AUSTRALIAN CAPITAL TERRITORY.

No. 15 of 1947.

AN ORDINANCE

Relating to Trustee Companies.

BE it ordained by the Governor-General in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *Seat of Government Acceptance Act* 1909-1938 and the *Seat of Government (Administration) Act* 1910-1947, as follows:—

1. This Ordinance may be cited as the *Trustee Companies Ordinance* 1947.* Short title and citation.

2.—(1.) Section thirteen of the *Administration and Probate Ordinance* 1929-1943 is repealed. Repeal.

(2.) The *Administration and Probate Ordinance* 1929-1943, as amended by this Ordinance, may be cited as the *Administration and Probate Ordinance* 1929-1947.

3. In this Ordinance, unless the contrary intention appears— Definitions.

"manager" includes acting manager;

"managing director" includes acting managing director;

"the Court" means the Supreme Court of the Territory;

"trustee company" means a company—

(*a*) incorporated in the Territory and specified in the First Schedule to this Ordinance; or

(*b*) registered in the Territory as a foreign company and authorized by or under any law in force in the State of New South Wales to act in that State as executor, administrator and trustee.

4. Where a trustee company is named expressly or by implication as executor in the last will and testament or in the codicil to the last will and testament of any testator, that company may act as executor, and may apply for and obtain probate of the will of the testator and perform and discharge all the acts and duties of an executor. Company may act as executor and obtain probate.

5. In any case in which a private individual may apply for and obtain letters of administration with the will annexed of the estate of a deceased person, that individual may, instead of himself applying, authorize a trustee company to apply to the Court for, and to obtain, letters of administration with the will annexed, which may be granted to the company upon its own application and the company may perform and discharge all the acts and duties of an administrator. Company may obtain letters of administration with will annexed and act as administrator.

6.—(1.) A person or persons named expressly or by implication as executor or executors who would be entitled to obtain probate of the will of any testator, without reserving leave to any other person Persons entitled to probate may authorize company to obtain administration with will annexed.

* Notified in the *Commonwealth Gazette* on 18th December, 1947.

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to apply for probate, may, instead of himself or themselves applying for probate, authorize a trustee company to apply to the Court for administration with the will annexed.

(2.) Thereupon administration with the will annexed may be granted to the company upon its own application (unless the testator, by his will, has expressed his desire that the office of executor shall not be delegated, or that a trustee company, or that particular trustee company, shall not act in the trusts of his will) and the company may perform and discharge all the acts and duties of an administrator.

Trustee company where authorized by one executor may act jointly with others or obtain probate with leave for others to come in and prove.

7.—(1.) A person or persons named expressly or by implication as executor or executors who would be entitled to obtain probate of the will of any testator jointly with any other person or persons, may, instead of himself or themselves applying for probate, authorize a trustee company to apply to the Court for probate, either alone with leave reserved for any person or persons to come in and prove, or jointly with any other person or persons entitled to apply for probate, in the same manner as if the trustee company had been originally named in the will in the place of the person authorizing the application.

(2.) The application may be granted (unless the testator, by his will, has expressed his desire that the office of executor shall not be delegated or that a trustee company, or that particular trustee company, shall not act in the trusts of his will) and the company may perform and discharge all the acts and duties of an executor.

Persons entitled to administration on intestacy may authorize company to obtain administration.

8. A person entitled to obtain administration of the estate of an intestate as wife or husband of the intestate, or as his next of kin, or as a creditor, may, instead of himself applying for administration, authorize a trustee company to apply for administration of the estate, and administration of the estate of the intestate may be granted to the company upon its own application, and the company may perform and discharge all the acts and duties of an administrator.

Court to act upon affidavit of managing director or manager in applications for probate or administration.

9. In any case in which a trustee company is empowered under this Ordinance to apply for probate or for letters of administration the Court may receive and act upon an affidavit made by the managing director or manager of the company in place of any affidavit required to be made by persons making application for probate or for letters of administration.

Assets of company to be liable for proper administration of estates.

