

TRUSTEE COMPANIES ACT AND ANOTHER ACT AMENDMENT ACT

No. 77 of 1989

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Queensland



ANNO TRICESIMO OCTAVO

ELIZABETHAE SECUNDAE REGINAE

No. 77 of 1989

An Act to amend the Trustee Companies Act 1968-1984 and
the Trusts Act 1973-1988 each in certain particulars
and for other purposes

[ASSENTED TO 24TH AUGUST, 1989]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title. This Act may be cited as the *Trustee Companies Act and Another Act Amendment Act 1989*.

2. Commencement. (1) This section and sections 1, 25 and 27 shall commence on the day on which this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1), the provisions of this Act or such or so much of them as may be specified in the Proclamation shall commence on a day or days to be appointed by Proclamation for the commencement of those provisions.

3. Principal Act and citation as amended. (1) In this Act the *Trustee Companies Act 1968-1984* is referred to as the Principal Act.

(2) The Principal Act as amended by this Act may be cited as the *Trustee Companies Act 1968-1989*.

4. Amendment of s. 4. Interpretation. Section 4 of the Principal Act is amended by—

(a) in subsection (1),

(i) inserting after the definition “administration with the will annexed” the following definitions:—

““bank” means—

(a) a bank as defined in section 5 of the Banking Act 1959 of the Commonwealth as amended and in force for the time being;

or

(b) a bank constituted under a law of a State or a Territory of the Commonwealth;

“bankers' books” means—

(a) books of a bank, including any documents used in the ordinary business of a bank;

(b) cheques, orders for the payment of money, bills of exchange and promissory notes in the possession or under the control of a bank;

and

(c) securities or documents of title to securities in the possession or under the control of a bank whether by way of pledge or otherwise;

“books” includes any register or other record of information and any accounts or accounting records, however compiled, recorded or stored, and also includes any document;

“corporation” means any body corporate, whether formed or incorporated within or outside the State, and includes any company, any foreign company and any recognized company but does not include—

(a) a body corporate that is incorporated within Australia or an external Territory of the Commonwealth and is a public authority or an instrumentality or agency of the Crown;

(b) a corporation sole;”;

(ii) inserting after the definition “estate” the following definitions:—

“ “financial institution” means—

(a) a bank;

(b) an insurance company;

(c) the trustees or managers of a superannuation fund established by a law of the Commonwealth or of another State or a Territory of the Commonwealth;

or

(d) a corporation, or a corporation included in a class of corporations declared by Order in Council to be a financial institution;

“foreign company” has the same meaning as in the *Companies (Queensland) Code*;

“insurance company” means a corporation that is registered under the Life Insurance Act 1945 of the Commonwealth as amended and in force for the time being;”;

(iii) inserting after the definition “judge” the following definition:—

“ “new trustee company” means a trustee company whose name is inserted in the First Part of the Second Schedule to this Act on or after 21 June 1983;”;

(iv) inserting after the definition “probate” the following definitions:—

“ “recognized company” has the same meaning as in the *Companies (Queensland) Code*;

“registrar” means the Registrar of Commercial Acts, Brisbane, appointed under the *Administration of Commercial Laws Act 1962-1981*: the term includes a Deputy Registrar of Commercial Acts, Brisbane, appointed under that Act;

“related corporation”, in relation to a corporation, means a corporation that is deemed to be related to the firstmentioned corporation by virtue of section 4A (5);

“unincorporated association” means any unincorporated joint venture, partnership, trust or any other form of unincorporated association;”.

5. **New s. 4A.** The Principal Act is amended by inserting after section 4 the following section:—

“4A. Subsidiaries, holding companies and related corporations.

(1) For the purposes of this Act, a corporation shall, subject to subsection (3), be deemed to be a subsidiary of another corporation if—

(a) that other corporation—

(i) controls the composition of the board of directors of the firstmentioned corporation;

(ii) is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the firstmentioned corporation;

or

(iii) holds more than one-half of the issued share capital of the firstmentioned corporation (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital);

or

(b) the firstmentioned corporation is a subsidiary of any corporation that is that other corporation’s subsidiary (including a corporation that is that other corporation’s subsidiary by another application or other applications of this paragraph).

(2) Without limiting by implication the circumstances in which the composition of a corporation’s board of directors is to be taken to be controlled by another corporation, the composition of a corporation’s board of directors shall be taken to be controlled by another corporation if that other corporation, by the exercise of some power exercisable whether with or without the consent or concurrence of any other person by that other corporation, can appoint or remove all or a majority of the directors, and for the purposes of this provision that other corporation shall be deemed to have power to make such an appointment if—

(a) a person cannot be appointed as a director without the exercise in his favour by that other corporation of such a power;

or

(b) a person’s appointment as a director follows necessarily from his being a director or other officer of that other corporation.

