

No. , 1911.

---

---

# A BILL

To amend the Acts relating to companies ; and for other purposes.

---

---

**B**E 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 :—

**1.** (1) This Act may be cited as the "Companies (Amendment) Act, 1911." It shall be construed with the Companies Act, 1899 (hereinafter referred to as the Principal Act), and any Acts amending the same. Short title.

(2) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them :— Definitions. 8 Edw. 7, c. 69, s. 285.

“ Articles ” means the articles of association of a company as originally framed, or as altered by special resolution, including, so far as they apply to the company, the regulations contained in Table A in the Second Schedule and in the Seventh Schedule to the Principal Act.

“ Debenture ” includes debenture stock.

“ Director ” includes any person occupying the position of director by whatever name called.

“ Memorandum ” means the memorandum of association of a company, as originally framed, or as altered in pursuance of the provisions of the Principal Act or any Act amending the same.

“ Prescribed ” means prescribed by regulations.

“ Prospectus ” means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company.

“ Regulations ” means regulations made under the provisions of the Act.

“ Share ” means share in the share capital of the company, and includes stock, except where a distinction between stock and shares is expressed or implied.

*Prospectus.* }

**2.** (1) Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus. Filing of prospectus. Ibid. s. 80.

(2) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, shall be filed for registration with the registrar on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so filed for registration.

(3) The registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section.

(4) Every prospectus shall state on the face of it that a copy has been filed for registration as required by this section.

(5) If a prospectus is issued without a copy thereof being so filed, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a penalty not exceeding *five* pounds for every day from the date of the issue of the prospectus until a copy thereof is so filed.

3. (1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state—

Specific requirements as to particulars of prospectus.

*Ibid.* s. 81.

- (a) the contents of the memorandum, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively; and the number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company; and
- (b) the number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors; and
- (c) the names, descriptions, and addresses of the directors or proposed directors; and
- (d) the minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share; and in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, and the amount actually allotted, and the amount, if any, paid on the shares so allotted; and
- (e) the number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued; and
- (f) the names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares, or debentures, to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor: Provided that where the vendors or any of them are a firm the members of the firm shall not be treated as separate vendors; and
- (g) the amount (if any) paid or payable as purchase money in cash, shares, or debentures, for any such property as aforesaid, specifying the amount (if any) payable for goodwill; and
- (h) the amount (if any) paid within the two preceding years, or payable, as commission for subscribing or agreeing to subscribe,

subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission : Provided that it shall not be necessary to state the commission payable to sub-underwriters; and

- (i) the amount or estimated amount of preliminary expenses; and
- (j) the amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment; and
- (k) the dates of and parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected : Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into more than two years before the date of issue of the prospectus; and
- (l) the names and addresses of the auditors (if any) of the company; and
- (m) full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him, as a director, or, otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company; and
- (n) where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred by the several classes of shares respectively.

(2) For the purposes of this section every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

- (a) the purchase money is not fully paid at the date of issue of the prospectus; or
- (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or
- (c) the contract depends for its validity or fulfilment on the result of that issue.

(3)

(3) Where any of the property to be acquired by the company is to be taken on lease, this section shall apply as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

(4) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(5) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the memorandum or the signatories thereto, and the number of shares subscribed for by them.

(6) In the event of non-compliance with any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance, if he proves that—

(a) as regards any matter not disclosed, he was not cognisant thereof; or

(b) the non-compliance arose from an honest mistake of fact on his part:

Provided that in the event of non-compliance with the requirements contained in paragraph (m) of subsection one of this section, no director or other person shall incur any liability in respect of the non-compliance unless it be proved that he had knowledge of the matters not disclosed.

(7) This section shall not apply to a circular or notice inviting existing members or debenture-holders of a company to subscribe either for shares or for debentures of the company, whether with or without the right to renounce in favour of other persons, but subject as aforesaid, this section shall apply to any prospectus whether issued on or with reference to the formation of a company or subsequently.

(8) The requirements of this section as to the memorandum and the qualification, remuneration, and interest of directors, the names, descriptions, and addresses of directors or proposed directors, and the amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus issued more than one year after the date at which the company is entitled to commence business.

(9) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or the Principal Act, or any Act amending the same, or this Act apart from this section.

**4.** (1) A company which does not issue a prospectus on or with reference to its formation, shall not allot any of its shares or debentures unless before the first allotment of either shares or debentures there has been filed with the registrar a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his agent authorised in writing, in the form and containing the particulars set out in the Schedule to this Act.

Obligations of companies where no prospectus is issued.  
*Ibid.* s. 82.

(2) This section shall not apply to a private company or to a company which has allotted any shares or debentures before the commencement of this Act.

**5.** A company shall not previously to the statutory meeting vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except subject to the approval of the statutory meeting.

Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus.  
*Ibid.* s. 83.

**6.** (1) When a prospectus invites persons to subscribe for shares in or debentures of a company, every person who is a director of the company at the time of the issue of the prospectus, and every person who has authorised the naming of him and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time, and every promoter of the company, and every person who has authorised the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

Liability for statements in prospectus.  
*Ibid.* s. 84.

- (a) with respect to every untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true; and
- (b) with respect to every untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation: Provided that the director, person named as director, promoter, or person who authorised the issue of the prospectus, shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and

(c)

(c) with respect to every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document,  
or unless it is proved—

- (i) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
- (ii) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or
- (iii) that after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal, and of the reason therefor.

(2) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself against any action or legal proceedings brought against him in respect thereof.

(3) Every person who by reason of his being a director, or named as a director or as having agreed to become a director, or of his having authorised the issue of the prospectus, becomes liable to make any payment under this section may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(4) For the purposes of this section—  
the expression “promoter” means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company;  
the expression “expert” includes engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him.

*Information*

*Information as to mortgages, charges, &c.*

7. (1) Every mortgage or charge created after the commencement of this Act by a company registered in New South Wales and being either—

Registration of mortgages and charges.  
*Ibid.*, s. 93.

- (a) a mortgage or charge for the purpose of securing any issue of debentures ; or
- (b) a mortgage or charge on uncalled share capital of the company ; or
- (c) a mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale ; or
- (d) a mortgage or charge on any land, wherever situate, or any interest therein ; or
- (e) a mortgage or charge on any book debts of the company ; or
- (f) a floating charge on the undertaking or property of the company,

shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the mortgage or charge, together with the instrument (if any) by which the mortgage or charge is created or evidenced, are delivered to or received by the registrar for registration in manner required by the Principal Act or any Act amending the same within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a mortgage or charge becomes void under this section the money secured thereby shall immediately become payable :

Provided that—

- (i) in the case of a mortgage or charge created out of New South Wales comprising solely property situate outside that State, the delivery to and the receipt by the registrar of a copy of the instrument by which the mortgage or charge is created or evidenced, verified in the prescribed manner, shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and twenty-one days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in New South Wales, shall be substituted for twenty-one days after the date of the creation of the mortgage or charge, as the time within which the particulars and instrument or copy are to be delivered to the registrar ; and
- (ii) where the mortgage or charge is created in New South Wales, but comprises property outside that State, the instrument creating or purporting to create the mortgage or charge may



*Companies (Amendment).*

may be sent for registration notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country in which the property is situate; and

- (iii) where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a mortgage or charge on those book debts; and
- (iv) the holding of debentures entitling the holder to a charge on land shall not be deemed to be an interest in land.

(2) The registrar shall keep, with respect to each company, a register in the prescribed form of all the mortgages and charges created by the company after the commencement of this Act, and requiring registration under this section, and shall, on payment of the prescribed fee, enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.

(3) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture-holders of that series are entitled *pari passu* is created by a company, it shall be sufficient if there are delivered to or received by the registrar within twenty-one days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars:—

- (a) The total amount secured by the whole series; and
- (b) the dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined; and
- (c) a general description of the property charged; and
- (d) the names of the trustees, if any, for the debenture-holders, together with the deed containing the charge, or, if there is no such deed, one of the debentures of the series; and the registrar shall, on payment of the prescribed fee, enter those particulars in the register:

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

(4) Where any commission, allowance, or discount has been paid or made either directly or indirectly by the company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional

conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount or rate per cent. of the commission, discount, or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued :

Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this provision be treated as the issue of the debentures at a discount.

(5) The registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of this section, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this section as to registration have been complied with.

(6) The company shall cause a copy of every certificate of registration given under this section to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the mortgage or charge so registered :

Provided that nothing in this subsection shall be construed as requiring a company to cause a certificate of registration of any mortgage or charge so given to be endorsed on any debenture or certificate of debenture stock which has been issued by the company before the mortgage or charge was created.

(7) It shall be the duty of the company to send to the registrar for registration the particulars of every mortgage or charge created by the company and of the issues of debentures of a series, requiring registration under this section, but registration of any such mortgage or charge may be effected on the application of any person interested therein.

Where the registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.

(8) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding one shilling for each inspection.

(9) Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under this section to be kept at the registered office of the company : Provided that, in the case of a series of uniform debentures, a copy of one such debenture shall be sufficient.

**8.** (1) If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall within seven days from the date of the order or of the appointment

Registration of enforcement of security.  
*Ibid.* s. 94.

appointment under the powers contained in the instrument give notice of the fact to the registrar, and the registrar shall, on payment of the prescribed fee enter the fact in the register of mortgages and charges.