10.—(1.) In any case in which probate or letters of administration are granted to a trustee company, all the capital both paid and unpaid and all other assets of the company shall be liable for the proper administration of the estate committed to the company and, so long as a trustee company possesses a paid-up capital of not less than Twenty thousand pounds, of which paid-up capital Ten thousand pounds is invested in the purchase of debentures or inscribed stock in such of the public funds of the Commonwealth as the directors of the company select, in the name of the Treasurer of the Commonwealth, in trust for the company concerned, but transferable only upon the joint consent of the Treasurer and the company or upon the order of the Court, the liability of the capital and assets of the company shall be deemed to be sufficient security in place of the bond taken in the case of a private individual to whom letters of administration are granted or the bond required by the next succeeding sub-section to be furnished.

(2.) Subject to the last preceding sub-section, a trustee company which is a foreign company shall, in relation to the grant of probate to the company, be subject to the like obligations with respect to the furnishing of a bond with sureties as are applicable to a private individual to whom letters of administration are granted, and any such bond shall be deemed to be an administration bond for the purposes of the *Administration and Probate Ordinance* 1929-1947.

Company may be appointed trustee, receiver or guardian of estate.

11.—(1.) In all cases where any court, judge or person has power to appoint any person as—

(*a*) trustee;

(*b*) receiver; or

(*c*) guardian of the estate of an infant,

a trustee company may be so appointed.

(2.) Subject to this section, a trustee company may be appointed, or may continue to act, as sole trustee in all cases notwithstanding that it is provided by the terms of the instrument (if any) creating the trust or of any power or otherwise that there shall be more than one trustee to perform the trust.

(3.) Where a trustee company and one or more individuals are co-trustees, any one or more of those individuals may retire, and the company shall, for the purposes of any law relating to the retirement of trustees and the vesting of the trust property, be deemed to be equivalent to two trustees.

(4.) A trustee company shall not be appointed in any case in which the instrument creating the trust or power forbids the appointment of a trustee company or of that particular trustee company.

(5.) A trustee company shall not be appointed or be entitled to act as sole trustee in any case in which the instrument creating the trust or power expressly provides that there shall be another trustee in addition to a trustee company or that a trustee company or that particular trustee company shall not be appointed or act as sole trustee.

(6.) In every case in which a trustee company is appointed or acts in any of the offices mentioned in sub-section (1.) of this section, all the capital of the company, both paid and unpaid, and all other assets of the company and the directors, manager, and assistant manager thereof and their respective estates shall be liable for the proper discharge of the duties of that office.

(7.) No bond, recognizance, or other security for the proper discharge of such duties shall be required to be given by or on behalf of a trustee company.

Company may act under power of attorney by managing director, manager or two directors.

12.—(1.) A trustee company may act under any power of attorney by which the trustee company is appointed attorney by any person, and all the powers conferred upon the trustee company by any such power of attorney may be exercised and carried into execution by the managing director or manager or two of the directors of the trustee company, but in all cases the capital both paid and unpaid and all other assets of the trustee company shall be liable for the due execution of the powers so conferred upon the trustee company.

(2.) This section shall not authorize any person to confer any power upon a trustee company which cannot be legally conferred upon a private individual.

Company may be appointed to act as temporary executor or administrator.

13. An executor or administrator or trustee may appoint a trustee company to act as executor or administrator or trustee in his stead, and a trustee company if appointed by deed filed in accordance with any law providing for the filing of powers of attorney may act within the scope of the authority conferred upon it as effectually as the executor or administrator or trustee could have acted and may exercise all discretionary and other powers delegated by the principal as fully as the principal could have exercised them, and after the filing of the deed and before the registration of the death of the principal or of the revocation of the authority given by him every act of the trustee company within the scope of the authority conferred shall, in favour of any person who deals with the trustee company, *bona fide*, and without notice of the death of the principal or of his revocation of the authority, be valid and effectual notwithstanding the revocation by, or death of, the principal.

Executor or administrator may appoint company to discharge duties.

14.—(1.) An executor or administrator acting under any probate or letters of administration, whether granted before or after the date upon which this Ordinance comes into operation, or a trustee, receiver or guardian of an infant may, with the consent of the Court, appoint a trustee company to perform and discharge all the acts and duties of that executor, administrator, trustee, receiver or guardian.

