

[CONFIDENTIAL]  
(Rough Draft for Consideration Only.)

No. , 1934.

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A BILL

To make further provisions as to prospectuses of companies; to impose certain restrictions on the sale of shares, stock, bonds, debentures, or debenture stock of companies or of any rights or interests therein, and for these and other purposes to amend the Companies Act, 1899, and certain other Acts; and for purposes connected therewith.

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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:—

1. (1) This Act may be cited as the "Companies (Amendment) Act, 1934" Short title.

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(2) The Companies Act, 1899, as amended by subsequent Acts is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the "Companies Act, 1899-1934."

2. The Principal Act is amended—

Amendment of Act No. 40, 1899.

Sec. 2. (Interpretation.)

(a) (i) by inserting in section two before the definition of "Company limited by guarantee" the following new definition:—

"Company" means a company formed and registered under this Act or an existing company";

(ii) by inserting in the same section next after the definition of "Court" the following new definitions:—

"Debenture" includes debenture stock, bonds and any other security of a company whether constituting a charge on the assets of the company or not.

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

"Existing company" means a company formed and registered under or subject to Part I of this Act or a company deemed to be registered under that Part.

(iii) by inserting in the same section at the end of the definition of "No-liability company" the words "or an existing company being a no-liability mining company";

(iv) by inserting in the same section next after the definition of "No-liability company" the following new definitions:—

"Proprietary company" means a company which by its articles of association—

cf. 19 and 20 Geo. V, c. 23, s. 26.

(a) restricts the right to transfer its shares; and

(b)

- (b) limits the number of its members to fifty not including persons who are in the employment of the company and persons who having been formerly in the employment of the company were while in that employment, and have continued after the determination of that employment to be, members of the company; and
- (c) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

Where two or more persons hold one or more shares jointly they shall for the purposes of this definition be treated as a single member.

“ 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.

- (v) by inserting in the same section next after the definition of “ Registrar ” the following new definition:—

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

- (b) by inserting next after section sixty-five the following new short heading and sections:—

New ss. 65A,  
65B, 65C,  
65D, 65E.

DIVISION 2A.—*Prospectus.*

65A. (1) Every prospectus issued after the commencement of the Companies (Amendment) Act, 1934, 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. (2)

Dating and registration. 19 and 20 Geo. V, c. 23, s. 34.

(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 delivered to the Registrar for registration on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so delivered 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 delivered for registration as required by this section.

(5) If a prospectus is issued without a copy thereof being so delivered the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable on summary conviction 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 delivered.

65B. (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 the matters specified in Part I of the Ninth Schedule to this Act and set out the reports specified in Part II of that Schedule, and the said Parts I and II shall have effect subject to the provisions contained in Part III of the said Schedule.

Particulars.  
19 and 20  
Geo. V,  
c. 23, s. 35.

(2) A condition requiring or binding any applicant for shares in or debentures of a company 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.

(3)

(3) 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.

Where any such prospectus is so published, it shall not be necessary in the advertisement to insert any particulars required by this section, except those with respect to the names, descriptions, and addresses of the directors or proposed directors, and the number of shares subscribed for by them respectively, and with respect to the minimum subscription on which the directors may proceed to allotment:

Act No.  
3,659 (Vic.),  
s. 89.

Provided that the advertisement does not contain anything to which the requirements of this section apply, and which is not in the prospectus, or is inconsistent with the prospectus, and that the advertisement states—

- (a) that the requirements of subsection one of this section have not been fully complied with;
- (b) a place where copies of the full prospectus and forms of application for shares or debentures may be obtained;
- (c) that applications for shares will proceed only on one of the forms of application referred to and endorsed upon a printed copy of the prospectus.

(4) It shall not be lawful to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus which complies with the requirements of this section:

Provided that this subsection shall not apply if it is shown that the form of application was issued either—

- (a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or

(b)

(b) in relation to shares or debentures which were not offered to the public.

If any person acts in contravention of the provisions of this section, he shall be liable on summary conviction to a penalty not exceeding *five hundred* pounds.