(2) If any person makes default in complying with the requirements of this section he shall be liable to a penalty not exceeding *five* pounds for every day during which the default continues.

**9.** (1) Every receiver or manager of the property of a company who after the commencement of this Act has been appointed under the powers contained in any instrument, and has taken possession, shall, once in every half year while he remains in possession, and also on ceasing to act as receiver or manager, file with the registrar an abstract in the prescribed form of his receipts and payments during the period to which the abstract relates, and shall also on ceasing to act as receiver or manager file with the registrar notice to that effect, and the registrar shall enter the notice in the register of mortgages and charges.

Filing of accounts of receivers and managers. *Ibid.* s. 95.

(2) Every receiver or manager who makes default in complying with the provisions of this section shall be liable to a penalty not exceeding *fifty* pounds.

**10.** A judge, on being satisfied that the omission to register a mortgage or charge within the time hereinbefore required, or that the omission or misstatement of any particular with respect to any such mortgage or charge, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief may, on the application of the company or any person interested, and on such terms and conditions as seem to the judge just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or misstatement be rectified.

Rectification of register of mortgages. *Ibid.* s. 96.

**11.** The registrar may, on evidence being given to his satisfaction that the debt for which any registered mortgage or charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall if required furnish the company with a copy thereof.

Entry of satisfaction. *Ibid.* s. 97.

**12.** The registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the mortgages or charges registered with him under this Act.

Index to register of mortgages and charges. *Ibid.* s. 98.

**13.** (1) If any company makes default in sending to the registrar for registration the particulars of any mortgage or charge created by the company, and of the issues of debentures of a series, requiring registration with the registrar under the foregoing provisions of this Act, then, unless the registration has been effected on the application of some other person, the company, and every director,

Penalties. *Ibid.* s. 99.

director, manager, secretary, or other person who is knowingly a party to the default, shall on conviction be liable to a penalty not exceeding *fifty* pounds for every day during which the default continues.

(2) Subject as aforesaid, if any company makes default in complying with any of the requirements of this Act as to the registration with the registrar of any mortgage or charge created by the company, the company and every director, manager, and other officer of the company, who knowingly and wilfully authorised or permitted the default shall, without prejudice to any other liability, be liable on summary conviction to a penalty not exceeding *one hundred* pounds.

(3) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock requiring registration with the registrar under the foregoing provisions of this Act without a copy of the certificate of registration being endorsed upon it, he shall, without prejudice to any other liability, be liable on summary conviction to a penalty not exceeding *one hundred* pounds.

**14.** (1) Every limited company shall keep a register of mortgages and enter therein all mortgages and charges specifically affecting property of the company, giving in each case a short description of the property mortgaged or charged, the amount of the mortgage or charge, and (except in the case of securities to bearer) the names of the mortgagees or persons entitled thereto.

Company's register of mortgages. *Ibid.* s. 100.

(2) If any director, manager, or other officer of the company knowingly and wilfully authorises or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a penalty not exceeding *fifty* pounds.

**15.** (1) The copies of instruments creating any mortgage or charge requiring registration under this Act with the registrar of companies, and the register of mortgages kept in pursuance of the last foregoing section, shall be open at all reasonable times to the inspection of any creditor or member of the company without fee, and the register of mortgages shall also be open to the inspection of any other person on payment of such fee, not exceeding one shilling for each inspection, as the company may prescribe.

Right to inspect copies of instruments creating mortgages and charges and company's register of mortgages. *Ibid.* s. 101.

(2) If inspection of the said copies or register is refused, any officer of the company refusing inspection, and every director and manager of the company authorising or knowingly and wilfully permitting the refusal, shall be liable to a penalty not exceeding *five* pounds, and a further penalty not exceeding *two* pounds for every day during which the refusal continues; and, in addition to the above penalty as respects companies registered in New South Wales, any judge sitting in chambers, may by order compel an immediate inspection of the copies or register.

**16.**

**16.** (1) Every register of holders of debentures of a company shall, except when closed in accordance with the articles during such period or periods (not exceeding in the whole thirty days in any year) as may be specified in the articles, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspection, and every such holder may require a copy of the register or any part thereof on payment of sixpence for every one hundred words required to be copied.

Right of debenture-holders to inspect the register of debenture-holders and to have copies of trust deed.

*Ibid.* s. 102.

(2) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of one shilling or such less sum as may be prescribed by the company, or, where the trust deed has not been printed, on payment of sixpence for every one hundred words required to be copied.

(3) If inspection is refused, or a copy is refused or not forwarded, the company shall be liable to a penalty not exceeding *five* pounds, and to a further penalty not exceeding *two* pounds for every day during which the refusal continues, and every director, manager, secretary, or other officer of the company who knowingly authorises or permits the refusal shall incur the like penalty.

