dollars (\$2.00) held by the shareholders of National fractions being disregarded.
- (ii) The payment by Perpetual to the shareholders of National at the rate of Three dollars eighty five cents (\$3.85) per share held in the capital of National in respect of shares which cannot be represented evenly by whole shares in the capital of Perpetual.

3. THE allotments and payments referred to in sub-paragraphs (i) and (ii) of Paragraphs 2 hereof shall be made and paid within sixty (60) days after the aforesaid legislation (including the amendments referred to) comes into operation.

4. PERPETUAL will pay all Stamp Duty payable on the transfer of shares in National from the holders thereof to Perpetual.

5. NATIONAL shall be entitled to pay from the profits of the Company available for dividend to its shareholders the following dividends:

(a) a final dividend of Six per cent (6%) in respect of the year ending Thirty first day of July 1967.

(b) a dividend calculated at the rate of Ten percent (10%) per annum in respect of the period from the Thirty first day of July 1967 until the date upon which the allotments and payments are made by Perpetual under the provisions of Paragraphs 2 and 3 hereof.

6. THE shareholders in National shall be entitled to a dividend on the shares allotted to them in the capital of Perpetual in exchange for their shares in the capital of National pursuant to the provisions of sub-paragraph (i) of Paragraph 2 hereof calculated at the rate of dividend declared by Perpetual for the full financial year of Perpetual in which the allotments and payments are made by Perpetual under the provisions of Paragraphs 2 and 3 hereof for the period from the date upon which such allotments and payments are made until the end of such financial year being the Thirtieth day of June next following and thereafter the shares in Perpetual allotted the shareholders in National as aforesaid shall rank *pari passu* with the then existing ordinary shares in Perpetual in respect of dividends also.

7. PERPETUAL shall forthwith after allotment of the said shares (or the shares into which they shall have been sub-divided if that shall have been effected) apply for and have such shares listed for quotation on the Hobart Stock Exchange.

8. UPON the effecting of the amalgamation in terms of Paragraph 2 hereof Perpetual shall take all appropriate steps to change its name to "Perpetual Trustees and National Executors of Tasmania Limited" or such other name as may be approved by the Registrar of Companies and will carry on business under that name in the State of Tasmania.

AS WITNESS the hands of the parties hereto the day and year first hereinbefore written.

THE COMMON SEAL of THE PERPETUAL  
TRUSTEES EXECUTORS AND AGENCY COMPANY }  
OF TASMANIA LIMITED was hereunto affixed by order }  
of the Directors in the presence of:

F. H. FOSTER                    } Directors.                   (L.S.)  
G. F. DAVIES                   }

J. D. WATCHORN               } Manager.

THE COMMON SEAL of THE NATIONAL EXECU-  
TORS AND TRUSTEES COMPANY OF TASMANIA }  
LIMITED was hereunto affixed by order of the Directors }  
in the presence of:

F. H. PEACOCK                 } Directors.                   (L.S.)

A. C. WALLACE                 } Secretary.