



ANNO PRIMO

GEORGII V REGIS.

A.D. 1910.

Private Act.

An Act to confer certain powers upon "Elder's
Trustee & Executor Co., Limited."

[*Assented to, November 30th, 1910.*]

WHEREAS it is often difficult to secure the services of suitable Preamble.
persons for the offices of trustee, executor, administrator, and
other similar offices: And whereas, in order to secure the more
certain discharge of the duties of such offices, a Company styled
"Elder's Trustee & Executor Co., Limited," has been formed
and incorporated under "The Companies Act, 1892," and Acts
amending the same, with the object, among other purposes, of afford-
ing persons the opportunity of obtaining the services of a permanent
corporation for the performance of the duties of such offices, and
thus to remove much of the uncertainty and insecurity which attend
the appointment of persons: And whereas it is expedient to enable
the said Company to act as executor, administrator with or without
a will annexed, receiver, trustee, committee of estates of persons
of unsound mind, guardian of the estates of infants, agent under
power of attorney or otherwise, liquidator, trustee in insolvency or
of any assignment under the law relating to insolvency, and to
perform and discharge all the duties of such offices, and to receive
remuneration for its services, and to confer upon the said Company
the powers and privileges hereinafter set forth in order to enable
the said Company the more effectually and usefully to carry out the
objects sought in its incorporation—Be it therefore Enacted by the
Governor, by and with the advice and consent of the Legislative
Council and House of Assembly of the State of South Australia, in
this present Parliament assembled, as follows:

Elder's Executor Company's Act.—1910.

Short title and commencement of Act.

1. This Act may, for all purposes, be cited as "Elder's Executor Company's Act, 1910."

Interpretation of words.

2. In this Act, unless the contrary intention appears—

"The Company" means "Elder's Trustee & Executor Co., Limited":

"The Court" means the Supreme Court of the State of South Australia, or any Judge thereof:

"The Manager" means the manager, acting manager, secretary, or acting secretary for the time being of the Company:

"Will" includes codicil:

"Letters of Administration" means letters of administration with or without a will annexed:

"Administrator" means administrator with or without a will annexed:

"Trustee in Insolvency" includes trustee of any assignment under the law relating to insolvency.

Company may act as executor and obtain probate.

3. Whenever the Company has been or shall be expressly, or according to the tenor, appointed as executor under the will of any testator, it shall be lawful for the Company to act as executor, or as executor according to the tenor, as the case may be, and to apply for and obtain probate accordingly.

Company may obtain letters of administration and act as administrator.

4. Whenever a natural person may apply for and obtain letters of administration of the estate of a deceased person it shall be lawful for the Company in like circumstances to apply for and obtain letters of administration and act as administrator.

Company may be appointed trustee, receiver, or committee of estate of lunatic, or guardian of estates of infants.

5. It shall be lawful for any Court, Judge, or person now or hereafter having power to appoint any trustee, receiver, committee of the estate of a person of unsound mind, guardian of an infant's estate, liquidator, trustee in insolvency, attorney, or agent, in any case to appoint the Company to be a trustee, receiver, committee, guardian, liquidator, trustee in insolvency, attorney, or agent, as the case may be.

Persons entitled to probate or letters of administration may authorise Company to obtain administration.

6. Any person who shall be entitled, either solely or with any other person, to apply for and obtain probate of any will, or letters of administration, whether general, special, or limited with a will annexed, and any person entitled solely to apply for and obtain letters of administration without a will annexed, and whether general, special, or limited, may, with the approval of the Court, by writing under his hand, authorise the Company to prove any such will, or to apply for and obtain letters of administration with such will annexed, or without a will annexed, or as the case may be; and thereupon the Company shall be entitled to prove such will (if any) and to apply for and obtain, and the Court

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Court may, in pursuance of such approval, grant probate of any will or letters of administration as aforesaid to the Company in accordance with such authority: Provided that, notwithstanding any grant to the Company under the provisions hereof, any other person entitled to any probate in the same matter may apply for and obtain a double probate in the same manner as if the Company had been originally named in the will as executor in the place of the person giving such authority: And provided also that the power conferred by this section shall not be exercised in regard to any will in which the testator shall have expressly provided that the Company shall not act in the execution of the provisions of such will, nor shall any such power be exercised by any person in the event of there being within the said State any other person of the age of twenty-one years who shall be entitled to and desirous of obtaining probate or letters of administration with the will annexed.

