

AUSTRALIAN CAPITAL TERRITORY

Trustee Companies (Amendment) Ordinance 1985

No. 34 of 1985

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 15 August 1985.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

LIONEL BOWEN
Attorney-General

Short title

1. This Ordinance may be cited as the *Trustee Companies (Amendment) Ordinance 1985*.¹

Principal Ordinance

2. In this Ordinance, "Principal Ordinance" means the *Trustee Companies Ordinance 1947*.²

Interpretation

3. Section 3 of the Principal Ordinance is amended—

- (a) by inserting before the definition of "manager" the following definitions:

“ ‘ bank’ means a bank as defined in sub-section 5 (1) of the *Banking Act 1959* or a bank constituted by a law of a State or Territory;

‘books’ has the same meaning as in the *Companies Act 1981*;

‘financial institution’ means—

- (a) a bank;
- (b) an insurance company;
- (c) a financial corporation to which the *Financial Corporations Act 1974* applies;
- (d) the trustee or managers of any superannuation fund established by any law of the Commonwealth or of a State or Territory; or
- (e) a body corporate declared by the Attorney-General by notice in the *Gazette* to be a financial institution for the purposes of this provisions;

‘insurance company’ means a company registered under section 19 of the *Life Insurance Act 1945*;”;

- (b) by inserting after the definition of “managing director” the following definitions:

“ ‘ officer’ has the same meaning as in the *Companies Act 1981*;

‘related corporation’ has the same meaning as in the *Companies Act 1981*;”.

Restriction upon classes of business

- 4. Section 24 of the Principal Ordinance is amended—

- (a) by inserting after sub-section (1) the following sub-section:

“(1A) A trustee company which contravenes sub-section (1) is guilty of an offence punishable, on conviction, by a fine not exceeding \$25,000.”; and

- (b) by omitting sub-section (2) and substituting the following sub-section:

“(2) An officer of a trustee company who is wilfully concerned in a breach of any provision of sub-section (1) is guilty of an offence punishable, on conviction, by a fine not exceeding \$5,000 or by imprisonment for a period not exceeding 2 years, or both.”.

5. After section 25 of the Principal Ordinance the following section is inserted:

Contributory investments

“25A. (1) Subject to this section, where a trustee company holds moneys that belong to more than one estate upon trusts which require or permit the moneys to be invested, the company may invest the moneys in one fund and distribute the income from the fund rateably among those estates.

“(2) A loss arising from investment of moneys pursuant to sub-section (1) shall be borne rateably by the estates to which the moneys belong.

“(3) A trustee company shall not invest moneys pursuant to sub-section (1) except as investments—

- (a) for the time being authorized by the *Trustee Ordinance 1957*; or
- (b) in each case authorized by the instrument creating the trust to which the relevant moneys belong.

“(4) This section does not entitle a trustee company to make any kind of investment of moneys belonging to an estate where investment of that kind is expressly prohibited by the instrument creating the relevant trust.”.

Improper dealings with money

6. Section 26 of the Principal Ordinance is amended by omitting the penalty set out at the foot of the section and substituting the following penalty:

“Penalty: \$5,000 or imprisonment for 2 years, or both.”.

Payment of moneys unclaimed

7. Section 28 of the Principal Ordinance is amended—

- (a) by inserting after sub-section (1) the following sub-sections:

“(1A) A trustee company which fails to comply with sub-section (1) is guilty of an offence punishable, on conviction, by a fine not exceeding \$10,000.

“(1B) An officer of a trustee company who is wilfully concerned, directly or indirectly, in the commission of an offence under sub-section (1A) is guilty of an offence punishable, on conviction, by a fine not exceeding \$2,000.”; and

- (b) by omitting sub-section (4) and substituting the following sub-sections:

“(4) A trustee company which fails to comply with sub-section (3) is guilty of an offence punishable, on conviction, by a fine not exceeding \$5,000.

“(5) An officer of a trustee company who is wilfully concerned, directly or indirectly, in the commission of an offence under sub-section (4) is guilty of an offence punishable, on conviction, by a fine not exceeding \$1,000.”.

