

TRUSTEE COMPANIES AMENDMENT ACT 1985

No. 64 of 1985

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SCHEDULE 1
FORMAL AMENDMENTS



TRUSTEE COMPANIES AMENDMENT ACT 1985

No. 64 of 1985

AN ACT to amend the Trustee Companies Act 1953.

[Royal Assent 25 July 1985]

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 Amendment Act* 1985. Short title.

2—(1) This section and section 1 shall commence on the day on which this Act receives the Royal assent. Commencement.

(2) Except as provided in subsection (1), this Act shall commence on a day to be fixed by proclamation.

3—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, No. 91 of 1975, Nos. 67 and 74 of 1978, and No. 9 of 1982.

Insertion in
Principal Act
of heading
to Part I.

4—Before section 1 of the Principal Act, the following headings are inserted:—

PART I

PRELIMINARY

Amendment of
section 3 of
Principal Act
(Interpre-
tation).

5—Section 3 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:—

- (1) In this Act, unless the contrary intention appears—
- “ administrator ” means administrator pursuant to letters of administration;
- “ bank ” means—
- (a) a bank as defined in section 5 of the *Banking Act 1959* of the Commonwealth; or
 - (b) a bank constituted under a law of a State or Territory;
- “ 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;
- “ the Court ” means the Supreme Court;
- “ financial institution ” means—
- (a) a bank;
 - (b) an insurance company;
 - (c) a financial corporation to which the *Financial Corporations Act 1974* of the Commonwealth applies;
 - (d) the trustees or managers of a superannuation fund established by a law of the Commonwealth or of a State or Territory; or
 - (e) a corporation that is prescribed as a financial institution for the purposes of this Act;
- “ insurance company ” means a corporation that is registered under the *Life Insurance Act 1945* of the Commonwealth;

- “ letters of administration ” means letters of administration with or without a will annexed;
- “ related corporation ” means a corporation that is, by virtue of section 7 (5) of the *Companies (Tasmania) Code*, deemed to be related to another corporation;
- “ secretary ”, in relation to a trustee company, includes an acting secretary, manager, or acting manager of the trustee company;
- “ subordinated loan ” means a loan that is unsecured and the terms of which are evidenced by an instrument in writing that expressly provides that the rights of the lender are subordinated to all other creditors of the borrower;
- “ trust estate ” includes all real and personal property of whatever kind committed to the administration or management of a trustee company;
- “ trustee company ” means a company that is specified in Schedule 2, and includes any company, association, society, or body of persons that is declared, pursuant to section 4, to be a trustee company for the purposes of this Act;
- “ will ” includes codicil.

6—After section 4 of the Principal Act, the following headings are inserted:—

Insertion in Principal Act of heading to Part II, &c.

PART II

TRUSTEE COMPANIES

Division 1—Administration of estates

7—Section 8 of the Principal Act is amended by inserting “ in Tasmania ” after “ obtain ”.

Amendment of section 8 of Principal Act (Power of person entitled to probate to authorize trustee company to obtain probate).

Amendment of section 9 of Principal Act (Power of person entitled to administration to authorize trustee company to obtain administration).

8—Section 9 of the Principal Act is amended by omitting “an intestate” and substituting “another”.

Substitution of section 10A of Principal Act.

9—Section 10A of the Principal Act is repealed and the following section is substituted:—

Election to administer small estates without grant of probate, &c.

10A—(1) Where—

- (a) a person dies, or has died, domiciled or leaving property in Tasmania;
- (b) a trustee company is entitled, or authorized by another person entitled, to obtain probate of the will of the deceased person or letters of administration of the estate of that deceased person; and
- (c) it appears to that trustee company that the gross amount of that estate to be administered in Tasmania does not exceed \$20 000 or, if another amount is prescribed by the regulations, that other amount,

that trustee company may, instead of applying for probate or letters of administration, file in the office of the Registrar of the Court an election under its common seal to administer that estate specifying—

- (d) the name, residence, occupation, and marital status so far as may be known to the trustee company, of the deceased person at the date of his death;
- (e) the names and the age, if surviving, or the date of death, if deceased, of any issue of the deceased person;
- (f) the property forming the estate of the deceased person so far as it is then known to the trustee company; and
- (g) the date of death of the deceased person.

