

Act No. 22, 1906.

An Act to give further powers to companies with respect to certain instruments under which they may be constituted or regulated; to provide for the registration of foreign companies; to facilitate compromises and arrangements between certain companies, societies, and associations and their creditors; to amend the Companies Act, 1899; and for other purposes. [11th December, 1906.]

COMPANIES
(AMENDMENT).
—

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Companies (Amendment) Act, 1906," and shall be construed as one with the Companies Act, 1899, hereinafter called the Principal Act. Short title.

2. In the construction and for the purposes of this Act, the following words and terms shall, if not inconsistent with the subject-matter or context, have the respective meanings hereby assigned to them (that is to say):— Definitions.

"Company," in Part II and Part III of this Act, means a company registered under Part I of the Companies Act, 1899.

"Court" means the Supreme Court in its equitable jurisdiction.

"Deed of settlement" means any contract of co-partnership, or other instrument constituting or regulating a company, not being an Act of Parliament, a royal charter, or letters patent.

PART

PART II.

MEMORANDA OF ASSOCIATION.

Power for company to alter objects, subject to confirmation by court.

Companies (Memorandum of Association) Act, 1890.

53 & 54 Vic., c. 62, s. 1.

3. A company may by special resolution, subject to the provisions hereinafter contained, and subject to the confirmation of the court, alter the provisions of its memorandum of association or deed of settlement with respect to the objects of the company to enable the company—

- (a) to carry on its business more conveniently or efficiently; or
- (b) to attain its objects by new or improved means; or
- (c) to enlarge, restrict, or change the area of its operations; or
- (d) to carry on any business or businesses which, under existing circumstances, may conveniently or advantageously be combined with the business of the company; or
- (e) to enlarge, restrict, or abandon any of the objects specified in the memorandum of association or deed of settlement.

In no case shall any such alteration take effect until confirmed by the court.

Order of confirmation.

Ibid.

4. A company which has passed a special resolution altering its memorandum of association or deed of settlement may apply to the court, by petition, for an order confirming any such alterations, and the court may, on the hearing of the petition, if satisfied—

- (a) that sufficient notice has been given to every holder of debentures or debenture stocks of the company, and any persons or class of persons whose interests will, in the opinion of the court, be affected by the alteration; and
- (b) that every creditor who, in the opinion of the court, is entitled to object to such alteration, and who has signified his objection in manner directed by the court, either consents to such alteration or his debt or claim has been discharged, or has determined or has been secured to the satisfaction of the court,

make an order confirming any such alteration, either wholly or in part, on such terms and subject to such conditions as it deems fit, and make such orders as to costs as it deems proper: Provided that the court may for special reasons dispense with the notice required by this section to be given to holders of debentures or debenture stock, or any persons or class of persons or creditors.

Interests to be considered by, and powers of, court.

Ibid., s. 2.

5. The court shall, in exercising its discretion under this Part of the Act, have regard to the rights and interests of the members of the company, or of any class of those members, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of the dissentient members;

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members; and the court may give such directions and make such orders as it may think expedient for the purpose of facilitating any such arrangement or carrying the same into effect: Provided always that it shall not be lawful to expend any part of the capital of the company in such purchase.

6. (1) Where any such alteration has been confirmed by the court, an office copy of the order confirming the alteration, together with a printed copy of the memorandum of association or deed of settlement so altered, shall be delivered to the registrar of joint stock companies within sixty days from the date of the order; and the registrar shall register the same, and shall certify under his hand the registration thereof, and his certificate shall be conclusive evidence that all the requisitions of this Part of this Act with respect to such alteration and the confirmation thereof have been complied with, and thenceforth (but subject to the provisions of this Part of this Act) the memorandum of association or deed of settlement so altered shall be the memorandum of association or deed of settlement of the company.

Registration of order and memorandum as ordered. 53 & 54 Vic., c. 62, s. 2.

(2) If a company makes default in delivering to the registrar any document required by this part of this Act to be delivered to him, the company shall be liable to a penalty not exceeding five pounds for every day during which it is in default.

PART III.

FOREIGN COMPANIES.

7. (1) Every company or society formed or incorporated in any country, colony, or state other than New South Wales and carrying on business in New South Wales shall, within six months from the commencement of this Act, or before commencing to carry on business in New South Wales, register—

Registration of foreign companies. Companies Act (Vic.), 1896, No. 1482, s. 70.

- (a) its name and a copy of its memorandum and articles of association, or any like document;
- (b) a balance sheet containing a statement of its assets and liabilities at a date not more than twelve months prior to the date of such registration;
- (c) the name and place of abode or business of the person appointed by such company or society to carry on the business of such company or society in New South Wales; and
- (d) the situation of the principal office of such company or society in New South Wales.

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The person so registered shall be deemed to be the agent of such company or society, and shall be called the public officer of the company or society, and such office shall be the registered office of such company or society for the purposes of this Act.

Every company or society which fails to comply with this provision, and any person carrying on in New South Wales the business of any such company or society which has failed to comply with such provision, shall be liable to a penalty not exceeding five pounds for every day during which business shall be carried on.