Quarterly financial declarations

8. Section 31 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) “and July” and substituting “, April, July and October”;
- (b) by omitting from paragraph (1) (a) “within seven days after the making thereof” and substituting “not later than 7 days after the day on which the declaration was made”;
- (c) by inserting after paragraph (1) (a) the following paragraph:
- “(aa) a copy of the declaration shall, not later than 7 days after the day on which the declaration was made, be sent to the Attorney-General; and”;
- (d) by omitting from paragraph (1) (b) “member or creditor of the company” and substituting “person”; and
- (e) by omitting sub-section (2) and substituting the following sub-sections:

“(2) A trustee company which fails to comply with any provision of sub-section (1) is guilty of an offence punishable, on conviction, by a fine not exceeding \$5,000.

“(3) An officer of a trustee company who is wilfully concerned, directly or indirectly, in the commission of an offence under sub-section (2) is guilty of an offence punishable, on conviction, by a fine not exceeding \$1,000.”.

9. After section 31 of the Principal Ordinance the following sections are inserted:

Information, &c., for Attorney-General

“31A. (1) Where it appears to the Attorney-General that a trustee company—

- (a) may be failing, or may have failed, to comply with a requirement under this Ordinance;
- (b) may be, or may have been, in breach of a law of the Territory relevant to its activities under this Ordinance; or
- (c) may be failing, or may have failed, to comply with a legal obligation as a trustee.

The Attorney-General may, by instrument in writing, require the company, within a time specified in the instrument, to provide to him such information or statements in writing, generally or in relation to particular matters, in respect of—

- (d) the affairs of the company; or
- (e) the activities of the company as executor, administrator, trustee, receiver, guardian or attorney,

as the instrument specifies.

“(2) A trustee company that refuses or fails, without reasonable excuse, to comply with a requirement made under sub-section (1) is guilty of an offence punishable, on conviction, by a fine not exceeding \$5,000.

“(3) An officer of a trustee company who is wilfully concerned, directly or indirectly, in the commission of an offence under sub-section (2) is guilty of an offence punishable, on conviction, by a fine not exceeding \$1,000.

Inquiries and audits

“31B. (1) The Attorney-General may, by instrument in writing, upon grounds specified in the instrument, authorize a person specified in the instrument to undertake, whether generally or in relation to particular matters, any of the following:

- (a) an inquiry into the affairs of the company;
- (b) an inquiry into the activities of the company as executor, administrator, trustee, receiver, guardian or attorney;
- (c) an audit of the books and accounts of the company (including books and accounts of or relating to any estate, trust or property managed or administered by the company).

“(2) The grounds that may be specified for the purposes of an inquiry or audit under sub-section (1) are any of the following:

- (a) that it appears to the Attorney-General that the relevant trustee company may be failing, or may have failed, to comply with a requirement under this Ordinance;
- (b) that it appears to the Attorney-General that the company may be, or may have been, in breach of a law of the Territory relevant to its activities under this Ordinance;
- (c) that it appears to the Attorney-General that the company may be failing, or may have failed, to comply with a legal obligation as a trustee.

“(3) For the purposes of an inquiry or audit under sub-section (1), a trustee company shall—

- (a) deliver to a person authorized by the Attorney-General in accordance with that sub-section a list of all books kept by the company;
- (b) produce to a person so authorized such books of the company as that person requires; and
- (c) provide to a person so authorized such information and facilities as that person requires.

“(4) A trustee company that refuses or fails, without reasonable excuse, to comply with sub-section (3) is guilty of an offence punishable, on conviction, by a fine not exceeding \$5,000.

“(5) An officer of a trustee company who is wilfully concerned, directly or indirectly, in the commission of an offence under sub-section (4) is guilty of an offence punishable, on conviction, by a fine not exceeding \$1,000.

“(6) The costs of an inquiry or audit under this section shall, unless the Attorney-General otherwise directs, be borne by the relevant trustee company and may be recovered by the Attorney-General as a debt due to the Commonwealth.”.

Regulations

10. Section 35 of the Principal Ordinance is amended by omitting “Two hundred dollars” and substituting “\$500”.

Heading to First Schedule

11. The First Schedule to the Principal Ordinance is amended by omitting the heading and substituting the following heading:

“SCHEDULE 1 SPECIFIED TRUSTEE COMPANIES”.