(2) Where a trustee company believes that a deceased person referred to in subsection (1) has died testate, an election under that subsection shall state—

- (a) that, after due inquiries, the trustee company believes that the document annexed to the election is the testator's last will or an exemplification of that will, if probate of that will or other appropriate testamentary grant has been made outside Tasmania; and
- (b) that that will has been validly executed according to law,

and shall specify with respect to each beneficiary of the will of the deceased person—

- (c) his relationship, if any, to that person; and
- (d) particulars of the property of the deceased person to which that beneficiary is entitled as such.

(3) On the filing of an election under subsection (1), the trustee company filing it shall be deemed to be administrator or executor, as the case may be, of the property of the deceased person in all respects as if letters of administration or probate had been granted to it by the Court.

(4) A trustee company shall publish in the *Gazette* a notice that it has made an election under subsection (1).

(5) A notice published in the *Gazette* under subsection (4) is evidence that the trustee company is entitled to administer the estate to which the notice relates.

(6) If a trustee company—

- (a) after filing an election under subsection (1), finds that the gross value of the property to be administered in Tasmania exceeds \$22 000 or, if another amount is prescribed by the regulations, that other amount, the trustee company shall, as soon as practicable after it becomes aware of that fact; or

- (b) at any time considers it desirable for any reason so to do, the trustee company may,

file in the office of the Registrar of the Court a memorandum under its common seal stating that fact, and revoking its election, and apply for letters of administration or probate, as the case may require.

(7) If, after filing an election under subsection (1), a trustee company finds—

- (a) that the deceased person who was supposed to have died intestate has died testate; or
- (b) that the document annexed to the election as the testator's last will has been superseded by a later will, or for any reason is of no testamentary validity or effect,

the trustee company shall, as soon as practicable after it becomes aware of that fact, file in the office of the Registrar of the Court a memorandum under its common seal stating that fact and revoking the election.

(8) Where a trustee company files a memorandum under subsection (7)—

- (a) the election previously made by the trustee company is revoked;
- (b) the trustee company may file a fresh election under subsection (1); and
- (c) the provisions of this section apply to, and in relation to, the estate previously subject to the election as if no such previous election relating to that estate had been made under subsection (1).

(9) A copy of an election filed under subsection (1) and certified as a correct copy under the seal of the Court has the same legal effect as an exemplification of probate.

10—Section 15A of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:—

(1) A trustee company may manage properties and businesses held or carried on in trust by it or by other trustees, if the trustee company directly controls that management.

11—After section 15A of the Principal Act the following sections are inserted:—

15B—A trustee company shall not make a deposit or loan to a related corporation from an estate administered or managed by the trustee company under this Act.

Penalty: \$20 000.

Amendment of section 15A of Principal Act (Power of trustee company to undertake other services).

Insertion in Principal Act of new sections 15B and 15C.

Loans from estates to related corporations prohibited.

15C—(1) A trust estate administered or managed by a trustee company is not liable for the payment of money under a guarantee from the trustee company otherwise than under a guarantee lawfully given by the trustee company on behalf of that trust estate.

No trust estate to be liable under guarantee from trustee company unless given on behalf of that estate.

(2) Subsection (1) does not authorize a trustee company to give a guarantee on behalf of a trust estate to a related corporation.

12—After section 17 of the Principal Act the following section is inserted:—

Insertion in Principal Act of new section 17A.

17A—(1) Notwithstanding anything in the *Companies (Tasmania) Code* or in the memorandum or articles of association of a trustee company, a trustee company shall not—

Borrowing by trustee companies.

- (a) accept a deposit of money with, or a loan of money to, the trustee company from any trust estate committed to its administration or management; or
- (b) except as provided by this Act, accept a deposit of money with, or a loan of money to, the trustee company on its own behalf from any other person.

Penalty: \$20 000.