7. Any executor, administrator, or trustee, whether appointed before or after the passing of this Act may, at any time and from time to time, with the approval of the Court, by any writing deposited in the General Registry Office of the said State, appoint the Company to perform, carry out, and exercise, during any absence from the said State of the appointor, all or any of his duties, discretions, and powers in as full, ample, and complete a manner and as effectually as the appointor could have performed and exercised the same if personally present. After such deposit as aforesaid, and until notice in writing of the death of the appointor, or of the revocation of the authority conferred shall have been given to and registered by the Registrar-General or his deputy, every act of the Company within the scope of the authority conferred shall, in favor of any person who shall deal with the Company *bonâ fide* and without notice of such death or revocation as last aforesaid, be valid and effectual notwithstanding such death or revocation.

Company may be appointed to act temporarily for executor, administrator, or trustee.

8. Any executor or administrator, whether appointed before or after the passing of this Act, may, with the approval of the Court, appoint the Company to perform and discharge all acts, duties, powers, and discretions of such executor or administrator, and the Company shall have power to exercise, perform, and discharge all such acts, duties, powers, and discretions accordingly, and, upon such approval being given, such executor or administrator may convey and assign to the Company the trust property vested in him, whereupon he shall be released and discharged from all liability in respect of all acts and omissions by the Company after such appointment.

Executors and administrators may appoint Company to discharge duties for them.

9. Every application for the approval of the Court may be by motion, petition, or originating summons. The Court may give such approval either *ex parte* or after such notice has been given to the persons interested in the estate, personally or by advertisement, or in such other manner as the Court may direct. And any approval given

Procedure to obtain approval of Court.

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given by the Court in the absence of any interested party, whether notice shall have been directed to be given or not, shall bind such party in the same manner as if he had been present or represented on the application. Such approval shall not be given in the case of a will in which the testator has expressly provided that the execution of the provisions thereof shall not be delegated, or that the Company shall not act therein. The costs of such application shall be in the discretion of the Court, and may be ordered to be paid out of the estate.

Company may act jointly.

10. The Company may in any case act alone or jointly with any person in any fiduciary capacity, and in particular as trustee, executor, administrator, committee, receiver, guardian, liquidator, trustee in insolvency, attorney or agent, and may acquire and hold real and personal property in joint tenancy in the same manner as if it were a natural person; and the Company shall have the same benefit and right of survivorship upon the death of any joint tenant or joint owner as if it were a natural person, and upon its dissolution every joint tenant or joint owner shall have the same benefit and right of survivorship as if the Company were a natural person and had died at the time of such dissolution; and when any property shall be vested in the Company and any person to the intent that the Company and such person shall act jointly in any fiduciary capacity, the Company and such person shall be deemed to be joint tenants or joint owners thereof, and not tenants or owners in common, unless otherwise expressly provided for.

Company may be appointed to act solely in the place of retiring trustees.

11. The Company, with the approval of the persons (if any) for the time being within the State and of the age of twenty-one years having an absolutely vested estate or interest in any property the subject of the office, may in any case be appointed to act solely as trustee, executor, administrator, committee, receiver, liquidator, attorney, or agent, although the instrument or order creating the office may have provided for the appointment of more than one person to the office; and it shall not be necessary to fill up the original or contemplated number unless the terms of such instrument or order shall expressly provide that a fixed number of persons shall always be maintained in the office, and upon the Company being so appointed to act solely the person retiring shall, from the time of such appointment, be released from all responsibility for the performance of the office.

Appointments of Company already made to be valid.

12. Any appointment of the Company as executor, administrator, receiver, trustee, guardian, committee, liquidator, attorney, or agent made prior to the coming into operation of this Act shall be deemed and taken to be a valid appointment of the Company to such office or position; and whenever in any will any director or the manager of the Company shall have been or shall be hereafter appointed in their character as such director or manager as executor or trustee thereof, such will shall be read as if the Company had been appointed executor or trustee in lieu of such director or manager.

13. Wherever

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13. Wherever the Company is appointed to any office or position pursuant to any of the provisions hereof, it shall be lawful for the Company to do and perform all acts and duties and exercise all powers and discretions which appertain to such office or position as fully as if the Company were a natural person.

Company may perform all acts and exercise all discretions appertaining to any office or position held.