(5) In the event of non-compliance with or contravention of 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 or contravention, if—

- (a) as regards any matter not disclosed, he proves that he was not cognisant thereof; or
- (b) he proves that the non-compliance arose from an honest mistake of fact on his part; or
- (c) the non-compliance or contravention was in respect of matters which in the opinion of the court dealing with the case were immaterial or were otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph sixteen of Part I of the Ninth Schedule to this Act, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

Ninth  
Schedule.

(6) This section shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application, relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, but subject to those exceptions, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company, or subsequently.

(7)

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

65c. (1) A company limited by shares or a company limited by guarantee and having a share capital 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.

Alteration of terms. 19 and 20 Geo. V, c. 23, s. 36.

(2) This section shall not apply to a proprietary company.

65d. (1) Where a prospectus invites persons to subscribe for shares in or debentures of a company—

Liability for statements in prospectus. *Ibid.* s. 37.

- (a) every person who is a director of the company at the time of the issue of the prospectus; and
- (b) every person who has authorised himself to be named 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
- (c) every person being a promoter of the company; and
- (d) 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 which 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—

- (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)

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- (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; or
- (iv) that—
- (a) as regards every untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement 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) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation; and
  - (c) as regards 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, it was a correct and fair representation of the statement or copy of or extract from the document:

Provided



Provided that a person shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making any such statement, report, or valuation as is mentioned in subparagraph (b) of paragraph (iv) of this subsection was competent to make it.

(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

reason of his acting in a professional capacity for persons engaged in procuring the formation of the company.

(5) For the purposes of this section the expression "expert" includes engineer, valuer, accountant, and other person whose profession gives authority to a statement made by him.

65E. (1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and all enactments and rules of law as to the contents of prospectuses and to liability in respect of a statement in and an omission from prospectuses, or otherwise relating to prospectuses, shall apply and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of any misstatement contained in the document or otherwise in respect thereof.

Document containing offer for sale deemed a prospectus.  
19 and 20 Geo. V, c. 23, s. 38.

(2) For the purposes of this Act it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown—

- (a) that an offer of the shares or debentures for sale to the public was made within six months after the allotment or agreement to allot; or
- (b) that at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(3)

(3) Section 65A of this Act as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company, and section 65B of this Act as applied by this section shall have effect as if it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—

- (a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates; and
- (b) the place and time at which the contract under which the said shares or debentures have been or are to be allotted may be inspected.

(4) Where a person making an offer to which this section relates is a company, it shall be sufficient if the document by which the offer for sale to the public is made is signed on behalf of the company or firm by two directors of the company or not less than half of the partners of the firm, as the case may be, and any such director or partner may sign by his agent authorised in writing.

(c) by inserting next after the Eighth Schedule the following new Schedule:—

NINTH SCHEDULE.

Secs. 65B,  
66A.

PART 1.—MATTERS REQUIRED TO BE STATED IN PROSPECTUS.

1. Except where the prospectus is published as a newspaper advertisement, the contents of the memorandum, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively.

2. 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.

3. 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.

4. The names, descriptions, and addresses of the directors or proposed directors.

5.

5. The names, descriptions and addresses of the secretary and solicitors of the company.

6. Where shares are offered to the public for subscription particulars as to—

(i) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters:—

(a) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;

(b) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company;

(c) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters;

(d) working capital; and

(ii) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

7. 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, the amount actually allotted, and the amount, if any, paid on the shares so allotted.

8. 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.

9. 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

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.

10. 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.

11. The amount, if any, paid within the two preceding years, or payable, as commission (but not including commission to sub-underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission.

12. The amount or estimated amount of preliminary expenses.

13. The amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment.

14. The dates of and parties to every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than two years before the date of issue of the prospectus, and a reasonable time and place at which any such material contract or a copy thereof may be inspected.

15. The names and addresses of the auditors, if any, of the company.

16. 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.

17. If the prospectus invites the public to subscribe for shares in the company and the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

18. In the case of a company which has been carrying on business, or of a business which has been carried on for less than three years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

PART II.—REPORTS TO BE SET OUT IN PROSPECTUS.