(2) Notwithstanding subsection (1), a trustee company may borrow money if—

- (a) the money is—
 - (i) borrowed from a financial institution; or
 - (ii) a subordinated loan from a related corporation (if any) of the trustee company; and
- (b) after 30th June 1985, the total of all borrowings by the trustee company from financial institutions and the liability (other than any contingent liability) of the trustee company under a bill of exchange or promissory note and the amount of the proposed loan together do not exceed the total amount of the net tangible assets of the trustee company specified in the last declaration made by the trustee company under section 18H.

(3) Nothing in this section affects or limits the investment of money of an estate by a trustee company in a Common Fund established under this Act.

Amendment of section 18 of Principal Act (Commission chargeable by trustee company).

13—Section 18 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) “five”, wherever occurring, and substituting “5”;
- (b) by omitting from subsection (4A) “paragraph (a) of subsection (1) of this section” and “fifty dollars” and substituting “subsection (1)” and “\$100 or such other amount as may be prescribed,” respectively.

Insertion in Principal Act of new Divisions 2 and 3 of Part II.

14—After section 18A of the Principal Act, the following Divisions are inserted:—

Division 2—General powers

18B—A trustee company may—

- (a) prepare and lodge taxation returns;
- (b) if so authorized by a will or other instrument creating a trust or by an instrument signed by all persons beneficially entitled to the income of any property or business, manage that property or carry on that business in accordance with any terms or conditions specified in that will or other instrument; and
- (c) hold property as a custodian trustee unless it is prohibited from doing so by virtue of, or it is inconsistent with, any trusts to which that property is subject.

Power of trustee company to undertake other services.

18C—(1) A trustee company may establish and keep in its books one or more funds to be called a “Common Fund” and, if more than one, with an appropriate distinguishing number.

(2) The money comprised in a Common Fund established in the books of a trustee company shall be invested in—

- (a) investments for a term of not less than a year secured by first mortgages of land in Tasmania; or
- (b) investments authorized by the *Trustee Act* 1898.

(3) A trustee company may invest any money in its hands either—

- (a) on the separate account of the trust estate to which the money belongs; or

Power of trustee companies to establish Common Funds.

(b) if the money is not directed to be invested in a manner specified in the trust deed, will, or other instrument governing the money and investment in a Common Fund is not inconsistent with that instrument, as part of a Common Fund established and kept in the books of the company if that investment is limited to a class or classes of investments in which that money might lawfully be invested on its separate account.

(4) Investments made from money forming part of a Common Fund shall not be made on account of, or belong to, any particular trust estate, but the trustee company shall cause to be kept in the records of the company an account showing at all times the current amount at credit in a Common Fund on account of each trust estate.

(5) A trustee company may sell investments belonging to a Common Fund and may withdraw any of the money belonging to a Common Fund for any purpose of, or relating to, the exercise and discharge of its powers, authorities, duties, and functions.

(6) A trustee company may, at any time, withdraw from a Common Fund an amount at credit in a Common Fund on the account of a trust estate and invest that amount on the separate account of that trust estate.

(7) An amount so withdrawn from a Common Fund shall, on and from the date of the withdrawal, cease to have any claim for interest or otherwise from a Common Fund.

(8) Any profits or losses on realization of any investment in a Common Fund shall be credited or debited, as the case requires, to the Common Fund and be received or borne proportionately by the several amounts invested in the Common Fund at the time of that realization.

(9) As soon as practicable after the first day of each month, a trustee company shall determine the value of the investment as on that day in each Common Fund established by it under this section.

(10) In respect of securities listed on a stock exchange, the quotations published by that stock exchange are evidence of value or, if there are no such quotations on a particular day, the valuation of the chairman or secretary of the relevant stock exchange is evidence of that value.

(11) Investments in, or withdrawals from, a Common Fund shall, during any month, be effected on the basis of the value determined under subsection (9) as on the first day of that month.

(12) A trustee company shall pay or allocate the income arising from a Common Fund proportionately to or among the trust estates entitled to the income arising from the capital sums invested in the Common Fund according to the several sums so invested and the periods for which they remain so invested.