14. Whenever the Company is empowered to apply for probate or letters of administration, an affidavit made by the manager shall be received and acted upon by the Court in which or the officer before whom such application shall be made in place of any affidavit required by any law, Act of Parliament, or Rule of Court to be made by persons making application for probate or letters of administration.

Court to act upon affidavit of manager in application for probate or administration.

15. In all cases in which the personal attendance of an executor, administrator, trustee, receiver, guardian, committee, liquidator, or trustee in insolvency is required in a court of justice or elsewhere, the Company shall be entitled to make such attendance in the person of the manager, and the personal duties of executor, administrator, trustee, receiver, guardian, committee, liquidator, trustee in insolvency or of any assignment under the law relating to insolvency, may be discharged on behalf of the Company by the manager; and all affidavits, declarations, accounts, and other documents which, in carrying out the duties relating to the offices aforesaid, it shall be necessary to make, file, exhibit, or give, may be filed, exhibited, or given by the manager; and in every case where the Company shall obtain probate or letters of administration or be appointed to act as trustee, receiver, guardian, committee, or liquidator, the manager and directors shall be individually and collectively, in their own proper persons, responsible to the Court, and be liable, by process of attachment, to 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 such Courts in the same manner and to the same extent as if the manager and directors had personally obtained probate or letters of administration, or had acted as executor, administrator, trustee, receiver, guardian, committee, or liquidator.

Directors and manager responsible to Court.

16. All the assets (including uncalled capital) of the Company for the time being shall be liable for the proper discharge of all duties undertaken by the Company.

Assets of the Company liable for proper discharge of duties.

17. The Company shall forthwith deposit with the Public Trustee of the said State in trust for the Company out of its paid-up capital the sum of Ten Thousand Pounds, or at its option securities representing such sum being Government securities of the said State, or bonds of any municipal corporation therein, or mortgage of freehold properties therein, or partly some or one of such securities and partly cash, and in addition the Company shall, on or before the first day of September in each year deposit in like manner similar securities or cash, equivalent to one-half of any additional paid-up

Cash or securities to be deposited with Public Trustee.

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paid-up capital received during the preceding year, until the value of such deposits shall amount in the aggregate to Twenty Thousand Pounds.

Cash or securities deposited to be transferable or exchangeable.

18. Any cash or securities deposited as provided by the last preceding section shall be transferable or exchangeable by the Company, with the consent of the Public Trustee, or upon the order of the Court. The income therefrom shall from time to time be receivable by the Company.

When deposits made bond not required.

19. So soon as the deposits shall be made as provided in section 17 hereof, the Company shall not be required to enter into any bond in any case where a bond would be required if the duties undertaken by the Company had been undertaken by a natural person.

Company to be paid a commission on moneys received.

20. The Company shall be entitled to receive and retain, in addition to all moneys properly expended by it and chargeable against any estate or property placed under the administration or management of the Company, a commission to be fixed from time to time by the board of directors of the Company, but not to exceed in any case Five Pounds for every One Hundred Pounds received by the Company as executor, administrator, trustee, receiver, guardian, or committee, liquidator, trustee in insolvency, attorney or agent, and such commission shall be payable and retainable out of the moneys or property committed to the management of the Company, and no other charges beyond the said commission and the moneys so expended by the Company shall be made by the Company; but if in any case the Court shall be of opinion that such commission is excessive, it shall be competent for the Court to review and reduce the rate of such commission, and the commission to be charged by the Company shall not exceed in any case the amount of the published scale of charges of the Company at the time when such estate or property was committed to the Company: Provided that under no circumstances shall the commission to be so received and retained be a less sum than Twenty Pounds, whatever the value of the estate or property may be, nor a less sum than Twenty Pounds per annum where the duties of the Company shall continue for more than one year, whatever the amount of the annual income of the estate or property may be: Provided nevertheless that in any case where a testator, settlor, or appointor prescribes an amount to be received and retained by way of remuneration the Company may accept the same in lieu of the commission hereinbefore mentioned.

Company may be removed from office by Court, and provisions for relief against Company or directors.

21. In all cases where the Company shall be appointed to and shall undertake the duties of any office or position pursuant to any of the provisions of this Act, the Company shall, in addition to the liabilities and restrictions imposed by this Act, be subject in all respects to the same control and liability to removal as natural persons; and it shall be lawful for all persons who may claim relief against the 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

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directors or officers under any of the powers conferred by this Act, to proceed in any Court of competent jurisdiction, either by action, suit, or other proceedings, or in a summary way by motion against the Company, or any of its directors or officers, and such Court may make and enforce such order in the matter as to such Court shall seem just.