Schedule 2

12. The Second Schedule to the Principal Ordinance is repealed and the following Schedule substituted:

SCHEDULE 2 Section 31 QUARTERLY FINANCIAL DECLARATION

..... Limited

We, (1).....of (2),
 (1).....of (2),
 (1).....of (2),
 (1).....of (2),

being officers of.....Limited, declare
 in relation to that company, that—

(a) the liability of the members is limited;

(b) the authorized capital is \$ divided into shares of each;

(c) the number of shares issued is ;

(d) ⁽³⁾there has been called up on each of shares, \$;
^{(3)*} there has been called up on each of shares, \$;

(e) ⁽⁴⁾ the net tangible assets, on 19 , being the latest practicable day before the making of this declaration, amounted to \$;

(f) ⁽⁵⁾ the unused credit and standby facilities arranged as at 19 , amounted to \$;

- (g) ⁽⁵⁾ the statement annexed to this declaration is a true and correct statement of the company's liabilities and assets as at 19 ;
- (h) the classification and valuation of assets adopted in that statement correctly reflect the company's intentions, as at the day of this declaration, in regard to the use and disposal of those assets;
- (j) the following loans were obtained from financial institutions, other than banks and insurance companies, during the period of 3 months immediately preceding that day:

Name of Institution	Amount of loan	Term of loan	Interest rate	Security (if applicable)
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- (k) the following contingent liabilities, to the extent that those liabilities are quantifiable, existed on that day:

Type of contingent liability	Estimated amount \$000
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1. Guarantees of liabilities of related corporations
2. Guarantees of liabilities of other persons
3. Other contingent liabilities

Total \$.....

- (l) guarantees of liabilities of related corporations as set out in the statement annexed are made up as follows:

Name of corporation	Amount \$000
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Total \$.....

-
- (m) the following table sets out the credit and standby facilities available on that day and the restrictions affecting those facilities:
-

Description of facility	Amount \$000
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-
- (n) the following significant changes have occurred in the nature of the principal activities of the company during the period of 3 months immediately preceding that day:

(give details)

- (o) the following items, transactions or events of a material and unusual nature affected the results of the company's operation during the period of 3 months immediately preceding that day:

(give details)

- (p) the company has complied with the *Trustee Companies Ordinance 1947* throughout the period of 3 months immediately preceding that day; and

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

.....

Signatures

- (1) the declaration is to be completed by the manager or managing director, the chief financial officer and 2 other persons who are directors of the trustee company.
- (2) Insert usual residential address.
- (3) Where the shares are of different classes, the number issued in each class must be shown separately.
- (4) Net tangible assets means net tangible assets within the meaning of sub-section 490 (1) of the *Companies Act 1981*.
- (5) For the purposes of this paragraph, the required date is that of the last day of the month immediately preceding the month in which this declaration is made.

* Strike out if inapplicable.

STATEMENT TO BE ANNEXED TO QUARTERLY FINANCIAL
 DECLARATION SHOWING ASSETS AND LIABILITIES AS AT

.....19.....(*)

..... Limited

Assets and liabilities	\$000
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TANGIBLE ASSETS

1. Recoverable or realizable within one year—

Cash on hand

Cash at bank.....	
Bills receivable—	
bank, accepted or endorsed ⁽¹⁾	
other ⁽¹⁾	
Amounts receivable from related corporations—	
secured ⁽¹⁾	
unsecured ⁽¹⁾	
Other loans ⁽³⁾ and deposits—	
Secured ⁽¹⁾	
Unsecured ⁽¹⁾	
Government and semi-Government securities ⁽²⁾	
Shares, units, options and convertible notes in companies—	
Listed on an Australian stock exchange ⁽¹⁾	
Not listed on an Australian stock exchange ⁽¹⁾	
Capital investments in partnerships, trusts and unincorporated joint ventures ⁽¹⁾	
Lease receivables ⁽¹⁾	
Other amounts realizable within one year ⁽¹⁾	

Total assets recoverable or realizable within one year.....	