(13) In addition to the commission, fees, and remuneration which it is entitled to receive under section 18 or 18A, a trustee company is entitled to charge and receive from, or out of, any income received by a Common Fund, a fee (according to the value of the work done and the services rendered) calculated at a rate not exceeding one per cent a year on the capital sums invested in the Common Fund during the period in respect of which the income is received or allocated, for the establishment, keeping (including the keeping of books of account), and conduct of the Common Fund.

Power of trustee company to mix funds for investment.

18D—(1) Where a trustee company holds for investment—

- (a) money belonging to an estate of which it is the sole trustee; and
- (b) money belonging to another estate of which it is sole trustee or to a person for whom it acts as agent to invest that money,

the trustee company may—

- (c) invest all that money as one fund in one or several securities;
- (d) distribute the income arising from those securities, after deducting all proper charges, ratably among the several estates and persons from which or from whom the money so invested was derived; and
- (e) in the same manner debit any loss arising from the investment ratably to those several estates and persons.

(2) Nothing in this section authorizes a trustee company to invest money belonging to any estate or person in a security in which that money could not lawfully be invested apart from this section.

18E—A trustee company may invest its own funds—

- (a) in the acquisition of land in Tasmania;
- (b) on the security of a first mortgage of land in Tasmania;
- (c) in other investments authorized by the *Trustee Act 1898*;
- (d) in shares in a body corporate incorporated or registered under the law of a State or Territory that has entered into an agreement with the trustee company to provide goods or services to the trustee company; or
- (e) in public securities listed by a stock exchange that is approved under Part III of the *Securities Industry (Tasmania) Code*,

Investment by trustee company of its own funds.

and may, if prudent to do so having regard to the nature of its assets and liabilities, exercise any rights accruing to it by virtue of those investments, shares, or securities.

Division 3—Duties of trustee companies

18F—(1) Notwithstanding anything contained in the trust deed, will, or other instrument under which a trust is created, a trustee company shall not at any time after the administration or management of a trust estate is committed to it, acquire any shares in itself on behalf of that trust estate.

Duty of trustee company not to acquire shares in itself.

Penalty: \$20 000.

(2) Subsection (1) does not prevent a trustee company from retaining on behalf of a trust estate any shares in itself or from exercising any rights of that trust estate with respect to those shares if those shares were included in the trust estate when its administration or management was committed to the trustee company.

18G—(1) A trustee company shall furnish to the Attorney-General within such time as he specifies such information in writing or statements in respect of its business as he may direct.

Trustee company to give information to Attorney-General where directed.

Penalty: \$10 000.

(2) The Attorney-General may, where it appears to him to be necessary or advisable, cause to be carried out—

- (a) a review of the operations of a trustee company;
- (b) an audit of the records and accounts of a trustee company (including the records and accounts of any of the trust estates managed or administered by the trustee company); or
- (c) both the review and the audit.

(3) For the purposes of a review or audit under subsection (2), a trustee company shall—

- (a) deliver to a person authorized by the Attorney-General to that effect a list of all books kept by it;
- (b) produce to that person at all reasonable times when required the records kept by it and all accounts, vouchers, papers, and other documents of the trustee company; and
- (c) afford that person all necessary information and all other necessary facilities for enabling him to carry out that review or audit.

(4) Unless the Attorney-General otherwise directs, the costs of an audit or review under this section shall be borne by the trustee company and may be recovered by the Attorney-General in a court of competent jurisdiction as a debt due to the Crown.

Declaration
by trustee
company.

18H—(1) A trustee company shall, during the prescribed months in every year during which the company carries on business, cause a statutory declaration in accordance with form IA in Schedule 3 to be made by 2 of its directors.

(2) A copy of each declaration made under subsection (1)—

- (a) shall, within 7 days after the making of the declaration, be forwarded to the Attorney-General;
- (b) shall, within 7 days after the making of the declaration, be exhibited in a conspicuous place in the registered office of the trustee company concerned and in every branch office or place where the business of the trustee company is carried on; and
- (c) shall remain so exhibited until the next occasion on which the trustee company causes a statutory declaration to be exhibited under this section.

