



ANNO VICESIMO NONO

ELIZABETHAE II REGINAE

A.D. 1980

No. 103 of 1980

An Act to amend the Executors Company's Act, 1885-1978.

[Assented to 18 December 1980]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short titles.

1. (1) This Act may be cited as the "Executors Company's Act Amendment Act, 1980".

(2) The Executors Company's Act, 1885-1978, is in this Act referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Executors Company's Act, 1885-1980".

Commence-
ment.

2. This Act shall come into operation on a day to be fixed by proclamation.

Insertion of
new heading
and section.

3. The following heading and section are inserted before section 1 of the principal Act:

PART I

ESTABLISHMENT AND OPERATION OF THE COMPANY

Short title.

A1. This Act may be cited as the "Executors Company's Act, 1885-1980".

Repeal of
ss. 21a, 22
and 23 and
substitution of
new sections
and heading.

4. Sections 21a, 22 and 23 of the principal Act are repealed and the following heading and sections are substituted:

PART II

LIMITATION UPON SHAREHOLDINGS IN THE COMPANY

DIVISION I—PRELIMINARY

Interpretation.

22. In this Part, unless the contrary intention appears—

"the maximum permissible number" of shares means the maximum number of shares that may be held by a shareholder or a group of associated shareholders without contravening the provisions of section 26:

“share”, in relation to the Company, means a Class A share, or a Class B share, in the capital of the Company and includes any legal or equitable interest in any such share; and “shareholder” has a corresponding meaning.

23. (1) For the purposes of this Act, a person is an associate of another person— Associates.

(a) if he has entered, or proposes to enter, into an agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied with that other person—

(i) by reason of which either of those persons may exercise, directly or indirectly control the exercise of, or substantially influence the exercise of, any voting power attached to a share in the Company;

(ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the Company;

(iii) under which either of those persons may acquire from the other of them shares in the Company or may be required to dispose of those shares in accordance with the directions of the other of them;

(b) if that other person is, or proposes to become, associated, whether formally or informally, with him with a view to controlling or influencing the composition of the board of directors, or the conduct of the affairs, of the Company;

(c) if that other person has acted, is acting or proposes to act in concert with him in relation to the acquisition of shares or in relation to voting at a general meeting of the Company;

(d) if that other person is, or proposes to become, associated, whether formally or informally, in any other way with him in relation to the acquisition of shares or in relation to voting at a general meeting of the Company;

(e) if that other person has entered into, or proposes to enter into, a transaction, or has done, or proposes to do, any other act or thing, with a view to becoming associated with him in the manner described in paragraph (a), (b), (c) or (d);

(f) if that other person is—

(i) a director, secretary or executive officer of a corporation of which he is an associate under this section;

(ii) a corporation that is related to a corporation of which he is an associate under this section;

or

(iii) a director, secretary or executive officer of a corporation that is related to a corporation of which he is an associate under this section.

(2) A person shall not be taken to be associated with another person by virtue of subsection (1) (a), (b), (c), (d) or (e) by reason only that—

- (a) one of those persons gives a proxy to the other in relation to shares he holds in the Company and the other person votes at a general meeting of the Company in accordance with that proxy;
- (b) one of those persons furnishes advice to, or acts on behalf of, the other person in a professional capacity;
- (c) where the ordinary business of one of those persons includes dealing in securities—specific instructions are given to the person by or on behalf of the other person to acquire shares on behalf of the other person in the ordinary course of that business.

(3) For the purposes of subsection (1) (a), it is immaterial that the power of a person to exercise, control the exercise of, or influence the exercise of, voting power is in any way qualified.

(4) A corporation is related to another corporation for the purposes of subsection (1) (f) if those corporations are related to each other within the meaning of section 6 (5) of the Companies Act, 1962-1980.

Relevant
interests in
shares.

24. (1) Subject to this section, a person has a relevant interest in a share for the purposes of this Act if that person has power—

(a) to exercise, or to control the exercise of, the right to vote attached to that share;

or

(b) to dispose of, or to exercise control over the disposal of, that share.

(2) It is immaterial for the purposes of this section whether the power of a person—

(a) to exercise, or to control the exercise of, the right to vote attached to a share;

or

(b) to dispose of, or to exercise control over the disposal of, a share,

is express or implied or formal or informal, is exercisable alone or jointly with another person or other persons, cannot be related to a particular share, or is, or is capable of being made, subject to restraint or restriction, and any such power exercisable jointly with another person or other person shall, for those purposes, be deemed to be exercisable by either or any of those persons.

(3) A reference in this section to power or control includes a reference to power or control that is direct or indirect or is, or is capable of being, exercised as a result of, or by means of, or in breach of, or by revocation of, trusts, agreements, arrangements, understandings and practices, or any of them, whether or not they are enforceable, and a reference in this section to a controlling interest includes a reference to such an interest as gives control.

