

Trustee Companies (Commonwealth Regulation) Amendment Bill 2010

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended in Committee)

**Trustee Companies (Commonwealth
Regulation) Amendment Bill 2010**

A Bill for

An Act —

- **to amend the *Trustee Companies Act 1987* to facilitate the regulation of trustee companies by the Commonwealth; and**
 - **as a consequence, to make certain transitional arrangements and to amend the *Trustees Act 1962*,**
- and for related purposes.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

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1. Short title

This is the *Trustee Companies (Commonwealth Regulation) Amendment Act 2010*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Part 2 — *Trustee Companies Act 1987* amended

3. Act amended

This Part amends the *Trustee Companies Act 1987*.

4. Section 3 amended

(1) In section 3(1) delete the definitions of:

accounting records

books

Estate Common Trust Fund

Investment Common Trust Fund

publish

published

registered company auditor

related body corporate

trustee company

voting share

(2) In section 3(1) insert in alphabetical order:

trustee company means a licensed trustee company as defined in the Corporations Act section 601RAA;

(3) Delete section 3(2) to (8).

5. Section 4 deleted

Delete section 4.

6. Parts III and IV deleted

Delete Parts III and IV.

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1 **7. Heading to Part V deleted**

2 Delete the heading to Part V.

3 **8. Sections 24 to 26 deleted**

4 Delete sections 24 to 26.

5 **9. Sections 28 to 34 deleted**

6 Delete sections 28 to 34.

7 **10. Part VI deleted**

8 Delete Part VI.

9 **11. Part III inserted**

10 Before Part VII insert:
11

12 **Part III — Transfer of estate assets**
13 **and liabilities**

14 **Division 1 — Preliminary**

15 **28. Terms used in Corporations Act have the same**
16 **meaning in this Part**

17 If a term is given a meaning in the Corporations Act, it
18 has the same meaning in this Part unless the contrary
19 intention appears in this Part.

20 **Division 2 — Compulsory transfers**

21 **29. Compulsory transfers**

22 (1) The purpose of this section is to facilitate compulsory
23 transfers of estate assets and liabilities under the
24 Corporations Act Part 5D.6.

- 1 (2) This section applies if —
- 2 (a) ASIC cancels the licence of a trustee company
3 (the *transferring company*) and makes a
4 determination under the Corporations Act
5 section 601WBA that there is to be a transfer of
6 estate assets and liabilities from the transferring
7 company to another licensed trustee company
8 (the *receiving company*); and
- 9 (b) ASIC issues a certificate of transfer under the
10 Corporations Act section 601WBG for the
11 transfer; and
- 12 (c) either or both of the transferring company or
13 the receiving company are registered in
14 Western Australia.
- 15 (3) When the certificate of transfer comes into force, the
16 receiving company is taken to be the successor in law
17 of the transferring company, to the extent of the
18 transfer.
- 19 (4) In particular —
- 20 (a) if the transfer is a total transfer — all the assets
21 and liabilities of the transferring company
22 become respectively the assets and liabilities of
23 the receiving company without any transfer,
24 conveyance or assignment; and
- 25 (b) if the transfer is a partial transfer — all the
26 assets and liabilities of the transferring
27 company that are included in the list (referred
28 to in the Corporations Act
29 section 601WBG(2)(c)) included in, or attached
30 to, the certificate of transfer become
31 respectively assets and liabilities of the
32 receiving company without any transfer,
33 conveyance or assignment; and

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- 1 (c) to the extent of the transfer — the duties,
2 obligations, immunities, rights and privileges
3 applying to the transferring company apply to
4 the receiving company.
- 5 (5) If the certificate of transfer includes provisions of a
6 kind referred to in the Corporations Act
7 section 601WBG(3) —
- 8 (a) specifying that particular things are to happen
9 or are taken to be the case, those things are
10 taken to happen, or to be the case, in
11 accordance with those provisions; or
- 12 (b) specifying a mechanism for determining things
13 that are to happen or are taken to be the case,
14 things determined in accordance with that
15 mechanism are taken to happen, or to be the
16 case, as determined in accordance with that
17 mechanism.

18 **30. Certificates evidencing operation of Division**

- 19 (1) An authorised ASIC officer may, by a certificate in
20 writing signed by the officer, certify that a specific
21 asset or liability has become an asset or liability of the
22 receiving company under this Division.
- 23 (2) For all purposes and in all proceedings, a certificate
24 purporting to be issued under subsection (1) is
25 evidence of the matters certified.
- 26 (3) ASIC is empowered to authorise, in writing, a person
27 who is a member of ASIC, or of its staff, to issue
28 certificates under this section.