(2.) The trustee company may, upon being so appointed, perform and discharge all the acts and duties of the executor, administrator, trustee, receiver or guardian.

(3.) In every such case, all the capital both paid and unpaid and all other assets of the trustee company shall be liable for the proper discharge, from the date of the appointment, of the acts and duties of the executor, administrator, trustee, receiver or guardian, and the executor, administrator, trustee, receiver or guardian shall be released from liability in respect of all acts done by, or omitted to be done by, the trustee company acting under an appointment in pursuance of this section.

15.—(1.) Every application for consent under the last preceding section shall be by motion, and notice of the intended application and of the date on which it is intended to be made shall be advertised once in one daily newspaper published in the Territory at least seven days before the making of the application. **Application for consent to be by motion.**

(2.) The Court may require any person entitled to the immediate receipt of any of the income or corpus of the estate in respect of which the application is made to be served with notice thereof.

(3.) The costs of the application shall be in the discretion of the Court and may be ordered to be paid out of the estate.

(4.) The Court shall not give consent in the case of any will in which the testator has expressed his wish that the trusts of the will should not be delegated or that a trustee company or the particular trustee company in relation to which the application is made should not act in the trusts of the will.

16. In every case in which the personal attendance of an executor, administrator, trustee, receiver or guardian is required, a trustee company may attend in the person of its managing director or manager and the personal duties of executor, administrator, trustee, receiver or guardian may be discharged on behalf of the company by the managing director or manager. **Managing director or manager may attend on behalf of company.**

17.—(1.) In every case in which a trustee company obtains probate or letters of administration or is appointed and acts as trustee, receiver or guardian, the manager and directors shall be individually and collectively in their own proper persons responsible to the Court, and shall in their own proper persons be liable, by process of attachment, commitment for contempt or by other process, to all courts having jurisdiction in that behalf for the proper discharge of their duties and for obedience to the rules, orders and decrees of those courts in the same manner and to the same extent as if the manager and directors had personally obtained probate or letters of administration and had acted as executor, administrator, trustee, receiver or guardian. **Manager and directors personally responsible to Court.**

(2.) Notwithstanding anything contained in the last preceding sub-section, the capital, both paid and unpaid, and all the assets of the company shall remain liable for any pecuniary loss which is occasioned or which happens through the imperfect or improper discharge, or through the neglect of the trustee company concerned, or of any of its officers, of any act or duty in respect of any office, appointment or engagement held or entered upon by the company.

Company to be paid a commission on moneys received by it.

18.—(1.) Subject to this section, a trustee company shall be entitled to receive, in addition to all moneys properly expended by it and chargeable against the estates placed under its administration and management, commission at such rate as is fixed from time to time by the directors of the company.

(2.) The commission shall not exceed in any case Two pounds ten shillings for every One hundred pounds of the capital value of any estate committed to the management of the company as executor, administrator, trustee, receiver or guardian of the estate of an infant, and Five pounds for every One hundred pounds of income received by the company as executor, administrator, trustee, receiver or guardian of the estate of an infant, or of capital or income received by the trustee company as an attorney acting under power of attorney.

(3.) The commission shall be payable out of the moneys or property committed to the management of the company and shall be received and accepted by it as full recompense and remuneration for acting as executor, administrator, trustee, receiver, guardian or attorney, and no other charges beyond that commission and the moneys so expended by the company shall be made by any trustee company.

(4.) Where the Court or the Judge of the Court is of opinion that the commission so paid is excessive, the Court or Judge may, of its or his own motion or on the application of any party affected, review the rate of commission and, upon any such review, may reduce the rate of commission.

(5.) A trustee company shall not make a charge, by way of commission in respect of any estate, exceeding the amount of the published scale of charges of the company at the time when the estate was committed to it.

(6.) Nothing in this section shall prevent the payment of any commission which a testator has, in his will, directed to be paid in lieu of the commission mentioned in this section.

Trustee company to be subject to same duties as individual.

19.—(1.) A trustee company shall, subject to the provisions of this Ordinance, in every case in which it is appointed or acts as an executor, administrator, trustee, receiver or guardian, in addition to the liabilities and restrictions imposed by this Ordinance, be subject to the same respective rights, duties and obligations to which an individual acting as executor, administrator, trustee, receiver or guardian would be subject.