1. A report by the auditors of the company with respect to the profits of the company in respect of each of the three financial years immediately preceding the issue of the prospectus, and with respect to the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the said three years, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years, and, if no accounts have been made up in respect of any part of the period of three years ending on a date three months before the issue of the prospectus, containing a statement of that fact.

2. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by accountants who shall be named in the prospectus upon the profits of the business in respect of each of the three financial years immediately preceding the issue of the prospectus.

PART III.—PROVISIONS APPLYING TO PARTS I AND II OF NINTH SCHEDULE.

1. The provisions of this Schedule with respect 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 the preliminary expenses, shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

2. Every person shall for the purposes of this Schedule 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 the issue of the prospectus;
- (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;
- (c) the contract depends for its validity or fulfilment on the result of that issue.

3.

3. Where any property to be acquired by the company is to be taken on lease, this Schedule shall have effect 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. For the purposes of paragraph 9 of Part I of this Schedule where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.

5. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than three years, the accounts of the company or business have only been made up in respect of two years or one year, Part II of this Schedule shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years.

6. The expression "financial year" in Part II of this Schedule means the year in respect of which the accounts of the company or of the business, as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the company or business terminates the accounts of the company or business have been made up for a period greater or less than a year, that greater or less period shall for the purpose of the said Part of this Schedule be deemed to be a financial year.

3. The Principal Act is further amended—

Further amend-  
ment of Act No.  
40, 1899.

- (a) by inserting next after section sixty-six the following short heading and sections:—

New Div. 2B  
of Part I.

DIVISION 2B.—Allotment, etc.

66A. (1) No allotment shall be made of any share capital of a company offered to the public for subscription, unless—

Minimum  
subscription.  
19 and 20  
Geo. V,  
c. 23, s. 39.

- (a) the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, must be raised by the issue of share capital in order to provide for the matters specified in paragraph six of Part I of the Ninth Schedule to this Act has been subscribed; and
- (b) the sum payable on application for the amount so stated has been paid to and received by the company.

Ninth  
Schedule.

For

For the purposes of this subsection a sum shall be deemed to have been paid to and received by the company if a cheque for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that the cheque will not be paid.

(2) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash, and is in this Act referred to as the minimum subscription.

(3) The amount payable on application on each share shall not be less than five per centum of the nominal amount of the share.

(4) If the conditions mentioned in subsections one, two and three of this section have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to them without interest, and, if any such money is not so repaid within forty-eight days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per centum per annum from the expiration of the forty-eighth day:

Provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part.

(5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(6) This section except subsection three thereof shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

66B. (1) Where a company, having a share capital, which does not issue a prospectus on or with reference to its formation, or issues such a prospectus

Statement in lieu of prospectus.  
19 and 20 Geo. V, c. 23, s. 40.



prospectus but does not proceed to allot any of the shares offered to the public for subscription, the company shall not allot any of its shares or debentures unless at least seven days before the first allotment of either shares or debentures there has been delivered to 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 a form containing the particulars set out in the Tenth Schedule to this Act.

Tenth  
Schedule.

(2) If a company acts in contravention of the provisions of this section, the company and every director who knowingly authorises or permits the contravention shall be liable on summary conviction to a penalty not exceeding *one hundred pounds*.

(3) This section shall not apply to a proprietary company.

66c. (1) An allotment made by a company to an applicant in contravention of the provisions of section 66A or section 66B of this Act shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, or in any case where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment, and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

Irregular  
allotment.  
19 and 20  
Geo. V,  
c. 23, s. 41.

(2) If any director of a company knowingly contravenes or permits or authorises the contravention of any of the provisions of section 66A or section 66B of this Act with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages, or costs which the company or the allottee may have sustained or incurred thereby:

Provided

Provided that proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of two years from the date of the allotment.

66d. (1) Whenever a company limited by shares, or a company limited by guarantee and having a share capital, makes any allotment of its shares, the company shall within one month thereafter deliver to the Registrar for registration—

Return as to allotments. 19 and 20 Geo. V, c. 23, s. 42.

- (a) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount, if any, paid or due and payable on each share; and
- (b) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment, together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2) Where such a contract as abovementioned is not reduced to writing, the company shall within one month after the allotment deliver to the Registrar for registration the prescribed particulars of the contract.

