

**TRUSTEE COMPANIES (FURTHER AMENDMENT) ACT,
1982, No. 173**

New South Wales



ANNO TRICESIMO PRIMO

ELIZABETHÆ II REGINÆ

Act No. 173, 1982.

An Act to amend the Trustee Companies Act, 1964, to vary the provisions relating to Perpetual Trustees Australia Limited. [Assented to, 24th December, 1982.]

Trustee Companies (Further Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Trustee Companies (Further Amendment) Act, 1982".

Principal Act.

2. The Trustee Companies Act, 1964, is referred to in this Act as the Principal Act.

Amendment of Act No. 6, 1964.

3. The Principal Act is amended in the manner set forth in Schedule 1.

Application of Principal Act, as amended by this Act, to certain persons.

4. The provisions under the short heading "PERPETUAL TRUSTEES AUSTRALIA LIMITED" in the Second Schedule to the Principal Act, as amended by this Act, apply to a person who holds, is entitled to or controls shares in Perpetual Trustees Australia Limited in contravention of clause 4 of those provisions, notwithstanding that the person held, became entitled to or controlled those shares before the date of assent to this Act.

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SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 36 (3)—

After “any member”, insert “, other than the provisions so set out under the short heading ‘Perpetual Trustees Australia Limited’,”.

(2) Second Schedule—

Omit paragraphs (a), (b) and (c) occurring under the short heading “PERPETUAL TRUSTEES AUSTRALIA LIMITED”, insert instead:—

Interpretation.

1. (1) In the provisions of this Schedule relating to the Company, except in so far as the context or subject-matter otherwise indicates or requires—

“directors” means the directors, for the time being, of the Company;

“ineligible holder” means a person who—

(a) contravenes clause 4; or

(b) refuses or fails to furnish to the directors, upon being required by them to do so under clause 8, evidence satisfactory to them that—

(i) he has not contravened clause 4; or

(ii) in relation to any transaction, if that transaction were effected, he would not contravene clause 4;

“the Company” means Perpetual Trustees Australia Limited;

“transaction” means any, or any proposed, allotment, transfer or transmission of shares in the Company, or any proposed agreement, arrangement or understanding in relation to shares in the Company.

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(2) Words and expressions used in the provisions of this Schedule relating to the Company have the same meanings as in the Companies (New South Wales) Code.

(3) A reference in the provisions of this Schedule relating to the Company to the shares to which a person is entitled shall be construed as including a reference to—

- (a) shares in which that person has a relevant interest; and
- (b) shares in which a person associated with that person has a relevant interest.

(4) A reference in the provisions of this Schedule relating to the Company to the shares which a person controls shall be construed as—

- (a) including a reference to shares in respect of which, in the opinion of the directors, the person has power to exercise total or partial control of voting or transfer rights as a result of, or by means of, any trust, agreement, related corporation, arrangement, understanding, practice or other circumstance, whether or not having force by virtue of or based upon legal or equitable principles; and
- (b) not including a reference to shares controlled by reason only of—
 - (i) the appointment of the person (otherwise than for valuable consideration) as proxy or attorney for the holder of the shares; or
 - (ii) the person acting as a personal representative of the estate of a deceased person who held, was entitled to or controlled the shares.

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(5) The fact that a person, by the operation of the provisions of this Schedule relating to the Company, is taken to hold, to be entitled to or to control any share shall not exclude that share from being taken into account in determining whether any other person is an ineligible holder.

Share capital.

2. The capital of the Company shall be and remain divided into shares of \$2 each and the number of shares shall not be at any time reduced to less than 1,000,000.

Calls.

3. No more than \$1 per share shall be called up except in the event of and for the purpose of the winding-up of the Company, or in the event of and for the purposes of meeting any calls made in the winding-up of Perpetual Trustee Company Limited, and every member shall in that event be liable to contribute the unpaid balance of every share held by him or so much thereof as may be necessary to meet the call.

Maximum shareholding.

4. A person shall not hold, be entitled to or control shares in the Company which in total represent more than $1\frac{1}{2}$ per cent of the issued capital of the Company.

Resolutions.

5. A resolution of the board of directors at a duly constituted board meeting—

- (a) that a person has contravened clause 4—shall be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of that fact; and

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- (b) that a person is an ineligible holder within the meaning of paragraph (b) of the definition of “ineligible holder” in clause 1 (1)—is conclusive evidence of the refusal or failure of the person to furnish the required evidence.

Registration of transfer or transmission of shares.

6. (1) The Company may decline to register any transfer or transmission of shares in the Company in favour of a person who is, or would thereby become, an ineligible holder.

(2) Notwithstanding subclause (1), the Company may, after negotiation with the person wishing to effect the transaction referred to in that subclause, agree to register the transfer or transmission to the extent that the transfer or transmission will not cause the person to become an ineligible holder and may, thereafter, register the transfer or transmission to the extent so agreed.

Allotment of shares.

7. The directors may refuse to allot shares to a person, or may allot them on terms requiring their subsequent disposal, where the person is, or in their opinion would thereby become, an ineligible holder.

Notice of beneficial holding of shares, etc.