29 **31. Registration or record of transfer**

30 The Registrar of Titles, the Registrar of Deeds and
31 Transfers and any other person or authority required or
32 authorised under a law of the State to register or record

1 transactions affecting assets or liabilities, or documents
2 relating to such transactions, must, on application
3 under this section accompanied by a certificate issued
4 under section 30, register or record in an appropriate
5 manner the transfer or transfers to which the certificate
6 relates.

7 **32. Exemption from State tax**

- 8 (1) In this section —
9 *State tax* includes duty chargeable under the *Duties*
10 *Act 2008* and any other tax, duty, fee, levy or charge
11 under a law of the State.
- 12 (2) State tax is not payable in respect of a compulsory
13 transfer of estate assets or liabilities facilitated under
14 this Division.

15 **Division 3 — Voluntary transfers**

16 **33. Voluntary transfers**

- 17 (1) The Governor may make regulations to facilitate the
18 voluntary transfer of estate assets and liabilities from
19 one trustee company (the *transferring company*) to
20 another trustee company (the *receiving company*) if
21 ASIC has made a determination under the
22 Corporations Act allowing the transfer.
- 23 (2) Without limiting the generality of subsection (1), the
24 regulations may —
- 25 (a) give effect to the transfer of estate assets and
26 liabilities from the transferring company to the
27 receiving company; and
- 28 (b) provide that the receiving company is to be
29 taken to be the successor in law in relation to
30 estate assets and liabilities of the transferring
31 company, to the extent of the transfer; and

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- 1 (c) provide for the liquidation or dissolution of the
2 transferring company; and
- 3 (d) provide for the identification of estate assets or
4 liabilities of the transferring company; and
- 5 (e) provide for the transfer of estate assets and
6 liabilities of the transferring company; and
- 7 (f) provide for the registration or recording of the
8 transfer (with or without formal application) by
9 the Registrar of Titles or any other person or
10 authority; and
- 11 (g) provide for evidence of matters relating to the
12 transfer; and
- 13 (h) provide for relief from the consequences of
14 anything done or allowed under regulations
15 made under this section; and
- 16 (i) provide for payment, or exemption from
17 payment, of a State tax, as defined in
18 section 32(1), in respect of the transfer; and
- 19 (j) provide for any other matter of a savings or
20 transitional nature consequent on the transfer;
21 and
- 22 (k) provide for and give effect to the transfer of
23 duties, obligations, immunities, rights and
24 privileges of the transferring company from the
25 transferring company to the receiving company.
- 26 (3) Regulations made under this section have effect despite
27 anything in a contract, deed, undertaking, agreement or
28 other instrument.

29 **Division 4 — Relationship of Part with other laws**

30 **34. Relationship of Part with other laws**

- 31 (1) This Part has effect despite anything in a contract,
32 deed, undertaking, agreement or other instrument.

- 1 (2) Nothing done by or under this Part —
- 2 (a) places a receiving company, a transferring
- 3 company or another person in breach of
- 4 contract or confidence or otherwise makes any
- 5 of them guilty of a civil wrong; or
- 6 (b) places a receiving company, a transferring
- 7 company or another person in breach of —
- 8 (i) a law of the State; or
- 9 (ii) a contractual provision prohibiting,
- 10 restricting or regulating the assignment
- 11 or transfer of an asset or liability or the
- 12 disclosure of information;
- 13 or
- 14 (c) releases a surety, wholly or partly, from all or
- 15 any of the surety's obligations.
- 16 (3) Without limiting subsection (1), if, apart from this
- 17 section, the advice or consent of a person would be
- 18 necessary in a particular respect, the advice is taken to
- 19 have been obtained or the consent is taken to have been
- 20 given.
- 21

22 **12. Sections 39 and 40 deleted**

23 Delete sections 39 and 40.

24 **13. Section 42 deleted**

25 Delete section 42.

26 **14. Sections 46 to 48 deleted**

27 Delete sections 46 to 48.

1 **15. Part VIII inserted**

2 After Part VII insert:

3

4 **Part VIII — Transitional provisions for the**
5 ***Trustee Companies (Commonwealth Regulation)***
6 ***Amendment Act 2010***

7 **46. Term used: amending Act**

8 In this Part —

9 *amending Act* means the *Trustee Companies*
10 *(Commonwealth Regulation) Amendment Act 2010*.

