



TRUSTEE COMPANIES (AMALGAMATION)

No. 67 of 1978

ANALYSIS

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AN ACT to facilitate the amalgamation of certain trustee companies and to amend the Trustee Companies Act 1953.

[20 December 1978]

WHEREAS—

1. The Tasmanian Permanent Executors and Trustees Association Limited and The Equity Trustees Company of Tasmania Limited are trustee companies within the meaning of the *Trustee Companies Act 1953*. Preamble.

2. By an agreement made the 8th August 1978 (a copy of which is set out in the Schedule to this Act) those companies have agreed to amalgamate in accordance with the terms of the agreement.

3. In accordance with the agreement the agreement was approved by a special resolution passed at a general meeting of shareholders of the Association held on the 20th September 1978 and by a special resolution passed at a general meeting of the shareholders of the Company held on 19th September 1978.

4. It is expedient to authorize and facilitate the amalgamation of the companies in accordance with the agreement.

5. 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:—

Short title
and citation.

1—(1) This Act may be cited as the *Trustee Companies (Amalgamation) Act* 1978.

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

Commencement.

2—(1) Except as provided in subsection (2), this Act shall commence on the date of assent.

(2) Section 7 shall commence on a day to be fixed by proclamation.

Interpretation.

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

“agreement” means the agreement set out in the Schedule;

“Association” means The Tasmanian Permanent Executors and Trustees Association Limited;

“Company” means The Equity Trustees Company of Tasmania Limited.

Ratification of
agreement.

4—(1) Notwithstanding anything in the Principal Act or in any other Act or in the Memorandum or Articles of Association of the Association or of the Company the agreement is validated and approved, and is binding upon all members of the Association and of the Company.

(2) Without prejudice to the generality of the provisions of subsection (1) nothing in the Principal Act or in any other Act or in any Memorandum or Articles of Association referred to in subsection

* No. 72 of 1953. For this Act, as amended to 1959, see the Reprint of Statutes (1826-1959), Vol. 6, p. 483. Subsequently amended by No. 7 of 1960, No. 7 of 1961, No. 66 of 1962, No. 63 of 1963, No. 55 of 1965, No. 48 of 1967, No. 25 of 1970, No. 117 of 1973 and No. 91 of 1975.

(1) shall prevent the Association from holding such number of shares in the Company as is necessary to give effect to the agreement.

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

Substitution of
Tasmanian
Permanent
Executors for
Equity
Trustees.

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

(3) Where any person dies whether before or after the commencement of this Act having by his will appointed the Company as executor or trustee of his will and probate of the will has not been granted, the Association 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 Company would have had if the 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 Company to apply to the Supreme Court for administration with or without the will annexed under the provisions of the Principal Act the Association has the same right to apply for a grant of administration with or without the will annexed as the Company would have had if the agreement had not been made and this Act had not been passed.

(5) Any estate, or land or any other property, or any right to apply for a grant of probate or administration, which was vested in or conferred on the Company by the *Trustee Companies (Amalgamation) Act 1961*, is by this Act vested in or conferred on the Association, and the Association shall be entitled to deal with such

estate, or land or other property or to apply for such grant of probate or administration in the same way as the Company could have done if this Act had not been passed and the Company had continued in existence and not amalgamated with the Association.

Winding up
of the Company

6—When all the shares in the Company have been transferred to, and are vested in, the Association, the Company shall be voluntarily wound up under the provisions of the Principal Act and the *Companies Act 1962*.

Amendment of
Principal Act
in relation to
Tasmanian
Permanent
Executors

7—The Principal Act is amended—

(a) by inserting in section 3 after subsection (1A) the following subsection:—

“(1B) When the name of The Tasmanian Permanent Executors and Trustees Association Limited is changed in pursuance of the agreement set out in the Schedule to the *Trustee Companies (Amalgamation) Act 1978*, 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 changed.”;

(b) by omitting from the second Schedule the names “The Equity Trustees Company of Tasmania Limited” and “The Tasmanian Permanent Executors and Trustees Association Limited”; and

(c) by inserting at the end of the second Schedule the name “Tasmanian Permanent Executors and Equity Trustees Limited”.