8. (1) The directors may, at any time prior to—
- (a) making any allotment of shares in the Company; or
 - (b) the registration of any transfer or transmission of shares in the Company,

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by notice served on the proposed allottee, transferee or transmittee, require him to furnish, within 14 days after the service of the notice, evidence satisfactory to the directors that the transaction will not result in the proposed allottee, transferee or transmittee becoming an ineligible holder.

(2) The directors may, at any time, by notice served on a person registered as a member of the Company, require the member to furnish, within 14 days after the service of the notice, evidence satisfactory to the directors—

- (a) that the shares registered in the name of the member are held by the member as the sole beneficial owner and that the member is solely entitled to the shares;
- (b) if the member is not the sole beneficial owner or solely entitled to any shares registered in the name of the member—as to the beneficial ownership of each such share and the name of the person entitled to or to a beneficial interest in each such share, including particulars of the address of the person, the extent of the entitlement or interest of the person and the circumstances giving rise to that entitlement or interest;
- (c) that the shares registered in the name of the member are controlled solely by the member;
- (d) if any shares registered in the name of the member are not solely controlled by the member—as to the name and address of the person controlling the shares and the particulars of the shares so controlled, the extent of the control, and the circumstances giving rise to that control;
- (e) that the member does not have a beneficial interest in, is not entitled to and does not control any shares in the Company, other than the shares registered in the name of the member;
or

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- (f) if the member has a beneficial interest in, is entitled to or controls any shares in the Company, other than those registered in the name of the member—as to the particulars of each such share, including particulars of the name and address of the registered holder of the share, the extent of the member's beneficial interest in, entitlement to or control of the share and the circumstances giving rise to that interest, entitlement or control.

(3) Nothing in subclause (2) affects the operation of section 261 of the Companies (New South Wales) Code.

Failure to give notice as required.

9. Where a person is served with a notice pursuant to clause 8 and refuses or fails within the period of 14 days after the service of the notice to furnish to the directors all the information required by the notice—

- (a) that person; and
- (b) the person registered as the holder of the shares to which the notice relates,

shall be deemed, unless the directors are otherwise satisfied, to be ineligible holders.

Powers of directors in relation to ineligible holders.

10. (1) Where a person is, or is deemed to be, an ineligible holder, the directors may specify—

- (a) shares which that person holds, is entitled to or controls in excess of the proportion permitted by clause 4; or

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- (b) shares in respect of which that person has refused or failed to satisfy the requirements of a notice under clause 8.

(2) Where the directors have, under subclause (1), specified any shares—

- (a) the voting rights in respect of those shares shall, if the directors so require, be suspended; and
- (b) those shares shall not be taken into account in calculating the shareholding qualification of a director.

(3) The directors may, by notice served on an ineligible holder, require the ineligible holder—

- (a) to dispose of shares in excess of the proportion permitted by clause 4 to a person who has satisfied the directors that he is not an ineligible holder; or
- (b) to deliver to the Company share certificates relating to the number of shares in excess of the proportion permitted by clause 4 for the purpose of disposing, in accordance with clause 11, of the shares to which those certificates relate, being the shares in excess of the proportion permitted by clause 4.

(4) Where, after the expiry of a period of 1 month from the date of service of a notice under subclause (3) on an ineligible holder (or such longer period, not exceeding 6 months, as the directors may allow), the ineligible holder has not complied with the requirements of the notice—

- (a) the directors may thereupon cancel such share certificates as they determine, being share certificates relating to the number of shares in excess of the proportion permitted by clause 4;

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- (b) the Company may, on the cancellation of those share certificates, issue new certificates for the shares to which the cancelled certificates related; and
- (c) the directors may, in accordance with clause 11, dispose of the shares in excess of the proportion permitted by clause 4.

Disposal of shares of ineligible holders.

11. Where—

- (a) share certificates are delivered to the Company pursuant to clause 10 (3) (b) for disposal by the Company; or
- (b) the directors are empowered to dispose of any shares pursuant to clause 10 (4),

the directors may—

- (c) cause the shares, or any number of those shares, to be offered for sale;
- (d) sell the shares so offered for sale;
- (e) appoint a person (who shall for the purposes of the provisions of this Schedule relating to the Company be deemed to be the authorised agent of the member for the purpose) to execute a transfer of the shares and to receive, account to the Company for, and give a good discharge in respect of, the purchase money; and
- (f) register the transfer relating to the sale.

Application of purchase money.

12. Purchase money received by the directors pursuant to a sale effected under clause 11 shall be applied in defraying all costs, expenses, commissions and fees in respect of, or incidental to, that sale and the balance, if any, may be dealt with as trust moneys and be paid into court pursuant to section 95 of the Trustee Act, 1925.

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Registration of name of transferee conclusive.

13. Where the name of a transferee is entered in the share register consequent upon the sale of any share made in the exercise, or purported exercise, of the powers conferred by clause 11, the validity of the exercise by the directors or the Company of the powers conferred on it or them in relation to that share by the provisions of this Schedule relating to the Company shall not be questioned by any person.

Service of notices.

14. A notice authorised or required by the provisions of this Schedule relating to the Company to be served on any person shall be—

- (a) in writing signed by 2 or more directors or some other person authorised by the directors in that behalf; and
 - (b) delivered to the firstmentioned person personally or sent by prepaid post addressed to him at his address appearing in the share register of the Company or in the transfer or transmission of shares submitted by him to the Company.
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