2. Recoverable or realizable after one year—

Amounts receivable from related corporations—	
Secured ⁽¹⁾	
Unsecured ⁽¹⁾	
Other loans ⁽³⁾ and deposits—	

Secured ⁽²⁾	
Unsecured ⁽²⁾	
Government and semi-Government securities ⁽²⁾	
Shares, units, options and convertible units—	
Listed on an Australian stock exchange ⁽²⁾	
Not listed on an Australian stock exchange ⁽²⁾	
Capital investments in partnerships, trusts and unincorporated joint ventures ⁽²⁾	
Bills receivable—	
bank: accepted or endorsed ⁽²⁾	
other ⁽²⁾	
Property, plant and equipment ⁽²⁾	
Lease receivables ⁽²⁾	
Other tangible assets ⁽²⁾	

Total assets recoverable or realizable after on year.....	

Total tangible assets.....	

LIABILITIES

1. Due and payable within one year—
 - (a) Borrowings—
 - Bank and overdrafts and bank loans—
 - secured.....
 - unsecured.....
 - Loans from other financial institutions—
 - secured.....

	unsecured.....	
	Bills payable and liabilities under promissory notes.	
	Lease liabilities.....	
	Total	_____
(b)	Other liabilities—	
	Subordinated loans from related corporations.....	
	Trade creditors and accrued expenses.....	
	Provisions.....	
	Income tax.....	
	Dividends.....	
	Deferred income.....	
	Other liabilities—	
	secured.....	
	unsecured.....	
	Total	_____
	Total liabilities due and payable within one year.....	_____
2.	Due and payable after one year—	
(a)	Borrowings—	
	Bank loans—	
	secured.....	
	unsecured.....	

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

(b) Other liabilities—	
Subordinated loans from related corporations.....	
Provisions.....	
Income tax.....	
Deferred income.....	
Other.....	
	Total

Total liabilities payable after one year.....	

Total liabilities.....	

SUMMARY

	Total Tangible Assets
subtract	Total Liabilities
	Net Tangible Assets	_____
add	Other Assets

Shareholders' Funds

Remarks.....

Dated this.....day of.....19.....

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

Signatures

- (*) This statement shall be made up to the last day of the month immediately preceding the month in which the declaration is made.
- (1) State at the lower of cost and net realizable value.
- (2) State at cost or valuation less amounts written off or provided for depreciation or diminution in value.
- (3) Include mortgages.

Further amendments

13. The Principal Ordinance is amended as set out in the Schedule.

SCHEDULE**Section 13****FURTHER AMENDMENTS OF PRINCIPAL ORDINANCE**

Provision amended	Omit—	Substitute—
Section 2.....	(a) thirteen	13
	(b) 1929-1943	1929
	(c) 1929-1947	1929
Section 3.....	the First Schedule	Schedule 1
Section 10	(a) Forty thousand dollars	\$40,000
	(b) Twenty thousand dollars	\$20,000
	(c) the next succeeding sub-section	sub-section (2)
	(d) the last preceding	sub-section (1)
	(e) 1929-1947	1929
Sub-section 11 (3).....	two	2
Sub-section (11) (6).....	(a) officers	offices
	(b) (1) of this section	(1)
	(c) manager thereof	manager
Sub-section 12 (1).....	two	2
Sub-section 15 (1).....	(a) the last preceding section	section 14
	(b) seven	7
Sub-section 17 (2).....	the last preceding sub-section	sub-section (1)
Sub-section 18 (2).....	(a) Eight dollars	\$8
	(b) Two hundred dollars (wherever occurring)	\$200
	(c) Ten dollars (twice occurring)	\$10
Section 22.....	the last preceding section (twice occurring)	section 21
Section 27.....	the last preceding section	section 26
Section 28.....	(a) five	5
	(b) 1901-1934	1901
	(c) fourteen	14

	(d)	the thirtieth day of June	30 June
	(e)	twelve	12
	(f)	thirtieth day of June	30 June
	(g)	ten dollars	\$10
Paragraph 29 (1) (a)....		the last preceding section	section 28
Sub-section 30 (1).....		twenty-eight of this Ordinance	28
Section 31.....	(a)	the Second Schedule to this Ordinance	Schedule 2
	(b)	ten dollars	\$10
Section 35.....		Two hundred dollars	\$200

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 20 August 1985.
2. No. 15, 1947, as amended by Nos. 14 and 16, 1954; No. 7, 1960; No. 19, 1961; Nos 7 and 11, 1962; No. 4, 1965; Nos. 12 and 19, 1966; No. 8, 1968; Nos. 38 and 93, 1982; No. 6, 1984.