(3) If a trustee company fails to comply with a provision of this section—

(a) the trustee company is guilty of an offence and is liable on summary conviction to a penalty of not more than \$250 for each day during which the default continues; and

(b) each director and manager of the trustee company who knowingly and wilfully authorizes or permits the default is guilty of an offence and is liable on summary conviction to a penalty of not more than \$100 for each day during which the default continues.

(4) A declaration under this section in relation to a trustee company is not required to show—

(a) liabilities incurred by the trustee company while acting as trustee or in a representative capacity to the extent to which the trustee company has a valid and subsisting right of indemnity out of any assets in respect of those liabilities and those assets are sufficient to satisfy that right of indemnity; and

(b) assets, consisting of the value, if any, of any such right of indemnity arising from the incurring of those liabilities.

(5) In this section, “prescribed months” means the months of January, April, July, and October or such other months as the Attorney-General, on the application of a trustee company, may approve in respect of that trustee company.

181—(1) A trustee company—

(a) shall, within one month after the half-yearly balancing date of the company in each year during which the company carries on business in Tasmania, make a statutory declaration, in accordance with form II in Schedule 3, as to the assets and liabilities of the company;

(b) shall cause a copy of the declaration—

(i) to be published in the *Gazette* as soon as practicable after the making of the declaration;

Declaration as to assets and liabilities of trustee company.

- (ii) to be exhibited in a conspicuous position in the principal office of the company in Tasmania and in every branch office or other place in Tasmania where the business, or any part of the business, of the company is carried on; and
 - (iii) to be furnished free of charge to a creditor of the company who makes application for a copy of the declaration; and
 - (c) shall, on being requested by a shareholder or member of the company so to do, deliver or send by post a copy of the declaration to that shareholder or member free of charge.
- (2) If a trustee company fails to comply with a provision of subsection (1)—
- (a) the trustee company is guilty of an offence and is liable on summary conviction to a penalty of not more than \$250 for each day during which the default continues; and
 - (b) each director and manager of the trustee company who knowingly and wilfully authorizes or permits the default is guilty of an offence and is liable on summary conviction to a penalty of not more than \$100 for each day during which the default continues.

Employment of
solicitor by
trustee
company.

18J—(1) Where—

- (a) by a will, deed, or other instrument in writing, a trustee company or any other trustee appointed by the will, deed, or instrument, is directed to employ a solicitor who is named in that will, deed, or instrument to conduct the legal or professional business associated with the administration or management of the trust estate referred to in that will, deed, or instrument; or
 - (b) a trustee company, before the administration or management of any trust or estate is transferred or committed to it, agrees with a solicitor to employ him in or about the legal or professional business associated with the administration or management of that trust estate,
- the trustee company shall employ that solicitor accordingly.

(2) Where a solicitor is employed by a trustee company pursuant to subsection (1), he shall be deemed to be the solicitor of the company in the legal or professional business to which that subsection relates, and shall not be removed except by order of the Court under subsection (3).

(3) Upon the application of a trustee company or of a person who has an interest in a trust estate to which subsection (1) relates, the Court, on such cause being shown as the Court may think sufficient, may order the removal of a solicitor who is employed by the company pursuant to that subsection, and may appoint another solicitor to act as the solicitor of the company for the purposes of that trust estate.

15—Before section 19 of the Principal Act the following heading is inserted:—

Division 4—Control of trustee companies

Insertion in Principal Act of heading to Division 4 of Part II.

16—Section 19 (1) of the Principal Act is amended by inserting “agent,” after “committee,”.

Amendment of section 19 of Principal Act (Power of Court to remove trustee company from office).

17—(1) Section 20 of the Principal Act is amended by renumbering subsections (1) and (2) as subsections (2) and (3) respectively and by inserting before subsection (2), as so renumbered, the following subsection as subsection (1) of that section:—

Amendment of section 20 of Principal Act (Order for account).

(1) In subsection (1), “prescribed person”, in relation to a deceased person, means—

- (a) the widow or widower of that deceased person;
- (b) a trustee, beneficiary, executor, legatee, administrator, next of kin, or creditor of that deceased person; or
- (c) a person who is entitled to make an application under the *Testator's Family Maintenance Act 1912* for provision out of the estate of that deceased person.