THE SCHEDULE

(Section 4)

THE AGREEMENT

AN AGREEMENT made the eighth day of August One thousand nine hundred and seventy eight BETWEEN THE TASMANIAN PERMANENT EXECUTORS AND TRUSTEES ASSOCIATION LIMITED whose registered office is at No. 23 Paterson Street Launceston in Tasmania (hereinafter called “the Association”) of the one part and THE EQUITY TRUSTEES COMPANY OF TASMANIA LIMITED whose registered office is at No. 62 Cameron Street Launceston aforesaid (hereinafter called “the Company”) of the other part WHEREAS the Association was incorporated under the Companies Act 1869 AND WHEREAS the Company was incorporated under The Companies Act 1920 AND WHEREAS both the

Association and the Company were subsequently made subject to and regulated by Private Acts of the Parliament of Tasmania but both of such Private Acts have been repealed by the *Trustee Companies Act 1953* and both the Association and the Company are now Trustee Companies within the meaning of Section 3 of the last mentioned Act AND WHEREAS the nominal capital of the Association is Two hundred thousand dollars divided into twenty thousand shares of ten dollars each of which twelve thousand shares of ten dollars each have now been issued and stand credited in the books as having been paid to five dollars 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 the Association to eight hundred thousand dollars divided into eighty thousand shares to ten dollars each which from time to time will be issued on the terms that they will be paid up on issue to five dollars each and otherwise in accordance with the provisions of "*The Trustee Companies Act 1953*" AND WHEREAS the nominal capital of the Company is five hundred thousand dollars divided into fifty thousand shares of ten dollars each of which twenty-eight thousand shares have been issued and stand credited in the books as having been paid up to two dollars each and WHEREAS the Association and the Company are desirous of amalgamating upon the terms and conditions hereinafter contained AND WHEREAS it is intended to submit this Agreement to the shareholders of the Association and of the Company respectively for their approval by special resolution AND WHEREAS to facilitate the amalgamation of the Association and the Company and the proposed alteration to the capital of the Association 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. THAT the Association and the Company shall:

- (a) within sixty 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 the Association and the Company 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 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 the Association and the Company shall be effected by:

- (i) The Association shall increase its nominal share capital by six hundred thousand dollars divided into sixty thousand shares of ten dollars each and shall thereupon make to each of its existing shareholders a bonus issue of two shares of ten dollars each credited as paid up to five dollars per share for each ten dollar share credited as paid up to five dollars per share held by each of such shareholders PROVIDED THAT such issue shall be made and effected exclusively out of the Asset Revaluation Reserve Account of the Association.
- (ii) The allotment to each of the shareholders of the Company of two ordinary ten dollar shares in the capital of the Association credited as having been paid up to five dollars and ranking *pari passu* (save and except as to the dividends referred to in Paragraph 6 hereof) in all respects with the then existing ordinary shares of the Association in exchange for each five ordinary shares paid up to two dollars held by the shareholders of the Company fractions being disregarded.
- (iii) The payment in cash by the Association to the shareholders of the Company at the rate of two dollars per share held in the capital of the Company in respect of shares which cannot be represented evenly by whole shares in the capital of the Association.

3. THE shareholders of the Association and the shareholders who have been allotted shares in the Association under the provisions of Paragraph 2 (ii) hereof and the holders of the bonus shares issued under the provisions of Paragraph 2 (i) hereof shall be entitled to receive any dividend declared by the Association in respect of any period commencing on or after the First day of October One thousand nine hundred and seventy eight *pari passu*.

4. THE allotments and payments referred to in Sub-paragraphs (i), (ii) and (iii) of Paragraph 2 hereof shall be made and paid within sixty days after the aforesaid legislation (including the amendments referred to) comes into operation.

5. THE Association will pay all Stamp Duty payable on the transfer of shares in the Company from the holders thereof to the Association.