(2) Every such public officer as aforesaid shall be answerable for the doing of all such acts, matters, and things as are required to be done by such company or society by virtue of this Act, and shall, unless he prove some reasonable excuse, be personally liable to all penalties imposed on such company or society for any contravention of any of the provisions of this Act.

Mode of registration.
Companies Act
(Vic.), 1896, No.
1482, s. 71.

(3) The registration of the name of such company or society, agent, and office shall be effected in the following manner:— The attorney or agent of such company or society shall make and sign a statutory declaration in the prescribed form or to the like effect before a justice, and such declaration when so made and signed shall be filed with the Registrar-General.

(4) Such statutory declaration shall be accompanied by a copy of the memorandum of association and articles of association of the company or society, attested by the attorney or agent of such company or society to be a true transcript of the original memorandum of association and articles of association respectively of such company or society, and such memorandum of association and articles of association shall be filed in the office of the Registrar-General, and the same shall be open for inspection at all reasonable times by any person requiring to inspect the same.

Application of
sections twenty and
twenty-one of
Principal Act.

8. The provisions of sections twenty and twenty-one of the Principal Act (except subsection three of section twenty) applicable to companies formed or registered under that Act shall apply to companies registered under this Part.

List of debenture
and stock holders.

9. Any company registered under this Part shall once at least in every year make a list showing the number, denomination, value, and due date of all debentures, stock, or other securities secured on the property of the company. Such list shall specify the names, addresses, and occupations of the persons to whom such debentures, stock, or securities were issued or given by the company, or in whose names such debentures, stock, or securities stand in the books of the company.

Lists and balance-
sheet to be filed.

10. The list mentioned in section twenty of the Principal Act, as applied by this Act, and the list mentioned in the last preceding section shall be completed within three months of a general meeting

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at which a balance-sheet was presented held in that year, or within the last six months of the preceding year, and such lists and the balance-sheet so presented shall be filed in the office of the Registrar-General. Such balance-sheet shall contain a statement of the assets and liabilities of the company.

11. A certificate purporting to be under the hand of the Registrar-General (who is hereby required to give such certificate to any person applying for the same on payment of the prescribed fee), and which shall set forth the name of the company or society, and of the agent of and the situation of the principal office of the company or society in New South Wales, shall be prima facie evidence in all courts that such company or society is incorporated, that the person named therein as agent is the agent of such company or society in New South Wales, and that the office of such company or society in New South Wales is situate as therein stated, and that such company or society, agent, and office have been duly registered under the provisions of this Part of this Act, and of the time of registration, and of all particulars mentioned in such certificate.

Certificate of registration.
Companies Act (Vic.), 1896, No. 1482, s. 72.

12. When and so often as any such registered office shall be removed, or any other person shall be substituted for the registered agent of such company or society, the like declaration and notice shall be made and given as is hereinbefore required with reference to the registration of a company or society, and if the requirements of this section shall not be complied with, such company or society, and any person carrying on the business of such company or society which has failed to comply with such provisions, shall be liable to a penalty not exceeding five pounds for every day during which the business is so carried on.

Removal of registered office.
Ibid. s. 73.

13. All communications and notices may be addressed to such registered office of such company or society, and service of any notice or legal process at such office, or on the agent of the company or society whose name is registered pursuant to this Part, shall be deemed to be service upon the company or society.

Service of notices and process at registered office.
Ibid. s. 74.

14. No company shall be deemed to be carrying on business, within the meaning of this Part, by reason only of its investing its funds or other property in New South Wales.

Saving.
Ibid. s. 75.

PART IV.

COMPROMISES.

Definition. **15.** The word "company" in this Part of this Act means any society, association, or company registered in New South Wales as a building society before the passing of this Act.

Power to court to stay proceedings and sanction compromise before winding-up. **16.** Where no order has been made or resolution passed for the winding-up of a company, and any compromise or arrangement is proposed between such company and the creditors of such company or any class of such creditors, the court may, in addition to any other of its powers, on the application in a summary way of the company, or of any creditor of the company, restrain further proceedings in any action, suit, petition, or proceeding against the company upon such terms as it may think fit; and may also order that a meeting of such creditors, or class of creditors, shall be summoned in such manner and at such time as the court may direct, and if a majority in number representing three-fourths in value of such creditors, or class of creditors, present either in person or by proxy or attorney at such meeting, agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the court, be binding upon the company and its members and shareholders, and upon all such creditors or class of creditors, as the case may be.

Court may direct meetings, &c. **17.** The court, on the application of the company or of any creditor or person interested in the company, before sanctioning any arrangement or compromise under this Act, may order such meetings to be summoned and inquiries to be made as it shall think fit, and may alter or vary such arrangement or compromise, and impose such conditions in the carrying out thereof as it shall think just.

Miscellaneous.

Amendment of section 142 of the Principal Act. **18.** Section one hundred and forty-two of the Principal Act is amended by the addition of the following subsection, to be read after subsection three:—

(4) In the event of no quorum being present at any such meeting, it shall be a sufficient compliance with this section for the liquidators to make a return that such meeting has been duly convened.