11 **47. Transitional provisions**

12 (1) Immediately before the commencement of section 4 of
13 the amending Act a trustee company was a body
14 corporate listed in Schedule 1 (a ***Schedule 1 trustee***
15 ***company***).

16 (2) After the commencement of section 4 of the amending
17 Act, a trustee company means a licensed trustee
18 company as defined in the Corporations Act
19 section 601RAA.

20 (3) Each of the Schedule 1 trustee companies is, and was
21 before the repeal of Schedule 1 by section 16 of the
22 amending Act, a licensed trustee company as defined in
23 the Corporations Act section 601RAA.

24 (4) Accordingly —

25 (a) the repeal of Schedule 1 does not affect the
26 appointment of a Schedule 1 trustee company
27 made before the repeal as —

28 (i) the executor of a will, or the
29 administrator of an estate of a deceased
30 person; or

- 1 (ii) a trustee, agent, attorney, manager or
2 receiver; or
- 3 (iii) the guardian of the estate of a minor; or
- 4 (iv) a surety or guarantor; or
- 5 (v) the administrator, committee, guardian
6 or manager of the estate of a person who
7 is unable to manage his or her own
8 affairs;
- 9 and
- 10 (b) this Act, as amended by the amending Act,
11 continues to apply to a Schedule 1 trustee
12 company; and
- 13 (c) except to the extent of any inconsistency with
14 the Corporations Act —
- 15 (i) any duties, obligations, immunities,
16 rights and privileges of a Schedule 1
17 trustee company arising before the
18 repeal of that Schedule are not affected
19 by the repeal; and
- 20 (ii) the assets and liabilities of a Schedule 1
21 trustee company are not affected by the
22 repeal; and
- 23 (iii) any action taken or notice given by a
24 Schedule 1 trustee company before the
25 repeal of that Schedule or the
26 amendment of this Act by the amending
27 Act is not affected by the repeal or
28 amendment;
- 29 and
- 30 (d) proceedings relating to a Schedule 1 trustee
31 company that have been commenced but not
32 determined before the repeal of that Schedule
33 are not affected by the repeal.

- 1 **48. Regulations for transitional matters**
- 2 (1) In this section —
- 3 *commencement day* means —
- 4 (a) in the case of transitional regulations made
- 5 under subsection (2)(a) — the day on which the
- 6 amending provision commences; or
- 7 (b) in the case of transitional regulations made
- 8 under subsection (2)(b) — the day on which the
- 9 Commonwealth provision commences;
- 10 *gazettal day* means the day on which transitional
- 11 regulations are published in the *Gazette*;
- 12 *transitional matter* means a matter of a transitional,
- 13 savings or application nature;
- 14 *transitional regulations* means regulations made under
- 15 subsection (2).
- 16 (2) Regulations made under this Act may prescribe
- 17 anything else required, necessary or convenient to be
- 18 prescribed in relation to a transitional matter in
- 19 connection with —
- 20 (a) the amendment of this Act by a provision of the
- 21 amending Act (the *amending provision*); or
- 22 (b) the interaction between this Act and a provision
- 23 of an Act of the Commonwealth (the
- 24 *Commonwealth provision*).
- 25 (3) If transitional regulations provide that a state of affairs
- 26 is to be taken to have existed, or not to have existed, on
- 27 and from a day (the *operative day*) that is earlier than
- 28 Gazettal day, the regulations have effect according to
- 29 their terms as long as the operative day is not earlier
- 30 than the commencement day.

- 1 (4) If regulations contain a provision referred to in
2 subsection (4), the provision does not operate so as
3 to —
- 4 (a) affect in a manner prejudicial to any person
5 (other than the State or an authority of the
6 State), the rights of that person existing before
7 Gazettal day; or
- 8 (b) impose liabilities on any person (other than the
9 State or an authority of the State), in respect of
10 anything done or omitted to be done before
11 Gazettal day.
- 12

13 **16. Schedules 1 to 3 deleted**

14 Delete Schedules 1 to 3.

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1 **Part 3 — Consequential amendment to the *Trustees***
2 ***Act 1962***

3 **17. Act amended**

4 This Part amends the *Trustees Act 1962*.

5 **18. Section 6 amended**

6 In section 6(1) in the definition of *trustee corporation* delete
7 “corporation authorised by any Act of the Parliament of a State
8 to administer the estates of deceased persons and other trust
9 estates;” and insert:

10

11 trustee company under the *Trustee Companies Act 1987*;

12

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