(3) In determining whether one corporation is a subsidiary of another corporation—

(a) any shares held or power exercisable by that other corporation in a fiduciary capacity shall be treated as not held or exercisable by it;

(b) subject to paragraphs (c) and (d), any shares held or power exercisable—

(i) by any person as a nominee for that other corporation (except where that other corporation is concerned only in a fiduciary capacity);

or

(ii) by, or by a nominee for, a subsidiary of that other corporation, not being a subsidiary that is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other corporation;

(c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the firstmentioned corporation, or of a trust deed for securing any issue of such debentures, shall be disregarded;

and

(d) any shares held or power exercisable by, or by a nominee for, that other corporation or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by that other corporation if the ordinary business of that other corporation or its subsidiary, as the case may be, includes the lending of money and the shares are held or the power is exercisable only by way of security given for the purposes of a transaction entered into in the ordinary course of business in connexion with the lending of money, not being a transaction entered into with a person associated with the other corporation or its subsidiary.

(4) A reference in subsection (5) to the holding company of another corporation shall be read as a reference to a corporation of which that other corporation is a subsidiary.

(5) Where a corporation—

(a) is the holding company of another corporation;

(b) is a subsidiary of another corporation;

or

(c) is a subsidiary of the holding company of another corporation,

that firstmentioned corporation and that other corporation shall, for the purposes of this Act, be deemed to be related to each other.

(6) For the purposes of this Act, a corporation is the ultimate holding company of another corporation if—

- (a) the other corporation is a subsidiary of the corporation;
and
- (b) the firstmentioned corporation is not itself a subsidiary of any corporation.”.

6. Amendment of s. 9. Person entitled to probate may join with trustee company in applying for letters of administration to the trustee company. Section 9 (3) of the Principal Act is amended by omitting the words “a Registrar” and substituting the words “the Registrar of the Supreme Court”.

7. Amendment of s. 12. Power of trustee companies to elect to administer small estates without grant of administration. Section 12 (8) of the Principal Act is amended by omitting the words “Under Secretary Department of Justice” and substituting the words “the registrar”.

8. Amendment of s. 13. Elections in respect of unadministered balance of an estate. Section 13 (5) of the Principal Act is amended by omitting the words “Under Secretary, Department of Justice” and substituting the words “the registrar”.

9. Amendment of s. 36. Common funds. Section 36 of the Principal Act is amended by—

(a) omitting subsection (2) and substituting the following subsection:—

“(2) (a) A Common Fund established in the books of a trustee company after the commencement of the *Trustee Companies Act and Another Act Amendment Act 1989* shall be established only in accordance with this subsection.

(b) The Board of Directors of the trustee company shall pass a minute establishing a Common Fund, which minute shall contain details of—

- (i) any limitation on the amount of money that will form the Common Fund;
- (ii) the class or classes of investments in which the Common Fund may be invested;
- (iii) the procedure to be followed for valuing the investments;
- (iv) the type of expert advice (if any) that will be obtained in relation to the investments;
- (v) the duration of the Common Fund (if possible);
- (vi) the minimum amount (if any) that may be invested in the Common Fund on the separate account of

each estate, trust, property or person investing in the Common Fund;

- (vii) fees that are to be paid out of the Common Fund and by each estate, trust, property or person investing in the Common Fund;
- (viii) the policy to be adopted with respect to withdrawals from the Common Fund;
- (ix) procedures with respect to an audit of the Common Fund.

A copy of the minute shall be forwarded to the registrar within 14 days of the passing of the minute.

(c) A copy of the minute referred to in paragraph (b) shall be made available to any beneficiary of the estate, trust or property or person to which or to whom moneys invested in a Common Fund belong who applies for the same.

(d) After the commencement of the *Trustee Companies Act and Another Act Amendment Act 1989* a trustee company that establishes a Common Fund other than in accordance with the provisions of this subsection commits an offence against this Act.

Penalty: 150 penalty units.”;

(b) in subsection (4) (b), omitting the words “or savings bank duly authorized under a law of the Commonwealth relating to banking to carry on business in Queensland”;

(c) in subsection (6), inserting after the word “functions” the words “under this Act”;

(d) omitting subsection (10) and substituting the following subsection:—

“(10) The trustee company shall determine the value of the investments in each Common Fund as at the first business day of each month and, if the trustee company thinks fit, as at such other times as may be appropriate according to the nature of the particular fund.