(2.) Where any individual acting in any such capacity would be liable in his own proper person to attachment, commitment or other process, the managers and directors of a trustee company shall, where the company is acting in any of those capacities, be liable each for his own individual act and not further or otherwise in his own proper person to attachment, commitment or other process.

20.—(1.) Where a trustee company is appointed or acts as executor, administrator, trustee, receiver, guardian or attorney, it shall, in addition to the liabilities and restrictions imposed by this Ordinance, be subject in all respects to the same control and liable to removal as a private individual who acts as executor, administrator, trustee, receiver, guardian or attorney. Company may be removed from office by Court and provisions for relief against company or directors.

(2.) Any person claiming relief against a trustee company for any act done or assumed to be done, or in respect of any act omitted to be done, by the company, its directors or officers, under any of the powers conferred by this Ordinance, may proceed in the Court, either by action or other ordinary procedure of the Court or in any summary way by motion against the trustee company or against any of its directors or officers.

(3.) In any such proceedings, the Court may make such order as it thinks fit.

21.—(1.) A trustee, *cestui que trust*, executor, legatee, administrator, wife, husband, next of kin, creditor or infant entitled to or interested in any estate which comes into the possession, or under the control, of a trustee company, who is, upon application to the managing director or manager of the company, unable to obtain a sufficient account of the property or assets of which the estate consists and of the disposal and expenditure of or out of the property or assets, may apply to the Court or the Judge of the Court, upon motion or summons, after notice to the company, but without action or petition for an account. Order for account on application of trustee, &c.

(2.) If the Court or Judge is of opinion that a sufficient account has not been rendered by the company the Court or Judge may order such account to be rendered by the company as the Court or Judge considers just.

(3.) The Court or Judge may, if it or he considers that a sufficient case has not been established to require the company to furnish an account, dismiss the application.

(4.) The Court or Judge may make such order as to costs either against the trustee company, or against the applicant, or as to payment of costs out of the estate, as it or he thinks fit.

22.—(1.) The Court or the Judge of the Court may, on any application under the last preceding section, order, in addition to or in substitution for any account to be rendered by a trustee Supreme Court may order audit in any estate committed to the company.

company, that a person, to be named in the order, shall examine the books and accounts of the company relating to the estate in respect of which the order is made.

(2.) Upon the making of any such order, the company shall deliver to the person named in the order a list of all books kept by it, and shall produce to that person at all reasonable times, when required, all books, accounts, vouchers, papers and other documents of the company relating to the estate, and shall afford to him all necessary information and all other necessary facilities for enabling him to make the examination.

(3.) The Court or Judge shall have the same power as to the costs of such examination as is given by the last preceding section in respect of costs of, or occasioned by, an application under that section.

Voluntary winding up of company or disposal of shares may be restrained by Supreme Court.

23.—(1.) So long as an estate in respect of which a trustee company is executor, administrator, trustee, receiver or guardian remains in whole or in part unadministered, the company shall not, except with the approval of the Court or the Judge of the Court, be voluntarily wound up.

(2.) Any person interested in any such estate or who has a claim in respect of any such estate may apply to the Court or the Judge of the Court in a summary way to restrain a director or shareholder from disposing of any share which he holds in the company or to restrain the winding up voluntarily of the company, and the Court or Judge may upon any such application make such order as it or he thinks fit.

Trustee company to confine itself to certain classes of business.

24.—(1.) Notwithstanding anything contained in the *Companies Ordinance* 1931-1938 or in the memorandum or articles of association of a trustee company, the trustee company shall not engage in, carry on or be concerned in, any business, trade, venture or undertaking of any kind except—

(*a*) such as is expressly authorized by this Ordinance or by any law of a State or Territory of the Commonwealth;

(*b*) general agency business;

(*c*) the deposit of its own funds with the Commonwealth Bank of Australia or with a corporation lawfully carrying on the business of banking in Australia or in any Territory of the Commonwealth;

(*d*) the investment of those funds in the stock, debentures or marketable securities of any Government or any corporation or company or on purchase or mortgage of real property or Crown leasehold or, in the case of a foreign company, in any manner in which it is lawful for the company to invest its funds under the law of the place of its incorporation; or

(*e*) the management of its investments and other property:

Provided that a trustee company may guarantee the safety of the principal and the regular payment of the interest of trust funds committed to its management as executor or administrator or trustee, and may give, or enter into, any bond or guarantee for the purpose of enabling any person to obtain administration of the estate of any deceased person in any case where the estate is placed under the management or control of the company by the administrator.