(2) Section 20 of the Principal Act is further amended by omitting from subsection (2), as renumbered by this section, “any trustee, cestui que trust, executor, legatee, administrator, next of kin, or creditor,” and substituting “a prescribed person”.

Repeal of sections 23, 24, and 25, of Principal Act.

18—Sections 23, 24, and 25 of the Principal Act are repealed.

Insertion in Principal Act of heading to Division 5 of Part II.

19—Before section 26 of the Principal Act, the following heading is inserted:—

Division 5—Distribution of deceased estates

Insertion in Principal Act of heading to Part III.

20—After section 28 of the Principal Act, the following headings are inserted:—

PART III

MISCELLANEOUS AND SUPPLEMENTAL

Division 1—Restrictions on classes of business

insertion in Principal Act of heading to Division 2 of Part III.

21—After section 29 of the Principal Act, the following heading is inserted:—

Division 2—Accounts and audit

Insertion of section 34A in Principal Act.

22—After section 34 of the Principal Act, the following section is inserted:—

34A—(1) In this section, unless the contrary intention appears—

“accounts” means profit and loss accounts and balance-sheets and includes—

(a) statements, reports, and notes, other than auditors’ reports or directors’ reports, attached to, or intended to be read with, any of those profit and loss accounts or balance-sheets; and

(b) accounts relating to trust estates as mentioned in subsection (2),

but does not include any such accounts, balance-sheets, statements, reports, or notes relating to the conduct of a business or the management of property solely as an agent;

“appointed auditor”, in relation to a trustee company, means a registered company auditor who is appointed auditor of the trustee company under Division 3 of Part VI of the *Companies (Tasmania) Code*;

“group accounts”, in relation to a trustee company that is a holding company, means—

Powers and duties of auditors of trustee companies.

- (a) a set of consolidated accounts for the group of companies of that holding company;
 - (b) 2 or more sets of consolidated accounts together covering that group;
 - (c) separate accounts for each corporation in that group; or
 - (d) a combination of one or more sets of consolidated accounts and one or more separate accounts together covering that group,
- and includes the accounts relating to the trust estates, if any, of each subsidiary of the trustee company;

“group of companies”, in relation to a trustee company that is a holding company, means the holding company and the corporations that are subsidiaries of the holding company;

“holding company” means a trustee company that is a holding company of a corporation.

(2) An appointed auditor shall, in addition to his duties under the *Companies (Tasmania) Code*, audit the accounts of the trustee company relating to its trust estates and, if it is a holding company for which group accounts are required, shall also audit the accounts relating to the trust estates, if any, of each of its subsidiaries.

(3) An appointed auditor shall, in a report required to be furnished under section 285 of the *Companies (Tasmania) Code*, state—

(a) whether the accounts of the relevant trustee company considered as a whole and, if the company is a holding company for which group accounts are required, the group accounts are, in his opinion, properly drawn up—

(i) so as to give a true and fair view of the matters required by section 269 of the *Companies (Tasmania) Code* to be dealt with in the accounts and, if there are group accounts, in the group accounts; and

(ii) in accordance with the provisions of the *Companies (Tasmania) Code*;

- (b) whether the accounting records and other records relating to the trust estates required by the *Companies (Tasmania) Code* to be kept by the trustee company and, if it is a holding company, by the subsidiaries other than those of which he has not acted as auditor, have been, in his opinion, properly kept in accordance with the provisions of the *Companies (Tasmania) Code*;
- (c) any defect or irregularity in the accounts or group accounts and any matter not set out in the accounts or group accounts without regard to which a true and fair view of the matters dealt with by the accounts or group accounts would not be obtained; and
- (d) if he is not satisfied as to any matter referred to in paragraph (a) or (b), his reasons for not being so satisfied.

(4) For the purposes of this section—

- (a) an appointed auditor may exercise the same powers, and is subject to the same duties, as are specified in Division 3 of Part VI of the *Companies (Tasmania) Code*; and
- (b) the provisions of the *Companies (Tasmania) Code* apply to, and in relation to, an audit required by this section and the keeping of the accounting records of a trustee company relating to its trust estates.

Insertion in
Principal Act
of heading to
Division 3
of Part IV.