(4) For the purposes of this section, where a corporation has power—

(a) to exercise, or to control the exercise of, the right to vote attached to a share;

or

(b) to dispose of, or to exercise control over the disposal of, a share,

and—

(c) the corporation is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of a person in relation to the exercise of the power;

(d) a person has a controlling interest in the corporation;

or

(e) a person has power to exercise, or to control the exercise of, the voting power attached to not less than twenty per cent of the voting shares in the corporation,

that person shall be deemed to have the same power in relation to that share as the corporation has.

(5) For the purposes of subsection (4) (e), a person shall be deemed to have the power referred to if—

(a) a person associated with the firstmentioned person has that power;

(b) persons associated with the firstmentioned person together have that power;

or

(c) the firstmentioned person and a person or persons associated with him together have that power.

(6) Where a person—

(a) has entered into an agreement with respect to a share;

(b) has a right relating to a share, whether the right is enforceable presently or in the future and whether on the fulfilment of a condition or not;

or

(c) has an option with respect to a share,

and, on performance of the agreement, enforcement of the right or exercise of the option, as the case may be, that person would have a relevant interest in the share, he shall, for the purposes of this section, be deemed to have that relevant interest in the share.

(7) A relevant interest in a share shall be disregarded—

(a) if the ordinary business of the person who has the relevant interest includes the lending of money and he has authority to exercise his powers as the holder of the relevant interest only by reason of a security given for the purposes of a

transaction entered into in the ordinary course of business in connection with the lending of money, not being a transaction entered into with a person associated with the firstmentioned person;

(b) if the share is subject to a trust, the relevant interest is that of a trustee and—

(i) a beneficiary is deemed, by subsection (6), to have a relevant interest in the share by virtue of a presently enforceable and unconditional right referred to in paragraph (b) of that subsection;

or

(ii) the trustee is a bare trustee;

(c) if the ordinary business of the person who has the relevant interest includes dealing in securities and he has authority to exercise his powers as the holder of the relevant interest only by reason of instructions given to him by or on behalf of another person to dispose of that share on behalf of the other person in the ordinary course of business;

or

(d) if the relevant interest is that of a person who has it by reason of his having been appointed as a proxy or representative to vote at a meeting of members, or of a class of members, of the Company or another corporation, not being an appointment in return for the making of which the person or a person associated with the person provided valuable consideration.

(8) For the purposes of subsection (7) (b) (ii), a trustee shall not be taken not to be a bare trustee by reason only of the fact that the trustee is entitled in his capacity as a trustee to be remunerated out of the income or property of the trust.

(9) A relevant interest in a share shall not be disregarded by reason only of—

(a) its remoteness;

or

(b) the manner in which it arose.

Groups of
associated
shareholders.

25. For the purposes of this Act—

(a) where one or more shareholders are associates of any other shareholder, those shareholders and the shareholder of whom they are associates constitute a group of associated shareholders;

and

(b) where two or more shareholders are associates of a person who is not a shareholder, those shareholders constitute a group of associated shareholders.

DIVISION II—LIMITATION UPON SHAREHOLDINGS AND VOTING RIGHTS

26. (1) No shareholder, and no group of associated shareholders, of the Company is entitled to hold more than 1·67 per centum, or such greater percentage as may be prescribed, of the total number of shares issued by the Company.

Limitation of the size of shareholdings that may be held by individual shareholders or groups of associated shareholders.

(2) The Governor may, by regulation, prescribe a percentage for the purposes of subsection (1).

(3) In determining the number of shares held by a shareholder for the purposes of subsection (1), the following principles shall be applied—

(a) if the shareholder, or an associate of the shareholder, has a relevant interest in shares, those shares must also be brought into account;

and

(b) if a person has a relevant interest in shares of the shareholder, then any other shares held by that person or any of his associates, or in which that person or any of his associates has a relevant interest, must also be brought into account,

but in aggregating the shares of shareholders who are members of a group of associated shareholders for the purpose of determining the total number of shares held by the group, the same shares shall not be counted more than once.

27. (1) A director or the secretary of the Company may, before a transfer of shares in the Company is registered, by notice in writing served personally or by post upon the transferee require him to make a statutory declaration setting forth such information as the Company may reasonably require in order to ascertain—

Statutory declaration by transferee.

(a) whether the transferee is, or is likely to become, a member of a group of associated shareholders;

(b) if so, the membership of the group;

(c) the number of shares held by each member of the group;

(d) whether the transferee or any of his associates has a relevant interest in shares;

(e) whether any other person has a relevant interest in the shares subject to the transfer, and, if so, the identity of that person and the nature of his interest;

and

(f) any other matter relevant to the administration of this Act.

(2) If—

(a) a transferee of shares fails to furnish a declaration required under subsection (1) within the time allowed in the notice;

(b) the directors are not satisfied of the veracity of a declaration furnished under that subsection;

or

- (c) the transferee, or a group of associated shareholders of which he is or would become a member, holds or would in consequence of the transfer hold, more than the maximum permissible number of shares in the Company,

the Company may refuse to register the transfer.