In this subsection “business day” means a day other than a Saturday, Sunday or public holiday.”;

(e) in subsection (11), omitting the words “first day of the month in question” and substituting the words “day of the valuation”;

(f) omitting subsection (12) and substituting the following subsection:—

“(12) Investments in and withdrawals from a Common Fund shall be effected on the basis of the valuation last made pursuant to subsection (10) of this section.”;

(g) adding at the end of the section the following subsection:—

“(14) It is hereby declared that moneys held by a trustee company in a Common Fund are deemed to be held on trust

by the trustee company for those persons on whose behalf the moneys have been deposited with it.”.

10. New s. 36A. Cash Common Fund. The Principal Act is amended by inserting after section 36 the following section:—

“**36A. Cash Common Fund.** (1) The provisions of section 36 shall extend to the establishment of a Common Fund which provides for the payment of interest determined from day to day but if, and only if, the investment of that Fund is restricted to the classes of investment referred to in subsection (2).

(2) Subject to subsection (3), a trustee company may invest moneys in a Common Fund of the kind referred to in subsection (1)—

- (a) in any of the parliamentary stocks, public funds or government securities of the United Kingdom, of the Commonwealth, of any of the States or Territories of the Commonwealth, or of New Zealand;
- (b) in any one or more of the following, namely:—
 - (i) on any interest bearing deposit in any bank;
 - (ii) on the security of a certificate of deposit issued by any bank;
 - (iii) on deposit in any savings bank;
 - and
 - (iv) on the security of a commercial bill of exchange accepted by a bank;
- (c) with any dealer in the short term money market, approved by the Reserve Bank of Australia, as an authorized dealer, who has established lines of credit with that bank as a lender of last resort;
- (d) in any security in respect of which repayment of the amount secured and payment of interest thereon is guaranteed by the Parliament of the United Kingdom or the Commonwealth or any State or Territory of the Commonwealth or of New Zealand;
- (e) in the purchase of shares in, or the deposit of moneys with, a permanent building society that is approved under section 227 of the *Building Societies Act 1985-1987* for the purposes of section 21 (1) (k) of the *Trusts Act 1973-1988*,

and may also from time to time vary any such investment.

(3) Where a maturity date for an investment is not specified in subsection (2), the investment shall have a maturity date of not more than 2 years.”.

11. Amendment of s. 48. An officer may attend on behalf of a trustee company, and be personally responsible. Section 48 (2) of the

Principal Act is amended by omitting the words “to the Court, and shall” and substituting the following words:—

“—

- (c) to the Court;
and
- (d) to any trustee, beneficiary, executor, legatee, administrator, next-of-kin, creditor or infant entitled to or interested in any estate that is for the time being under the administration or management of the trustee company,
and shall”.

12. Amendment of s. 50. Filing and passing accounts by trustee company. Section 50 (2) of the Principal Act is amended by omitting the word “registrar” and substituting the words “Registrar of the Supreme Court”.

12A. Amendment of s. 51. Court may order account. Section 51 (1) of the Principal Act is amended by omitting the words “*cestui que trust*” and substituting the word “beneficiary”.

13. Amendment of s. 54. Trustee company to have paid up capital of not less than two hundred thousand dollars. Section 54 of the Principal Act is amended by—

(a) omitting the note appearing in and at the beginning of the section and substituting the note “Quantum of paid up capital of trustee companies.”;

(b) omitting the words “two hundred thousand dollars” and substituting the following words:—

“—

- (a) if the trustee company is a new trustee company,
\$1 500 000;
or
- (b) if the trustee company is not a new trustee company,
\$200 000”.

14. Amendment of s. 56. Investment of Capital in name of Treasurer. Section 56 of the Principal Act is amended by—

(a) in subsection (1), omitting the words “the sum of one hundred thousand dollars of the paid up capital of each trustee company shall be invested” and substituting the words “each trustee company shall invest part of its paid up capital (to such extent as is specified in subsection (1A) of this section)”;

(b) inserting after subsection (1) the following subsection:—

“(1A) The part of its paid up capital that each trustee company is required by subsection (1) of this section to invest is such

sum as is directed by Order in Council from time to time in respect of trustee companies generally or a particular trustee company.”;

(c) in subsection (2), omitting the words “subsection (1) of this section not less than forty thousand dollars” and substituting the words “subsection (1A) of this section not less than 40 percent (40%)”.

15. Amendment of s. 57. No bond required in certain cases. Section 57 (1) of the Principal Act is amended by omitting the words “While the sum of one hundred thousand dollars remains invested by a trustee company as required by section 56 of this Act” and substituting the words “While the sum of money that a trustee company is required by section 56 of this Act to invest remains so invested”.

16. Amendment of s. 58. Court may order winding-up. Section 58 of the Principal Act is amended by omitting the words “*cestui que trust*” and substituting the word “beneficiary”.