22. If any executor, administrator, trustee, *cestui que* trust, legatee, next of kin, or creditor entitled to or interested in any estate in the possession or under the control of the Company shall claim that he is unable, upon application to the manager, to obtain a sufficient account of the property and assets of which such estate shall consist, and of the disposal and expenditure thereof or thereout, such executor, administrator, trustee, *cestui que* trust, legatee, next of kin, or creditor shall be entitled to apply to the Court by motion, petition, or originating summons, after notice to the Company, but without suit, for an account, and the Court may—

Order for account on application of trustee.

- (a) If of opinion that no sufficient account has been rendered by the Company, order that such account be rendered by the Company as to the Court shall seem just ;
- (b) In addition to or in substitution for such account, order that a person to be named in the order may examine the books and accounts of the Company in reference to the estate to which the order relates, and in that case the Company shall deliver to such person a list of all books relating to such estate kept by the Company, and shall produce to such person at all reasonable times when required the said books and all accounts, vouchers, papers, and other documents of the Company so relating as aforesaid, and shall afford all necessary information and facilities for enabling him to make the examination under that section ;
- (c) Dismiss the application ;
- (d) Make such order as to costs (including the costs of the examination mentioned in subsection (b) of this section), either against the Company or against the applicant or out of the estate, as the Court shall deem fit.

23. So long as any estate in respect of which the Company is executor, administrator, or trustee, shall remain in whole or in part unadministered, it shall not be lawful to proceed to wind up the Company voluntarily, unless with the sanction of the Court, and any person interested in such estate, or who may have any claim in respect thereof, may apply to the Court in a summary way to restrain any shareholder from disposing of any share which he may hold in the Company, or to restrain the directors of the Company from registering the transfer of any such share, or to restrain the voluntary winding up of the Company, and the Court may, in any such case, make such order as it shall deem fit.

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

24. Where

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Testators may appoint their own solicitor.

24. Where by any will or settlement a testator or settlor shall direct that any practising solicitor shall conduct the legal business of the trust estate, such solicitor shall be entitled to act therein accordingly; but in such case the Company shall not be liable for the negligence, misfeasance, nonfeasance, or misconduct of such solicitor, and such solicitor may be removed by order of the Court upon the application of the Company, or of any person interested in such estate, upon cause shown, and then and in such case the Court may appoint the solicitor to the Company, or some other solicitor to act in place of the solicitor so removed.

Trust moneys belonging to several estates may be invested as one fund.

25. In all cases where the Company shall hold money belonging to more than one estate as trustee for investment, it shall be lawful for the Company to invest such money as one fund in one or several securities, and to distribute the income arising from such securities, after deducting all proper charges ratably among the several estates whence the moneys so invested were derived; and any loss arising from any such investment shall likewise be borne ratably by the same several estates: Provided that no money belonging to any estate shall be invested upon any security not authorised by the instrument creating the trust or by Act of Parliament.

Declaration by manager.

26. The manager or other authorised officer of the Company shall, on the first Monday in May and the first Monday in November in the year one thousand nine hundred and eleven, and in every subsequent year during which it carries on business, make before a Justice of the Peace a declaration in the form contained in the First Schedule hereto, or as near thereto as circumstances will admit, and a copy of such declaration shall be put in a conspicuous place in the registered office of the Company, and shall be given to any trustee, *cestui que* trust, legatee, or beneficiary of the estate under administration, or to any member or creditor of the Company who applies for the same upon payment of a sum not exceeding One Shilling, and a copy thereof shall be forwarded to the Registrar of Companies, and shall be filed by him.

Report and declaration by auditors.

27. No appointment of auditors by the Company shall be valid until approved by the Treasurer of the said State, and the auditors of the Company shall, after every annual audit, attach to the Company's balance-sheet a report in the form contained in the Second Schedule hereto, or as near thereto as circumstances may permit.

Notice of winding up estate.