(3) If default is made in complying with this section, every director, manager, secretary, or other officer of the company, who is knowingly a party to the default, shall be liable on summary conviction to a penalty not exceeding *fifty* pounds for every day during which the default continues:

Provided

Provided that in case of default in delivering to the Registrar within one month after the allotment any document required to be delivered by this section, the company, or any person liable for the default, may apply to the court for relief, and the court, if satisfied that the omission to file the document was accidental or due to inadvertence, or that it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such period as the court may think proper.

66E. (1) It shall be lawful for a company to pay a commission to any person in consideration of his agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if—

Commis-  
sions and  
discounts:  
how far  
lawful.  
19 and 20  
Geo. V,  
c. 23, s. 43.

- (a) the payment of the commission is authorised by the articles; and
- (b) the commission paid or agreed to be paid does not exceed ten per centum of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is the less; and
- (c) the amount or rate per centum of the commission paid or agreed to be paid is—
  - (i) in the case of shares offered to the public for subscription, disclosed in the prospectus; or
  - (ii) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and delivered before the payment of the commission to the Registrar for registration and where a circular or notice, not being

a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice; and  
 (d) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in manner aforesaid.

(2) Save as provided in subsection one of this section, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.

(4) A vendor to, promoter of, or other person who receives payment in money or shares from, a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

(5) If default is made in complying with the provisions of this section relating to the delivery to the Registrar of the statement in the prescribed form, the company and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable on summary conviction to a penalty not exceeding *twenty-five pounds*. 66F.

66f. (1) Where a company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed, or so much thereof as has not been written off, shall be stated in every balance-sheet of the company until the whole amount thereof has been written off.

Statement in balance-sheet. 19 and 20 Geo. V, c. 23, s. 44.

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable on summary conviction to a penalty not exceeding *twenty-five* pounds.

66g. (1) Subject as provided in this section, it shall not be lawful for a company to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, directly or indirectly, any financial assistance for the purpose of or in connection with a purchase made or to be made by any person of any shares in the company:

Financial assistance for the purchase of shares: how far lawful. *Ibid.* s. 45.

Provided that nothing in this section shall be taken to prohibit—

- (a) where the lending of money is part of the ordinary business of a company, the lending by a company of money in the ordinary course of its business;
- (b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase by trustees of fully-paid shares in the company to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company;
- (c) the making by a company of loans to persons, other than directors, bona fide in the employment of the company with a view to enabling those persons to purchase fully-paid shares in the company to be held by themselves by way of beneficial ownership.

(2)

(2) The aggregate amount of any outstanding loans made under the authority of paragraphs (b) and (c) of the proviso to subsection one of this section shall be shown as a separate item in every balance-sheet of the company.

(3) If a company acts in contravention of this section the company and every officer of the company who is in default shall be liable on summary conviction to a penalty not exceeding one hundred pounds.

(b) by inserting next after the Ninth Schedule the following new Schedule:— **New Tenth Schedule.**

TENTH SCHEDULE.

Sec. 66B.

FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE DELIVERED TO REGISTRAR BY A COMPANY WHICH DOES NOT ISSUE A PROSPECTUS OR WHICH DOES NOT GO TO ALLOTMENT ON A PROSPECTUS ISSUED.

The Companies Act, 1899-1934.

Statement in lieu of prospectus delivered for registration by

[Insert the name of the Company]

Pursuant to section 66B of the Companies Act, 1899-1934. Delivered for registration by

The nominal share capital of the Company.	£		
Divided into .. .. .		Shares of £	each.
		" "	"
		" "	"
Amount (if any) of above capital which consists of redeemable preference shares.		Shares of £	each.
The date on or before which these shares are, or are liable, to be redeemed.			
Names, descriptions and addresses of directors or proposed directors.			
If the share capital of the Company is divided into different classes of shares, the right of voting at meetings of the Company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.			
Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.	1.	shares of £	fully paid.
	2.	shares upon which	
		£	per share
			credited as paid.
The consideration for the intended issue of those shares and debentures.	3.	debenture	
		£	
	4.	Consideration:—	

TENTH

TENTH SCHEDULE—continued.