17. Amendment of s. 59. Trusts of sum of one hundred thousand dollars. Section 59 of the Principal Act is amended by—

(a) omitting the note appearing in and at the beginning of the section and substituting the note “Trusts of s. 56 moneys.”;

(b) in subsection (1), omitting the words “The sum of one hundred thousand dollars, to be invested as provided by section 56 of this Act,” and substituting the words “The sum of moneys that a trustee company is required by section 56 of this Act to invest”;

(c) in subsection (2), omitting the words “of one hundred thousand dollars”.

18. Amendment of s. 64. Separate accounts to be kept. Section 64 of the Principal Act is amended by inserting at the end thereof the following subsection:—

“(3) The trustee company shall furnish to each beneficiary of the estate entitled thereto—

(a) at least once each year;

and

(b) on request by the beneficiary but not more than once in any 3 monthly period,

an extract from the account referred to in subsection (2) setting out all transactions that have been entered in the account since the last extract was furnished to the beneficiary.

There shall be included in or attached to the extract of the account a copy of sections 51 and 64A.”.

19. New s. 64A. The Principal Act is amended by inserting after section 64 the following section:—

“64A. Trustee company to give information to Attorney-General. (1) A trustee company shall furnish to the Attorney-General such information in writing or statements in respect of

its business as the Attorney-General directs within such time as is specified by the Attorney-General.

Penalty: 20 penalty units.

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

- (a) a review of the operations of a trustee company;
- (b) an audit of the books and accounts of a trustee company (including the books and accounts of any of the estates managed or administered by the trustee company);

or

- (c) both the review and audit.

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

- (a) deliver to any 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 by that person the books 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 to enable that person to carry out that review or audit.

Penalty: 20 penalty units.

(4) Any bankers' books of a trustee company shall be open for inspection without charge by a person authorized by the Attorney-General for the purposes of this section.

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

20. Amendment of s. 65. Declaration as to state of trustee company's affairs to be made yearly. Section 65 (2) of the Principal Act is amended by omitting the words "*cestui que trust*" and substituting the word "beneficiary".

21. Amendment of s. 66. Balance sheet. Section 66 of the Principal Act is amended by—

(a) omitting the expression "Attorney-General" where firstly occurring and substituting the word "registrar";

(b) omitting all words from and including the words "fourteen days" where secondly occurring to and including the words "next

session” and substituting the words “14 sitting days from the receipt thereof by the registrar”.

22. **New ss. 66A-66G.** The Principal Act is amended by inserting after section 66 the following sections:—

“**66A. Borrowing by trustee company.** (1) Notwithstanding anything in the *Companies (Queensland) Code* or in the memorandum or articles of association of a trustee company, a trustee company shall not—

(a) accept a deposit of money with, or a loan of money to, the trustee company from any estate under 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 in its own behalf from any other person.

(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 of the trustee company and the prior approval of the Attorney-General to the borrowing of the money by way of the loan is obtained;

and

(b) the money is to be used by the trustee company in the exercise and discharge of its powers, authorities, duties and functions under this Act.

This subsection shall not be construed so as to prohibit a trustee company from borrowing money for the provision of premises and facilities for the purpose of the exercise and discharge of its powers, authorities, duties and functions under this Act.

(3) Nothing in this section shall affect or limit the investment of moneys of any estate by a trustee company in a Common Fund established under this Act.

66B. Restriction on giving guarantees. A trustee company shall not give a guarantee except—

(a) a guarantee given on behalf of any estate that is for the time being under the administration or management of the trustee company;

or

(b) in respect of the performance by a subsidiary corporation of the trustee company of the powers, authorities, duties and functions under this Act of the trustee company on behalf of the estate.

66C. Loans, etc., from estates to related corporations prohibited. A deposit of money with or a loan of money to a related corporation (other than a bank) of a trustee company shall not be made from an estate under the administration or management of the trustee company unless—

- (a) the will or trust instrument otherwise specifically so provides;
- or
- (b) adequate disclosure has been made to the beneficiary entitled to or interested in the estate of the nature of the relationship between the trustee company and the related corporation prior to accepting the deposit or loan and the beneficiary consents to the deposit or loan.

Penalty: 50 penalty units.

66D. Investments may be retained. Where a person whose estate is being administered or managed by a trustee company has invested moneys in a related corporation of the trustee company the trustee company may—

- (a) continue the investment;
- (b) re-invest any dividends derived from the investment in the investment;
- and
- (c) accept any bonus or take up any rights issue arising out of the investment.

