



TRUSTEE COMPANIES

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 No. 74 of 1978
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ANALYSIS

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AN ACT to amend the Trustee Companies Act 1953.

[20 December 1978]

BE 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:—

1—This Act may be cited as the *Trustee Companies Act 1978*. Short title.

2—In this Act, the *Trustee Companies Act 1953** is referred to as the Principal Act. Principal Act.

* 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.

Interpretation.

3—Section 3 of the Principal Act is amended—

(a) by inserting in subsection (1), after the definition of “ administrator ”, the following definition:—

“ control ” includes control as a result of, or by means of, trusts, agreements, related corporations, arrangements, understandings, and practices, whether or not having legal or equitable force, and whether or not based on legal or equitable rights; and

(b) by inserting in that subsection, after the definition of “ letters of administration ”, the following definition:—

“ related corporation ” means a corporation that is, by virtue of section 6 (5) of the *Companies Act* 1962, deemed to be related to another corporation;

4—After section 39 of the Principal Act the following section is inserted:—

Special provisions relating to the holding, controlling, and disposal, &c., of shares in certain companies.

39AA—The provisions of the fifth Schedule apply to and in relation to—

- (a) the holding or controlling, or the holding and controlling, of shares in a trustee company to which that Schedule applies;
- (b) persons holding or controlling, or holding and controlling, any of those shares; and
- (c) the issue or allocation, or the registration of any transfer or transmission or disposal, of all or any of those shares in circumstances specified in that Schedule.

Amendments of the fourth Schedule.

5—The fourth Schedule to the Principal Act is amended—

- (a) by omitting subparagraph (a) of paragraph 2; and
- (b) by omitting subparagraph (b) of paragraph 3.

6—The Principal Act is amended by adding at the end the following Schedule:—

Addition of fifth Schedule.

THE FIFTH SCHEDULE

(Section 39AA)

SPECIAL PROVISIONS RELATING TO THE HOLDING, CONTROLLING, AND DISPOSAL, ETC., OF SHARES IN CERTAIN COMPANIES

1—In this Schedule, “trustee company” means—

Interpretation.

(a) Perpetual Trustees and National Executors of Tasmania Limited;

(b) during any period that—

- (i) Tasmanian Permanent Executors and Trustees Association Limited and The Equity Trustees Company of Tasmania Limited are not amalgamated, each of those companies; or
- (ii) the companies referred to in division (i) are amalgamated, Tasmanian Permanent Executors and Equity Trustees Limited; or

(c) any company, association, society, or body of persons that is declared, by proclamation under section 4, to be a trustee company for the purposes of this Act.

2—(1) No person—

(a) shall, in his own right at any one time, hold or control, or hold and control, more than—

Limitation on number of shares, &c., to be held or controlled, &c., in trustee companies.

- (i) 6 per cent of the number of issued shares in Tasmanian Permanent Executors and Equity Trustees Limited;
- (ii) 4 per cent of the number of issued shares in Perpetual Trustees and National Executors of Tasmania Limited;
- (iii) 1 000 shares in The Equity Trustees Company of Tasmania Limited; or
- (iv) 500 shares in any other trustee company; or

(b) shall have a beneficial interest in shares in a trustee company exceeding the percentage or the appropriate number prescribed by clause (a).

(2) For the purposes of this paragraph, where related corporations hold or control, or hold and control, shares in a trustee company, those related corporations shall be deemed to be one person.

(3) For the purposes of this paragraph, a person shall be deemed (but not to the exclusion of any other person) to control shares if he is in a position to exercise, wholly or partially and whether directly or indirectly, control of the voting rights attached to those shares.

(4) For the purposes of this paragraph, a person shall not be deemed to control shares merely by reason of—

- (a) his appointment as proxy or attorney for the holder of those shares; or
- (b) his appointment or his acting as a personal representative of the estate of a deceased person—
 - (i) who was a shareholder in; or
 - (ii) who had a beneficial interest in, or who controlled shares in, a trustee company.

Control of issue, allotment, transfer, and transmission of shares.

3—(1) No issue, allotment, transfer, or transmission of shares in a trustee company shall be made or registered that has the effect of causing a breach of any of the provisions of paragraph 2.

(2) Before making an issue or allotment or the registration of a transfer or transmission of shares in a trustee company, but without prejudice to any power that the directors of the company may have to decline to register a transfer, the directors of the company may require the person to whom the issue is made or the allottee, transferee, or transmittee to provide a statutory declaration or other evidence sufficient to show that the issue, allotment, transfer, or transmission will not involve a breach of any of the provisions of paragraph 2.

Power of directors of trustee companies to require declarations regarding holding and control of shares, &c.

4—(1) The directors of a trustee company may at any time and from time to time, by written notice, require a person who is registered as the holder of shares in the company to declare—

- (a) whether he holds all the shares registered in his name as a beneficial owner thereof and, if not, how otherwise and on whose behalf;
- (b) whether any other person controls all or any of the shares registered in his name and, if so, the number of those shares and the name of the person who controls them; and
- (c) whether he is the beneficial owner of, or has a beneficial interest in, any shares other than the shares registered in his name and, if so, the number of those shares and the name of the registered holder.