28. Immediately after the winding up of any estate and filing the accounts thereof, the Company shall insert in the *Government Gazette* and in one or more of the daily newspapers published in Adelaide, a notice that such particular estate has been closed, and a copy of such accounts shall remain open for the inspection of any beneficiary for a period of twenty-eight days, at the office of the Company, at all reasonable times, and such beneficiary shall be entitled to take copies of or extracts therefrom free of charge, or, if so requested

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requested by the persons so entitled, the Company shall, on receiving payment at a rate not exceeding Six Pence per common law folio, furnish such copies or extracts as so requested.

29. For the purposes of this Act the production of a certificate under the seal of the Company and hands of two of the directors thereof, certifying that the person named therein is the manager of the Company, shall be sufficient evidence of the due appointment of such person as the manager.

Evidence of appointment of manager.

30. Excepting so far as is herein expressly provided, the Company shall remain and be subject to the same restrictions, liabilities, penalties, privileges, and powers as it is subject to under its present incorporation, and this Act shall not otherwise affect the incorporation of the Company.

Incorporation and powers of Company, except so far as specially altered, to remain.

31. Notwithstanding any alteration which may be made in the Articles of Association of the Company, its members shall not be entitled to claim or receive, nor shall its directors or the Company declare or pay dividends or bonuses amounting in the aggregate in any one year to more than ten per centum upon the paid-up capital of the Company, unless at the time of the declaration and payment of such dividends and bonuses and each of them the Company shall have an existing reserve fund of not less than Fifty Thousand Pounds sterling. A certificate, under the hands of at least two directors of the Company and the manager at the date of the declaration and payment of any such dividend or bonus, that the Company has an existing reserve fund of not less than Fifty Thousand Pounds sterling shall be conclusive evidence of that fact.

Yearly dividends and bonuses not to exceed ten per centum per annum on paid-up capital unless reserve fund amounts to Fifty Thousand Pounds.

32. Nothing in this Act shall be deemed to derogate from or lessen in any manner whatsoever the powers or jurisdiction of the Court in relation to the care, control, and supervision of the persons or estates of infants.

Act not to derogate from jurisdiction of Court over infants and their estates.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

DAY H. BOSANQUET, Governor.

SCHEDULES ABOVE REFERRED TO.

FIRST SCHEDULE.

FINANCIAL STATEMENT.

I, _____, manager [*or as the case may be*] of Elder's Trustee & Executor Co., Limited, do solemnly and sincerely declare—

- I. That the liability of the members is limited.
- II. That the capital of the Company is _____ Pounds, divided into _____ shares of _____ each.
- III. That the number of shares issued is _____.
- IV. That calls to the amount of _____ Pounds per share have been made, under which the sum of _____ Pounds has been received.
- V. That the amount of all moneys received during the half-year ended on the first day of April (*or* October) last on account of estates is £ _____.
- VI. That the amount of all moneys paid during the half-year ended on the first day of April (*or* October) last on account of all estates is £ _____.
- VII. That the amount of all moneys invested on account of all estates under the control of the Company is £ _____.
- VIII. That the amount of the balance held on the first day of April (*or* October) last to the credit of all estates under the control of the Company is £ _____.
- IX. That the liabilities of the Company on the first day of April (*or* October) last were—

Debts payable to sundry persons by the Company—

A. On judgment	£	:	:
B. On specialty		:	:
C. On notes or bills		:	:
D. On simple contracts.....		:	:
E. On estimated liabilities		:	:

Total liabilities

	£	:	:
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- x. That the assets of the Company on the first day of April (*or* October) last were—

A. Government securities	£	:	:
B. Loans on mortgage		:	:
C. Bills of exchange and promissory notes.....		:	:
D. Cash at bankers		:	:
E. Other property		:	:

Total assets.....

	£	:	:
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- xi. That the present directors of the Company are—

Surname.	Christian Name.	Address.	Occupation.

xii. That the present manager of the Company is _____.

xiii. That the office of the Company is situated at _____.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of "The Statutory Declaration Act, 1835."

Declared before me at Adelaide, this _____ day of _____, 19 _____.

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SECOND SCHEDULE.

AUDITORS' REPORT.

Sec. 27.

We have examined the (annexed or above) balance-sheet made up to the day of . 19 , and report that we find the several items therein stated to conform to the balances in the general ledger, cash, and other account books.

We have counted the cash balance and examined the securities held by the Company, and hereby certify that we have found them correct.

We have also audited the accounts, and examined the securities relating to all estates that now are or have during the past year been under the control of the Company, and hereby certify that we have found the same correct.

} Auditors.

the Adelaide,
 day of , 19 .