66E. Declaration by trustee company. (1) The managing director or manager, the chief financial officer and 2 other directors of each trustee company, during the prescribed months in each year during which the company exercises and discharges its powers, authorities, duties and functions under this Act, shall make a statutory declaration in, or to the effect of, the Fourth Schedule to this Act.

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

- (a) within 7 days after the making of the declaration shall be—
 - (i) forwarded to the registrar;
 - and
 - (ii) displayed in a conspicuous place in the registered office or principal place of business of the trustee company in Queensland and in each branch office or place in Queensland where the business of the trustee company is carried on;
- and
- (b) given to any member or creditor of the trustee company or any beneficiary entitled to or interested in any estate that is for the time being under the

administration or management of the trustee company who applies for the same.

(3) If a trustee company fails to comply with the provisions of this section, the trustee company shall be liable to a penalty of one penalty unit for each day during which the default continues and each director or officer of the trustee company who knowingly and wilfully authorizes or permits the default shall be liable to a like penalty.

(4) A declaration under this section shall not be required to show—

(a) liabilities incurred by the trustee company whilst acting as trustee or in any 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.

66F. Insurance. (1) (a) Each trustee company shall effect and continue in force at all times insurance policies in such amounts as the trustee company thinks fit for the purpose of indemnifying itself against claims that may be brought against it in respect of—

(i) the fraudulent misappropriation by any officer of the trustee company or any employee or agent of the trustee company of property held by it as trustee;

and

(ii) any negligent act or omission on the part of the trustee company in the exercise and discharge of its powers, authorities, duties and functions under this Act.

(b) A trustee company whose name, at the date of commencement of the *Trustee Companies Act and Another Act Amendment Act 1989*, is mentioned in the First Part of the Second Schedule to this Act—

(i) if it is not the holder of insurance policies referred to in paragraph (a) shall comply with paragraph (a) within one month after that date of commencement;

or

(ii) if it is such a holder, shall forward to the registrar copies of the latest certificates of renewal (certified

by one of the persons specified in section 66 E(1)) of those policies within 14 days after that date of commencement.

(c) A trustee company whose name is inserted in the First Part of the Second Schedule to this Act after the date of commencement of the *Trustee Companies Act and Another Act Amendment Act 1989* shall comply with paragraph (a) within one month after that date of insertion.

(d) A trustee company referred to in paragraph (b) (i) or (c), shall furnish to the registrar certified copies of the acceptance certificates relating to the insurance policies in paragraph (a) (certified by one of the persons specified in section 66E (1)) within 14 days after the acceptances.

(2) Every year each trustee company, in respect of insurance policies held by it that conform to the insurance policies specified in subsection (1), shall forward to the registrar copies of the certificates of renewal (certified by one of the persons specified in section 66E (1)) of those policies within 14 days after the renewals.

(3) Where the Governor in Council is not satisfied with the amounts of insurance policies effected by a trustee company under subsection (1) (a) the Minister may give a direction to the trustee company to effect insurance policies in such amounts as are specified in the direction.

66G. Trustee company's liability in unincorporated association limited. A trustee company shall not become a member of, or participate in, an unincorporated association unless—

- (a) it is necessary to do so for any purpose of or relating to the exercise and discharge of its powers, authorities, duties and functions under this Act;
- and
- (b) the liability of the trustee company to contribute towards the liabilities of the unincorporated association is limited to the extent of the assets of the trust or estate on behalf of which the trustee company is a member of, or is participating in, the unincorporated association.

This section shall not be construed so as to prohibit a trustee company from being or becoming a member of any association the objects of which are—

- (a) to promote the interests of and co-operation among trustee companies;
- (b) to formulate and provide for the adoption and observance by trustee companies of conditions, standards, practices, procedures and guidelines governing the carrying on of their businesses as trustee companies;

or

- (c) to advocate and promote such legislation, practices and reforms as may be conducive to the objects of the association.”.

23. Repeal of and new s. 67. Recovery of penalties. The Principal Act is amended by repealing section 67 and substituting the following section:—

“**67. Penalty provisions.** (1) A person who contravenes or fails to comply with a provision of this Act commits an offence against this Act and, in the absence of another penalty expressly provided for in this Act, is liable to a penalty of 10 penalty units.

(2) Proceedings with respect to an offence against this Act shall be taken in a summary manner under the *Justices Act 1886-1988*.”.