(2) A person to whom a notice has been given by a trustee company pursuant to subparagraph (1) shall, within 14 days after the service of the notice on him, furnish the company with a statutory declaration or other sufficient evidence setting forth—

- (a) whether or not he holds all the shares registered in his name as beneficial owner thereof, particulars of the person or persons who is or are the beneficial owner or owners thereof, the address of each such person, and the number of shares beneficially owned by each such person; and
- (b) whether any other person controls all or any of the shares registered in his name and in respect of any shares so controlled, particulars of the person or persons who controls or control those shares, the address of each such person, and the number of shares controlled by each such person.

5—(1) If a person—

(a) holds or controls, or holds and controls, shares in a trustee company in contravention of any of the provisions of paragraph 2; or

(b) fails to furnish a statutory declaration or other evidence as required under paragraph 4 in respect of any shares registered in his name,

the directors of the company may procure the disposal of those shares in the manner provided in this paragraph.

Forced sale
of shares by
trustee
companies.

(2) If the making of an issue or allotment or the registration of a transfer or transmission of shares in a trustee company would have the effect of causing a breach of any of the provisions of paragraph 2, the directors of the company may, in the manner provided in this paragraph, procure the disposal of such number of shares in the company as will allow the issue or allotment to be made or the transfer or transmission to be registered without having such an effect.

(3) The directors of a trustee company may cause the company to give written notice—

(a) to a person to whom—

(i) subparagraph (1) (a) applies, requiring that the number of shares specified in the notice and held or controlled, or held and controlled, by that person in contravention of paragraph 2; or

(ii) subparagraph (1) (b) applies, requiring that the number of shares specified in the notice and held or controlled, or held and controlled, by that person,

at the time of the giving of the notice shall be disposed of within such period, being not less than 6 months, as is specified in the notice; or

(b) to a person entitled to shares in the company in any of the circumstances referred to in subparagraph (2), requiring that he shall procure, within such period, being not less than 6 months, as is specified in the notice, the disposal of such number of shares in the company as will allow the relevant issue or allotment of shares to be made to him or the relevant transfer or transmission of shares to be registered in his name without having the effect of causing a breach of any of the provisions of paragraph 2.

(4) A resolution of the board of directors for the time being of a trustee company made at a duly constituted board meeting is conclusive evidence of the existence of the circumstances set out in subparagraph (1) (a), subparagraph (1) (b), or subparagraph (2).

(5) If a person to whom a notice is given under subparagraph (3) by a trustee company does not comply with the requirements of the notice within the time specified in it, the directors of the company—

(a) may cause the company to give written notice to that person requiring him to deliver to the company the share certificate or certificates to the shares held or controlled, or held and controlled, by that person;

(b) may—

- (i) in the case of a person who is given a notice under subparagraph (3) (a) (i) cause the number of shares held or controlled, or held and controlled, by that person that are specified in the notice to be sold;
 - (ii) in the case of a person who is given a notice under subparagraph (3) (a) (ii), cause the number of shares held or controlled, or held and controlled, by that person that are specified in the notice, or any lesser number, to be sold; or
 - (iii) in the case of a person who is given a notice under subparagraph (3) (b), cause the number of shares held or controlled, or held and controlled, by that person that are specified in the notice to be sold;
- (c) may, if the person is the holder of the shares, appoint a person as the holder of the shares on his behalf to execute a transfer or transfers of the shares and to receive and give a good discharge for the purchase money; and
- (d) may register the transfer or transfers consequent on the sale, notwithstanding that the share certificate or certificates to those shares may not have been delivered to the company and may issue a new certificate to the transferee or transferees, in which event the previous certificate or certificates shall for all purposes be deemed to have been cancelled.

(6) Where a notice is given under subparagraph (3) by a trustee company, the voting rights attached to the shares to which the notice relates—

- (a) are suspended for the period commencing on the date on which the notice is given and ending on the date on which the shares are sold in compliance with the notice; or
- (b) in a case where those shares are not so sold, are suspended for the period commencing on the date on which the notice is given and ending on the date on which the shares are sold, if the company causes them to be sold pursuant to subparagraph (5).

(7) The purchase money received under subparagraph (5) (b) for the sale of shares in a trustee company—

- (a) shall be held in trust by the company for the person who held or controlled, or held and controlled, those shares; or
- (b) shall be paid by the company to the registered holder of the shares.

(8) A payment under subparagraph (7) by a trustee company is sufficient to extinguish the liability and obligation of the company in relation to the payment.

(9) After the name of a transferee has been entered in the register of a trustee company in purported exercise of the powers conferred by this paragraph, the validity of the proceedings shall not be questioned by any person.

6—A notice required by this Schedule to be given to a person—

- (a) shall be in writing signed by the manager or secretary of the trustee company by which it is given; and
- (b) shall be delivered to that person personally or sent by prepaid post addressed to him at his address appearing in the share register or in the transfer of shares submitted by him to the company.

Requirements
as to notices.