6. It is hereby expressly agreed that prior to the allotments and payments referred to in Paragraph 2 (ii) and 2 (iii) hereof:

- (i) The Company shall be entitled to pay from the profits of the Company available for dividend to its shareholders a final dividend of ten dollars per centum per annum in respect of the period commencing on and being inclusive of the First day of January One thousand nine hundred and seventy eight and ending on the Thirtieth day of September One thousand nine hundred and seventy eight.

(ii) The Association shall be entitled to pay from the profits of the Association available for dividend to its shareholders in respect of all shares held by such shareholders but not including bonus shares referred to in Paragraph 2 (i) hereof a dividend calculated at the rate of fifteen dollars per centum per annum in respect of the period commencing on and being inclusive of the first day of October One thousand nine hundred and seventy seven and ending on the Thirtieth day of September One thousand nine hundred and seventy eight.

7. UPON the effecting of the amalgamation in terms of Paragraph 2 hereof the Association shall take all appropriate steps to:

(a) Change its name to Tasmanian Permanent Executors and Equity Trustees 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.

(b) Amend the Articles of Association of the Association inter alia in manner following, that is to say:

That Article 64 be deleted and a new Article 64 be substituted therefore as follows:

64 (a) The Board of Directors of the Company shall until the Ordinary General Meeting of the Company to be held in the year 1980 consist of not more than twelve nor less than five persons and thereafter shall consist of not more than ten nor less than five persons.

64 (b) On amalgamation the Directors shall be:

- Malcolm Leslie Wright
- Kenneth Ashton Finney
- Richard Affleck Hughes
- Brian Roper Archer
- Frank Robert Archer
- Owen Frank FitzGerald
- Geoffrey James Foot
- Lyell George Stuart
- Edward John Dowling
- James Richard Hughes
- Hugh William Duncan Loane
- Neville Frederick Hyland

and they shall subject to the provisions of the Companies Act 1962 hold office until the Ordinary General Meeting to be held in the year 1980.

64 (c) At the Ordinary General Meeting of the Company to be held in the year 1980, four of such Directors shall retire of whom two shall be the oldest and the second oldest in age and who shall not be eligible for re-election and the remaining two shall be such person or persons as shall then agree to retire or who shall in default of such agreement be determined by secret ballot of the Directors and both of whom shall be eligible for re-election.

64 (d) At the Ordinary General Meeting of the Company held in the year 1981 and at every Annual General Meeting held thereafter in addition to any Directors who shall not be eligible for re-election as a Director pursuant to the provisions of Article 64 (e) two of the Directors who shall then have been longest in office shall retire but shall be eligible for re-election PROVIDED THAT if more than two Directors have been in office an equal length of time and two of such Directors are to retire then the Directors to retire shall in default of agreement between themselves be determined by secret ballot of the Directors.

64 (e) That no person who has attained the age of seventy two years shall be eligible for election as a Director at the Ordinary General Meeting to be held in the year 1980 or at any General Meeting to be held thereafter.

8. UPON the effecting of the amalgamation in terms of Paragraph 2 hereof the Company shall take all appropriate steps to amend its Articles of Association as follows:

(a) By deleting Article 17;

(b) By deleting Article 64 and substituting therefore the following new Article 64:

“ 64. It shall not be necessary for any person to hold any share in the capital of the Company to qualify for the office of Director.”;

(c) By deleting Article 71 (d).

IN WITNESS whereof the Common Seals of the parties hereto was hereunto affixed the day and year first hereinbefore written.

THE COMMON SEAL of THE TASMANIAN
PERMANENT EXECUTORS AND TRUSTEES
ASSOCIATION LIMITED was hereunto affixed
by Order of the Board of Directors in the
presence of:

M. L. WRIGHT
RICHARD A. HUGHES } Directors.

K PREECE } Secretary.

THE COMMON SEAL of THE EQUITY TRUSTEES COMPANY OF TASMANIA LIMITED was hereunto affixed by Order of the Board of Directors in the presence of:

G. J. FOOT
E. J. DOWLING } Directors.

T. SMITH } Secretary.