24. Repeal of s. 72 and new ss. 72-74. The Principal Act is amended by repealing section 72 and substituting the following sections:—

“**72. Power to amend Schedules.** (1) The Governor in Council by Order in Council from time to time, subject to such conditions as he thinks fit, may amend the Second Schedule to this Act—

(a) in the First Part thereof by—

- (i) inserting the name of a company that is to be a trustee company;
- (ii) substituting or varying the name of a trustee company;

or

(iii) omitting the name of a company that is to be a trustee company no longer;

(b) in the Second Part thereof—

- (i) by inserting with an appropriate heading such provisions as to the capital or the maximum number of shares that may be held by shareholders in and the liability of shareholders of, and otherwise in relation to, a company that is to be a trustee company as the Governor in Council thinks fit having regard to the nature and effect of the restrictions and limitations contained in the respective provisions in relation to trustee companies set out in the Second Schedule;
- (ii) by varying or substituting, as the Governor in Council thinks fit, provisions for the time being contained therein in relation to a trustee company;
- or
- (iii) by omitting therefrom provisions in relation to a company that is to be a trustee company no longer.

(2) The Governor in Council by Order in Council from time to time as he thinks fit may amend the Third or Fourth Schedule to this Act—

- (a) by omitting the form of declaration set forth in that Schedule and the heading to that Schedule;
- or
- (b) by varying or substituting the contents of that form of declaration.

(3) Every Order in Council made under this section—

- (a) shall be laid before the Legislative Assembly within 14 sitting days after publication of the order in the Gazette;
- and

- (b) subject to its being sooner disallowed by the Legislative Assembly, shall take effect from the date of such publication or upon such later date as is specified in the order for its commencement.

(4) If the Legislative Assembly passes a resolution within 14 sitting days after any Order in Council made under this section has been laid before it disallowing the order or any part of it the Order in Council or, as the case may be, part shall thereupon cease to have effect, but without prejudice to the validity of anything done or omitted under, in accordance with or for the purposes of the Order in Council or, as the case may be, part prior to such disallowance.

The operation of this subsection shall not prejudice the making of a further Order in Council.

(5) An Order in Council may be modified by the Governor in Council by a further Order in Council in accordance with any resolution passed by the Legislative Assembly within the period of 14 sitting days referred to in subsection (4).

(6) Where a Schedule to this Act has been amended pursuant to this section the provisions of the Schedule as so amended shall apply as from the date the amendment takes effect to all trustee companies or, as the case may be, to a particular trustee company as if the amendment had been made by an Act.

73. Provisions relating to ex trustee companies. (1) On the omission from the Second Schedule to this Act of the name of a company that is to be a trustee company no longer—

- (a) the company shall continue to have such legal capacities and powers as are conferred on and available to trustee companies under this Act in respect of every estate then under the administration or management of the company;
- and
- (b) the company shall continue to be subject to and obliged to comply with all the duties and obligations

imposed on trustee companies under this Act in respect of every estate then under the administration or management of the company and the company and every officer of the company shall continue to be responsible for his actions and omissions as if the name of the company had not been omitted from the Second Schedule to this Act.

(2) Subsection (1) is in addition to and in no way derogates from other powers and duties affecting the company and the estates under its administration or management at the time the name of the company is omitted from the Second Schedule to this Act.

(3) Without prejudice to other powers that may be available, the Court may, on the application of the Attorney-General—

(a) revoke the appointment of a company the name of which has been omitted from the Second Schedule to this Act as executor, administrator, trustee, receiver, committee, guardian, liquidator, official liquidator or attorney held by the company and appoint a trustee company or The Public Trustee of Queensland instead;

(b) make such ancillary orders as the Court considers necessary or desirable to facilitate the administration of any estate previously subject to the administration or management of the company.

74. Trustee companies that are subsidiary corporations to be guaranteed. The name of a company that is a subsidiary corporation of another corporation shall not be inserted in the Second Schedule to this Act unless the liability to be incurred by the company in the performance of its trustee functions in respect of estates is guaranteed to such amount as is determined from time to time by the Governor in Council.”.

25. Amendment of Second Schedule. (1) The Second Part of the Second Schedule to the Principal Act is amended by in the provisions appearing under the heading “The Union-Fidelity Trustee Company of Australia Limited” omitting provision (a) and substituting the following provision:—

“(a) No member shall hold more than one percent (1%) of the capital of the Company from time to time on issue or such higher percentage (not exceeding 12 percent (12%)) thereof as may be permitted by the Articles of Association of the Company.”.

(2) The amendment to the Principal Act made by subsection (1) shall be deemed to have commenced on 20 November, 1984, and shall have retrospective effect accordingly.

26. New Fourth Schedule. The Principal Act is amended by inserting at the end of the Third Schedule to that Act the following Schedule:—

“FOURTH SCHEDULE [s. 66E]

FINANCIAL DECLARATION BY A TRUSTEE COMPANY

..... (“the company”)
(Name of trustee company)

We,
(name of manager/managing director)

.....
(name of chief financial officer)

.....
(name of director)

.....
(name of director)

do solemnly and sincerely declare:

That on the (Note 11)
(hereinafter referred to as “balance date”):

The authorized capital of the company was \$ divided into shares of \$ each.