(2.) A director, member or officer of a trustee company who is concerned in, or a party to, any wilful breach of the provisions of this section, shall be guilty of an offence.

Penalty: One hundred pounds, or imprisonment for six months, or both.

25. An account of the moneys paid or received and of investments made and moneys advanced by a trustee company on account of each estate of which it has control shall be kept by the company separate and distinct from that of any other estate.

Separate accounts of each estate to be kept.

26. A director, member or officer of a trustee company who knowingly and wilfully—

Improper dealings with moneys.

(*a*) appropriates or deals with any real or personal property of which the company has control under the powers conferred upon it by this Ordinance; or

(*b*) lends or otherwise deals with any moneys received by the company under those powers,

otherwise than in accordance with this Ordinance, the instrument creating the trust, or the law for the time being in force, shall be guilty of an offence.

Penalty: One hundred pounds, or imprisonment for six months, or both.

27. Notwithstanding anything contained in the last preceding section a trustee company may deposit any moneys of which it has control under the powers conferred upon it by this Ordinance with the Commonwealth Bank of Australia or with any corporation lawfully carrying on the business of banking in Australia or in any Territory of the Commonwealth.

Power to deposit moneys with certain banks.

28.—(1.) A trustee company shall cause to be paid to the Attorney-General all sums of money which form part of any estate of which it is at any time executor or administrator or trustee by virtue of the powers conferred by this Ordinance and which remain unclaimed by the person entitled to the moneys for a period of five years after they have become payable to that person:

Moneys remaining unclaimed for five years to be paid to Attorney-General.

Provided that the company may retain any sums of money in respect of which payment is restrained by the injunction of a court of competent jurisdiction.

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(2.) The Attorney-General shall pay all moneys received by him under this section to the credit of a fund to be called the "Testamentary and Trust Fund" which shall be a trust account within the meaning of section sixty-two A of the *Audit Act* 1901-1934.

(3.) A trustee company shall, within fourteen days after the thirtieth day of June in each year, deliver to the Attorney-General a statement of all such unclaimed moneys which during the twelve months ended on that thirtieth day of June have been in its hands, distinguishing the estates in respect of which the moneys have been received, and, if those moneys or any part of those moneys have not been paid to the Attorney-General, stating the reason for the delay in the making of the payments.

(4.) A trustee company which fails to comply with any provision of this section shall be liable, upon conviction, to a penalty not exceeding Five pounds for every day during which the failure continues, and every director and every manager of the company who authorizes or permits the failure shall, upon conviction, be liable to the like penalty.

Persons entitled may apply subsequently.

29.—(1.) The Court or the Judge of the Court may at any time—

(*a*) upon the application of any person claiming to be entitled to any moneys paid over to the Attorney-General in accordance with the last preceding section; and

(*b*) upon being satisfied by affidavit, or other sufficient evidence, that that person is so entitled,

make an order for payment of those moneys, or any portion of those moneys, but—

(*c*) without interest on those moneys from the time of payment to the Attorney-General in pursuance of this Ordinance; and

(*d*) after deduction of any costs and expenses which have been incurred in respect of the application.

(2.) The Attorney-General, on being served with the order, shall, within a reasonable time, pay the amount mentioned in the order to the person named in the order, and the receipt of that person shall be a sufficient voucher for the payment.

Order for account on application of Attorney-General.

30.—(1.) Where the managing director or manager of a trustee company fails, upon application in writing by the Attorney-General, to furnish a sufficient account of—

(*a*) the property and assets of which any estate moneys of which have been included in, or ought to be or to have been included in, the statement of unclaimed moneys mentioned in section twenty-eight of this Ordinance, consists; and (*b*) the disposal or expenditure of or out of the property or assets,

the Attorney-General may apply to the Court or to the Judge of the Court, upon motion or summons after notice to the trustee company but without action or petition for an account, for an order requiring a sufficient account to be rendered.