23—Before section 35 of the Principal Act, the following heading is inserted:—

Division 3—Powers of Supreme Court

Insertion in
Principal Act
of heading to
Division 4
of Part IV.

24—After section 36 of the Principal Act, the following heading is inserted:—

Division 4—Miscellaneous

Insertion of
new section 40A
and substitution
of section 41 in
Principal Act.

25—Section 41 of the Principal Act is repealed and the following sections are substituted:—

40A—The Governor may make regulations for, or with ^{Regulations.} respect to—

- (a) prescribing a maximum amount for the purposes of section 10A (1) or (6) or section 18 (4A); and
- (b) the establishment and operation of a Common Fund under section 18c.

41—(1) The judges, or a majority of them, may make ^{Rules of Court.} Rules of Court for the purposes of this Act, except for, or with respect to, any matter on which regulations may be made under section 40A.

(2) Without limiting the generality of subsection (1), the Rules of Court may make provision for, or with respect to, conferring a right to inspect and copy any information specified in an election filed in the office of the Registrar of the Court under section 10A (1).

26—(1) The third schedule to the Principal Act is amended by inserting the following form after form I:— ^{Insertion of new form IA in third Schedule of Principal Act.}

FORM IA Section 18H

(State in full the name of the trustee company)

We (*insert* names, addresses, and occupations of 2 directors of the trustee ^{General.} company)

do solemnly and sincerely declare:

THAT the liability of the members is limited.

THAT the authorized capital of the company is \$..... divided into shares of \$..... each.

THAT the number of shares issued is shares.

THAT calls to the amount of \$..... per share have been made.

THAT the net tangible assets* of the company amounted to \$.....

THAT the unused credit and standby facilities available to the company on the day specified below amounted to \$.....

THAT the liabilities of the company on the last day of the month pre- ^{Liabilities.}ceding the month in which this declaration is made were—

Due and payable within one year	\$000
Bank overdrafts and bank loans—secured	
unsecured	
Loans from other financial institutions—secured	
unsecured	
Bills payable and liabilities under promissory notes	
Lease liabilities	

Total borrowings due and payable within one year

* Net tangible assets means the amount arrived at by deducting total liabilities from total tangible assets.

Subordinated loans from related corporations ..	
Trade creditors and accrued expenses	
Provisions	
Income tax	
Dividends	
Deferred income	
Other liabilities payable within one year—	
secured	
unsecured	

Total borrowings due and payable within
one year

Due and payable after one year

Bank loans—secured	
unsecured	
Loans from other financial institutions—secured	
unsecured	
Bills payable and liabilities under promissory	
notes	
Lease liabilities	

Total borrowings due and payable after one
year

Subordinated loans from related corporations ..	
Provisions	
Income Tax	
Deferred income	
Other liabilities payable after one year	

Total liabilities payable after one year

Total liabilities

Assets.

THAT the assets of the company on that day were:

Recoverable or realizable within one year	\$000
Cash at bank(s) and on hand	
Bills receivable—bank accepted or endorsed ⁽¹⁾	
other ⁽¹⁾	
Amounts receivable from related corporations—	
secured ⁽¹⁾	
unsecured ⁽¹⁾	
Other loans ⁽²⁾ and deposits—secured ⁽¹⁾	
unsecured ⁽¹⁾	
Government and semi-government securities ⁽²⁾	
Shares, units, options, and convertible notes in	
companies listed on an Australian stock	
exchange ⁽¹⁾	