The issued capital was made up of shares of \$ each paid to \$ per share.

The total amount of paid up capital was \$

The uncalled capital being \$ per share and amounting to \$ was made up as follows:

\$ per share amounting to \$ which may be called up at the discretion of the company.

\$ per share amounting to \$ which can only be called up on and for the purpose of the winding up of the company (reserve liability).

Calls to the amount of \$ per share amounting to \$ had been made but remained unpaid and the shares had not been forfeited.

The net tangible assets of the company (i.e. the amount calculated by deducting total liabilities from total tangible assets) amounted to \$

That the following loans were obtained from financial institutions other than banks and insurance companies during the period of 3 months preceding the balance date:

Name of institution	Amount of loan \$'000	Term of loan and maturity date	Interest rate	Security (if applicable)

That the following contingent liabilities existed at balance date:
 (Show the amounts where they can be quantified)

	\$'000
Guarantees of liabilities of related parties	
Guarantees of liabilities of other persons	
Other contingent liabilities (note 2).....	
TOTAL	\$

That the guarantees of liabilities of related parties (note 4) stated above were made up as follows:

Name of Related Party	Amount \$'000
TOTAL	\$

That the nature and amount of credit and standby facilities available to the company as at balance date, a summary of the restrictions affecting those facilities and the duration of each of those facilities were as described below:

Nature of facility	Summary of restrictions	Duration	Amount of facility available to the company \$'000	Amount of facility unused at balance date \$'000
		TOTAL	\$	\$

That the balance sheet as at(note 11) and the profit and loss account for the 3 months ended on that date were as follows:—

BALANCE SHEET AS AT

\$'000

CURRENT ASSETS

Cash at bank and on hand

Bills receivable:

bank accepted or endorsed (note 3)

other (note 3)

Investments in and loans to related parties:

investments (notes 3 and 5)

loans:

secured (notes 1 and 3)

unsecured (note 3)

Other loans and deposits (note 10):

secured (notes 1 and 3)

unsecured (note 3)

Government and semi-Government securities (note 6)

Shares, units, options, debentures and convertible notes:

listed on a prescribed stock exchange—market value's
\$ (notes 3, 5 and 7)

not listed on a prescribed stock exchange (notes 3 and 7)

Interests in partnerships, trusts and unincorporated ventures (notes 3 and 8)

Lease receivables (note 3)

	\$'000
Property held for resale (note 3)	
Other current assets (notes 2 and 3)	

TOTAL CURRENT ASSETS

NON-CURRENT ASSETS

	\$'000
Bills receivable:	
bank accepted or endorsed (note 6)	
other (note 6)	
Investments in and loans to related parties:	
investments (notes 5 and 6)	
loans:	
secured (notes 1 and 6)	
unsecured (note 6)	
Other loans and deposits (note 10):	
secured (notes 1 and 6)	
unsecured (note 6)	
Government and semi-Government securities (note 6)	
Shares, units, options, debentures and convertible notes:	
listed on a prescribed stock exchange—market value's	
\$ (notes 5, 6 and 7)	
not listed on a prescribed stock exchange (notes 5 and	
6)	
Interests in partnerships, trusts and unincorporated joint	
ventures (notes 6 and 8)	
Lease receivables (note 6)	
Property held for resale (note 6)	
Property, plant and equipment (note 6)	
Intangible assets (notes 2 and 6)	
Other non-current assets (notes 2 and 6)	

TOTAL NON-CURRENT ASSETS

TOTAL ASSETS

CURRENT LIABILITIES

\$'000

Bank overdrafts and bank loans:	
secured (note 1)	
unsecured	
Loans from other financial institutions:	
secured (note 1)	
unsecured	
Bills payable and liabilities under promissory notes	
Subordinated loans from related parties	
Clients' balances and deposits:	
secured (notes 1 and 2)	
unsecured	
Trade creditors and accrued expenses	
Lease payables	
Provisions:	
Income tax	
Dividends	
Other	
Deferred income (notes 2 and 9)	
Other amounts payable:	
secured (notes 1 and 2)	
unsecured (note 2)	

TOTAL CURRENT LIABILITIES

NON-CURRENT LIABILITIES

\$'000

Bank overdrafts and bank loans:	
secured (note 1)	
unsecured	
Loans from other financial institutions:	
secured (note 1)	
unsecured	
Bills payable and liabilities under promissory notes	
Subordinated loans from related parties	
Clients' balances and deposits:	
secured (notes 1 and 2)	