#### *Debentures and floating charges.*

**17.** A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the commencement of this Act, shall not be invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

Perpetual debentures.

*Ibid.* s. 103.

**18.** (1) Where either before or after the commencement of this Act a company has redeemed any debentures previously issued, the company, unless the articles or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns), shall have power, and shall be deemed always to have had power, to keep the debentures alive for the purposes of reissue, and where a company has purported to exercise such a power the company shall have power, and shall be deemed always to have had power, to reissue the debentures either by reissuing the same debentures or by issuing other debentures in their place, and upon such

Power to reissue redeemed debentures in certain cases.

*Ibid.* s. 104.

such a reissue the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issued.

(2) Where with the object of keeping debentures alive for the purpose of reissue they have either before or after the commencement of this Act been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a reissue for the purposes of this section.

(3) Where a company has either before or after the commencement of this Act deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(4) The reissue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the reissue or issue was made before or after the commencement of this Act, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued :

Provided that any person lending money on the security of a debenture reissued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

(5) Nothing in this section shall prejudice—

- (a) the operation of any judgment or order of a court of competent jurisdiction pronounced or made before the commencement of this Act, as between the parties to the proceedings in which the judgment was pronounced or the order made, and any appeal from any such judgment or order shall be decided as if this Act had not been passed ; or
- (b) any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished, reserved to a company by its debentures or the securities for the same.

**19.** A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

Specific performance of contract to subscribe for debentures.  
*Ibid.* s. 105.

**20.** (1) Where, in the case of a company registered in New South Wales, either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession

Payment of certain debts out of assets subject to floating charge in priority to claims under the charge.  
*Ibid.* s. 107.

possession is taken by or on behalf of those debenture-holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding-up are under the provisions of Division 4 of Part I of the Principal Act relating to preferential payments, to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or other persons taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) The periods of time mentioned in the said provisions of Division 4 of Part I of the Principal Act shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(3) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

*Amendment of the Companies (Amending) Act, 1906.*

**21.** Section fifteen of the Companies (Amending) Act, 1906, Amendment of s. 15 of 1906 Act. is repealed, and the following section substituted therefor:—

15. The word "company" in this Part of this Act means— Definition.

- (a) any society, association, or company registered in New South Wales as a building society; or
- (b) any society, association, or company formed under the provisions of the Companies Act, 1899, or any Act thereby consolidated in connection with the reconstruction of—
  - (i) any such building society; or
  - (ii) any company formed for the purpose of acquiring the assets and liabilities of any such building society; or
  - (iii) any such building society which has been converted into a limited company under the provisions of the said Acts.

**22.** The Governor may make regulations for carrying out the Regulations. the provisions of this Act.

02

*Companies (Amendment).*

16

SCHEDULE.

THE COMPANIES (AMENDMENT) ACT, 1911.

STATEMENT in lieu of prospectus filed by \_\_\_\_\_ Limited, pursuant  
to section four of the Companies (Amendment) Act, 1911.  
Presented for filing by \_\_\_\_\_

\_\_\_\_\_  
LIMITED,  
*Statement in lieu of prospectus.*

The nominal share capital of the company...	£
Divided into ... ..	Shares of £ ... each " " " " " "
Names, descriptions, and addresses of directors or proposed directors.	
Minimum subscription (if any) fixed by the memorandum or articles of association on which the company may proceed to allotment.	
Number and amount of shares and debentures agreed to be issued as fully or partly paid-up otherwise than in cash. The consideration for the intended issue of those shares and debentures.	1. shares of £ fully paid. 2. shares upon which £ per share credited as paid. 3. debenture £ 4. Consideration :—
Names and addresses of vendors* of property purchased or acquired, or proposed to be purchased† or acquired by the company. Amount (in cash, shares, or debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.	Total purchase price £ Cash ... .. £ Shares... .. £ Debentures ... .. £  Goodwill ... .. £
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company, or	Amount paid. " payable.
Rate of the commission ... ..	Rate per cent.

\* For definition of vendor, see section 3 (2) of the Companies (Amendment) Act, 1911.  
† See section 3 (3) of the Companies (Amendment) Act, 1911.



Companies (Amendment).

SCHEDULE—continued.

Estimated amount of preliminary expenses.	£
Amount paid or intended to be paid to any promoter. Consideration for the payment.	Name of promoter. Amount £ Consideration :—
Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the filing of this statement).	
Time and place at which the contracts or copies thereof may be inspected.	
Names and addresses of the auditors of the company (if any).	
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.	
Whether the articles contain any provisions precluding holders of shares or debentures receiving and inspecting balance sheets or reports of the auditors or other reports.	Nature of the provisions.

(Signatures of the persons above named as directors or proposed directors, or of their agents authorised in writing).