(2.) The Court or Judge may, if it or he is of opinion that no sufficient account has been rendered by the trustee company, order such account to be rendered by that company as the Court or Judge considers just.

(3.) If the Court or Judge is of the opinion that no sufficient case has been established to require the trustee company to furnish an account, the Court or Judge may dismiss the application.

(4.) The Court or Judge may in all such cases make such order as to costs, either against the company or against the applicant or as to payment of costs out of the estate, as it or he thinks fit.

Declarations as to company's position to be made and copies to be available.

31.—(1.) The managing director or manager of a trustee company shall, during the months of January and July in each year, make a statutory declaration in accordance with the form contained in the Second Schedule to this Ordinance, and—

(*a*) a copy of the declaration shall, within seven days after the making thereof, be filed with the Registrar of the Court;

(*b*) a copy of the declaration shall be displayed in a conspicuous place in the registered office of the company in the Territory and in every branch office or place in the Territory where the business of the company is carried on; and a copy of the declaration shall be given to any member or creditor of the company on application.

(2.) A trustee company which fails to comply with any provision of this section shall be liable to a penalty not exceeding Five pounds for every day during which the failure continues, and every director and manager of the company who authorizes or permits the failure shall, upon conviction, be liable to the like penalty.

Ordinance not to preclude other companies from applying for similar powers to those conferred by this Ordinance.

32. Nothing in this Ordinance shall entitle a trustee company to oppose the granting of any powers similar to those conferred upon certain companies by this Ordinance to any other company or to corporations generally, or to claim or to seek compensation in consequence of the powers being conferred upon any other company or upon corporations generally.

Testators may appoint their own solicitors.

33.—(1.) Where by any will, codicil or other testamentary writing a testator directs that any practising solicitor shall conduct the legal business of his estate the solicitor shall be entitled to conduct that legal business accordingly, but in such case the trustee company concerned shall not be liable for the negligence, misfeasance, nonfeasance or misconduct of the solicitor, and that solicitor may be removed by order of the Court or the Judge of the Court upon the application of the trustee company or of any person interested in the estate upon cause shown.

(2.) If any such solicitor is removed by any such order, the Court or Judge may appoint a solicitor nominated by the trustee company.

Incorporation and powers of company except so far as specifically altered to remain.

34. Except as otherwise provided in this Ordinance, a trustee company shall remain and be subject to the same restrictions, liabilities, penalties, privileges and powers as it is subject to under its incorporation, and this Ordinance shall not otherwise affect the incorporation of the company.

Regulations.

35. The Attorney-General may make regulations, not inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance and, in particular, for prescribing penalties not exceeding One hundred pounds for breaches of the Regulations.

SCHEDULES.

Section 3.

The First Schedule.

Permanent Trustee Company (Canberra) Limited.

Section 31.

The Second Schedule.

[State in full the name of the trustee company concerned.]

I (*managing director or manager, as the case may be*) do solemnly and sincerely declare:—

1. That the liability of the members is limited.

2. That the capital of the company is divided into shares of each.

3. That the number of shares issued is

4. That calls to the amount of per share have been made, under which the sum of has been received.

5. That the liabilities of the company on the last day of June (or December) last were:—

Debts owing to sundry persons by the company, viz.:—

On judgment, £
On specialty, £
On notes or bills, £
On simple contracts, £
On estimated liabilities, £

6. That the assets of the company on that day were:—

Government securities, £
Bills of exchange and promissory notes, £
Cash at the bankers, £
Other securities, £

And I make this solemn declaration by virtue of the *Statutory Declarations Act* 1911-1944 conscientiously believing the statements contained therein to be true in every particular.

Declared at the

day of , 19

Before me,

Dated this ninth day of December, 1947.

W. J. McKELL
Governor-General.

By His Excellency's Command,

N. E. McKENNA
for Minister of State for the Interior.

By Authority: L. F. Johnston, Commonwealth Government Printer, Canberra.