	\$'000
unsecured	
Lease payables	
Provisions:	
Income tax	
Other	
Deferred income (notes 2 and 9)	
Other amounts payable:	
secured (notes 1 and 2)	
unsecured (note 1)	

TOTAL NON-CURRENT LIABILITIES	

TOTAL LIABILITIES	

NET ASSETS/SHAREHOLDERS' FUNDS	
(Total assets less total liabilities)	
LESS: INTANGIBLE ASSETS	

NET TANGIBLE ASSETS	

PROFIT AND LOSS ACCOUNT FOR THE 3 MONTH	
PERIOD ENDED _____(note 11)	
Operating profit (loss) (note 13)	
Income tax	

Operating profit (loss) after income tax	
Profit (loss) on extraordinary items after income tax	

Net profit (loss)	

That in our opinion, the balance sheet and the profit and loss

account of the company have been drawn up so as to give a true and fair view of the state of affairs of the company as at (note 11) and the profit or loss of the company for the period ended on that date.

That the classification of assets and liabilities and the valuation of assets in the balance sheet are based upon the company's intentions at balance date as to the use or disposal of those assets and the repayment of liabilities.

That, in our opinion, at the date of this declaration, there are reasonable grounds to believe that the company will be able to pay its debts as and when they fall due.

That during the period of 3 months preceding the balance date:

There had been the following significant changes in the nature of the principal activities of the company (note 12):

.....
.....
.....
.....
.....

The following items, transactions or events of a material and unusual nature affected the results of the company's operations (note 12):

.....
.....
.....
.....
.....

The provisions of the *Trustee Companies Act 1968* (as amended and in force for the time being) in respect of investment of moneys held by the company on trust had been complied with. The company had complied with all other requirements of the *Trustee Companies Act 1968* (as amended and in force for the time being).

2. Non-current assets means assets which would in the normal course of business be consumed or converted into cash after 12 months of balance date.

3. Current liabilities means liabilities which in the normal course of business would be due and payable within 12 months of balance date.

4. Non-current liabilities means liabilities which would in the normal course of business be due and payable after 12 months of balance date.

NOTES

1. Indicate the nature and extent of security by broad categories.

2. Provide details of major components if the total amount is material.

3. State at lower of the cost or net realizable value.

4. "Related parties" includes—

(a) a related corporation;

(b) (i) a director;
(ii) an executive officer;

or

(iii) a secretary,

of the reporting company or of a related corporation, their relatives and companies controlled by them, and any unincorporated association (including trading trusts) where a material beneficial interest is held by those parties or any combination of those parties;

(c) any party which can significantly influence the management or operating policies of the reporting company;

(d) any party whose management or operating policies are able to be significantly influenced by the reporting company or a director, executive officer or secretary of the reporting company;

and

(e) any party whose management or operating policies are able to be significantly influenced by a third party which is in a position to exercise a similar influence on the reporting party.

"Unincorporated associations" means unincorporated joint ventures, partnerships, trusts or any other forms of unincorporated associations.

5. Indicate types of investments by broad categories.

6. State at cost or valuation less amounts written off or provided for depreciation or permanent diminution in value.

7. "Prescribed stock exchange" means a stock exchange prescribed by regulation 16 of the Companies (Queensland) Regulations.

8. Indicate the nature and extent of the interests by broad categories.

9. Any unearned income shall not be included in any estimate of the gross amount of any class of debts unless the amount of unearned income so included is shown as a deduction from the estimate of the gross amount of the class of debts concerned.

10. Includes mortgages.

11. Show the date of the last day of the 3 month period.

12. If no change, insert "nil".

13. To be calculated in accordance with the Companies (Queensland) Code."

27. Validation of Order in Council. The Order in Council made on 6 June 1985, and published in the Gazette on 8 June, 1985, at page 1083 purporting to amend the Second Part of the Second Schedule to the Principal Act by under the heading "Perpetual Trustees Australia Limited" omitting provision (a) and substituting a new provision (a) therefor is hereby validated and affirmed on and from 6 June 1985, and shall have retrospective effect accordingly.

28. Amendment of Trusts Act. (1) Section 21 (1) of the *Trusts Act 1973-1988* is amended by—

(a) omitting paragraph (j);

(b) inserting at the end of paragraph (k) the following expression and paragraph:—

“;

(ka) in a common fund established by a trustee corporation under the *Trustee Companies Act 1968-1989* the investment of which is restricted to a class or classes of investment authorized by the foregoing provisions of this subsection”.

(2) The *Trusts Act 1973-1988*, as amended by this section, may be cited as the *Trusts Act 1973-1989*.