(3) A refusal under subsection (2) to register a transfer shall remain in effect—

- (a) where the decision to refuse to register the transfer was made under subsection (2) (a)—until the transferee remedies his default;
- (b) where the decision to refuse to register the transfer was made under subsection (2) (b)—until the transferee satisfies the directors of the veracity of the declaration, or until the expiration of six months from the day on which the declaration was received by the Company, whichever first occurs;
- (c) where the decision to refuse to register the transfer was made under subsection (2) (c)—until the directors are satisfied that neither the transferee nor a group of associated shareholders of which he is or would become a member holds, or would in consequence of the transfer hold, more than the maximum permissible number of shares in the Company.

(4) While a refusal under subsection (2) to register a transfer remains in effect no voting rights attached to the shares subject to the transfer, or any other shares held by the transferee, are capable of being exercised.

Information
to be
furnished by
shareholders.

28. (1) A director or the secretary of the Company may, by notice in writing served personally or by post upon a shareholder, require him to make a statutory declaration setting forth such information as the Company may reasonably require in order to ascertain—

- (a) whether the shareholder is, or is likely to become, a member of a group of associated shareholders;
- (b) if so, the membership of the group;
- (c) the number of shares held by each member of the group;
- (d) whether the shareholder has a relevant interest in shares of which he is not the registered holder;
- (e) whether any other person has a relevant interest in shares of the shareholder and, if so, the identity of that person and the nature of his interest;

and

- (f) any other matter relevant to the administration of this Act.

(2) If a shareholder fails to furnish a declaration required under subsection (1) within the time allowed in the notice, no voting rights attached to shares of that shareholder shall be capable of being exercised while the shareholder remains in default.

(3) If the directors are not satisfied of the veracity of a declaration furnished by a shareholder under this section, no voting rights attached to shares of that shareholder shall be capable of being exercised until the shareholder satisfies the directors of the veracity of the declaration, or until the expiration of six months from the day on which the declaration was received by the Company, whichever first occurs.

29. (1) For the purpose of determining whether a shareholder or a group of associated shareholders holds more than the maximum permissible number of shares in the Company, the Supreme Court may, on the application of the Company or the Corporate Affairs Commission, summon for examination before the Court any person who may, in the opinion of the Court, be capable of giving information relevant to that question.

Examination in relation to whether non-compliance with this Act has occurred.

(2) The person summoned for examination shall be examined on oath and shall answer all such questions as the Court puts or allows to be put to him.

(3) The Court may require the person summoned to produce any books and papers in his custody or power relating to the matters in question, but where he claims any lien on books or papers the production shall be without prejudice to that lien, and the Court shall have jurisdiction to determine all questions relating to that lien.

(4) A person is entitled to be represented by counsel at an examination under this section and his counsel may put to him such questions as the Court may allow for the purpose of enabling him to explain or qualify any answers given by him.

(5) An examination under this section may be conducted before the Master.

(6) A written record shall be made of the questions put to a person upon an examination under this section and of his answers to those questions, and the Court shall require him to sign the written record.

(7) The record shall, without further proof, be admissible in evidence in legal proceedings relating to acts or matters done or arising under this Part, but where the person examined is not a party, or a director or shareholder of a party, to proceedings in which the record is admitted in evidence, the court may, if it considers it to be in the interests of justice to do so, order that he be called as a witness for examination or cross-examination in those proceedings.

(8) If a person summoned for examination under this section, after being tendered a reasonable sum for his expenses, fails or refuses to come before the Court at the time appointed (not having a lawful excuse made known to and allowed by the Court at the time of the sitting), the Court may cause him to be apprehended and brought before the Court for examination.

30. At a general meeting of the Company, or upon a poll—

(a) the voting rights of a shareholder or group of associated shareholders that holds more than the maximum permissible number of shares shall be determined as if that shareholder or group of associated shareholders held the maximum permissible number of shares and no more;

and

Voting rights at general meetings and upon polls.

- (b) the voting rights of a group of associated shareholders that holds more than the maximum permissible number of shares shall be divided amongst the individual members of the group in proportion to the number of shares registered in the name of each member of the group.

Minister may
require
shareholder
to dispose
of shares.

31. (1) Where a shareholder, or a group of associated shareholders, holds more than the maximum permissible number of shares the Company, acting in pursuance of a resolution of the board of directors may, by notice in writing served personally or by post upon that shareholder, or any member of the group, require him to sell or dispose of such number of his shares as may be specified in the notice to a person who neither is, nor intends to become, an associate of the shareholder to whom the notice is directed or of any other person specified in the notice.

(2) If a shareholder fails to comply with a requirement under subsection (1) within the time allowed in the notice (which must be a period of not less than three months from the date of the notice) the shares of that shareholder shall, by force of this subsection, be forfeited to the Crown.

(3) Any shares forfeited under subsection (2) shall be sold by the Corporate Affairs Commission.

(4) Any moneys realized from the sale of forfeited shares under subsection (3) shall, after deduction of the reasonable costs of the forfeiture and sale, be paid to the shareholder from whom the shares were forfeited.

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

K. D. SEAMAN, Governor