Shares, units options, and convertible notes in companies not listed on an Australian stock exchange ⁽¹⁾	
Capital investment in partnerships, trusts, and unincorporated joint ventures ⁽¹⁾	
Lease receivables	
Other amounts realizable within one year ⁽¹⁾	
	<hr/>
Total assets realizable or recoverable within one year	
	<hr/>
Recoverable or realizable after one year	
Amounts receivable from related corporations—	
secured ⁽¹⁾	
unsecured ⁽¹⁾	
Other loans ⁽³⁾ and deposits—secured ⁽²⁾	
unsecured ⁽²⁾	
Government and semi-government securities ⁽²⁾	
Shares, units, options, and convertible notes in companies listed on an Australian stock exchange ⁽²⁾	
Shares, units, options, and convertible notes in companies not listed on an Australian stock exchange ⁽²⁾	
Capital investment in partnerships, trusts, and unincorporated joint ventures ⁽²⁾	
Bills receivable—bank accepted or endorsed ⁽²⁾	
other ⁽²⁾	
Property, plant, and equipment ⁽²⁾	
Lease receivables ⁽²⁾	
Other tangible assets ⁽²⁾	
	<hr/>
Total assets realizable or recoverable after one year	
	<hr/>
	<hr/>
Total tangible assets	
Less total liabilities	
	<hr/>
Net tangible assets	
Add other assets	
	<hr/>
Shareholders' funds	
	<hr/>

(1) Stated at the lower of cost and net realizable value.
(2) Stated at cost or valuation less amounts written off or provided for depreciation or diminution in value.
(3) Including mortgages.

THAT the above classification and valuation of assets are based upon the company's intentions at the date of this declaration as to the use and disposal of those assets.

Loans.

THAT the following loans were obtained from financial institutions other than banks and insurance companies during the period of three months preceding that date—

Name of Institution	Amount of Loan	Term of Loan	Interest Rate	Security (if applicable)
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Contingent liabilities.

THAT the following contingent liabilities existed on that day, to the extent that they are quantifiable:

	\$000
Guarantees of liabilities of related corporations ..	
Guarantees of liabilities of other persons	
Other contingent liabilities ..	
Total ..	

Guarantees.

THAT the guarantees of liabilities of related corporations stated above are made up as follows:

Name of corporation	Amount
Total ..	

Credit and stand-by facilities.

THAT the nature and amount of credit and stand-by facilities available to the company on that day and the restrictions affecting those facilities are described below:

Facility	Amount \$000
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Significant changes.

THAT there have been the following significant changes in the nature of the principal activities of the company during the period of three months preceding that date—

Unusual items.

THAT the following items, transactions, or events of a material and unusual nature affected the results of the company's operations during the period of three months preceding that date—

Compliance with relevant legislation.

THAT the provisions of the *Trustee Companies Act 1953* in respect of investment of money held by the company on trust have been complied with throughout the period of three months preceding that date.

THAT the company has complied with all other requirements of the *Trustee Companies Act 1953* throughout the period of three months preceding that date.

THAT, in our opinion, there are reasonable grounds to believe that the company will be able to pay its debts as and when they fall due. Solvency.

AND we make this solemn declaration by virtue of section 132 of the Evidence Act 1910.

Signature.....
(Director of the trustee company)

Declared at this day of 1985.

Before me,

.....
A Justice of the Peace, &c.

Signature.....
(Director of the trustee company)

Declared at this day of 1985.

Before me,

.....
A Justice of the Peace, &c.

(2) The third schedule to the Principal Act is further amended by omitting from the heading to Form II "SECTION 23" and substituting "SECTION 18r".

27—Each provision of the Principal Act specified in the first column of Schedule 1 to this Act is amended by omitting the expression set out in the second column of that Schedule corresponding to that provision and substituting, in each case, the expression set out in the third column of that Schedule corresponding to that provision. Formal amendments.



SCHEDULE 1

Section 27

FORMAL AMENDMENTS

Provision	Omission	Substitution
Section 2	" the first schedule "	" Schedule 1 "
Section 4 (1)	" the second schedule "	" Schedule 2 "
Section 4 (6)	" the third schedule "	" Schedule 3 "
Section 4 (9)	" the fourth schedule "	" Schedule 4 "
Section 39	" the fourth schedule "	" Schedule 4 "
Section 39AA	" the fifth schedule "	" Schedule 5 "
The Schedules	The following headings:— " THE FIRST SCHEDULE " " THE SECOND SCHEDULE " " THE THIRD SCHEDULE " " THE FOURTH SCHEDULE " " THE FIFTH SCHEDULE "	" SCHEDULE 1 " " SCHEDULE 2 " " SCHEDULE 3 " " SCHEDULE 4 " " SCHEDULE 5 "