FORM OF STATEMENT—continued.

<p>Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the Company.</p> <p>Amount (in cash, shares, or debentures) payable to each separate vendor.</p> <p>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.</p>	<p>Total purchase price .. £</p> <p>Cash .. £</p> <p>Shares .. £</p> <p>Debentures .. £</p> <hr style="width: 50%; margin-left: 0;"/> <p>Goodwill .. £</p>
<p>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</p> <p>Rate of the commission .. . . .</p> <p>The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.</p> <p>Estimated amount of preliminary expenses.</p> <p>Amount paid or intended to be paid to any promoter.</p> <p>Consideration for the payment .. . .</p> <p>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 delivery of this statement).</p> <p>Time and place at which the contracts or copies thereof may be inspected.</p> <p>Names and addresses of the auditors of the Company (if any).</p> <p>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.</p>	<p>Amount paid. " payable.</p> <p>Rate per cent.</p> <p>£ . . .</p> <p>Name of promoter Amount £ Consideration:—</p>

TENTH SCHEDULE—continued.

FORM OF STATEMENT—continued.

If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year the above requirement shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on.

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

Date

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTE.—In this Schedule the expression "vendor" includes a vendor as defined in Part III of the Ninth Schedule to this Act, and the expression "financial year" has the meaning assigned to it in that Part of that Schedule.

4. The Principal Act is further amended by inserting next after section one hundred and ninety-five the following new section:—

Further amendment of Act No. 40, 1899. New s. 195A.

195A. The provisions of sections 65A to 65E of this Act, both inclusive, and of sections 66A to 66G of this Act, both inclusive, shall apply to and in respect of no-liability mining companies registered under this Part of this Act after the commencement of the Companies (Amendment) Act, 1934, or proposed to be so registered.

Application of certain sections to no-liability mining companies.

5.



5. The Principal Act is further amended—

(a) by inserting next after section two hundred and eighty-four the following new Part:—

Further amend-  
ment of Act  
No. 40, 1899.  
New  
Part VII.

PART VII.

RESTRICTIONS ON SALE OF SHARES.

285. (1) A person shall not—

(a) issue, circulate or distribute in New South Wales any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside New South Wales, whether the company has or has not established, or when formed will or will not establish, a place of business in New South Wales, unless—

Provisions  
with  
respect to  
prospectuses  
of foreign  
companies  
inviting  
subscriptions  
for  
shares or  
offering  
shares  
for sale.

19 and 20  
Geo. V,  
c. 23, s. 354.

- (i) before the issue, circulation or distribution of the prospectus in New South Wales, a copy thereof, certified by the chairman and two other directors of the company as having been approved by resolution of the managing body, has been delivered for registration to the Registrar;
- (ii) the prospectus states on the face of it that the copy has been so delivered;
- (iii) the prospectus is dated; and
- (iv) the prospectus otherwise complies with this Part of this Act; or

(b) issue to any person in New South Wales a form of application for shares in or debentures of such a company or intended company, unless the form is issued with a prospectus which complies with this Part of this Act:

Provided that this provision shall not apply if it is shown that the form of application was issued in connection with

a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(2) This section shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons, but, except in any such case, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(3) Where any document by which any shares in or debentures of a company incorporated outside New South Wales are offered for sale to the public would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section 65E of this Act to be a prospectus issued by the company, that document shall be deemed to be, for the purposes of this section, a prospectus issued by the company.

(4) An offer of shares or debentures for subscription or sale to any person whose ordinary business or part of whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this section.

(5) Section 65D of this Act shall extend to every prospectus to which this section applies.

(6) Any person who is knowingly responsible for the issue, circulation or distribution of any prospectus, or for the issue of a form of application for shares or debentures, in contravention of the provisions of this section shall be guilty of an offence, and shall be liable on summary conviction to a penalty not exceeding ~~one hundred~~ pounds.

(7)

(7) In this section and in section two hundred and eighty-six "prospectus," "shares," and "debentures" have the same meanings as when used in relation to a company incorporated under Part I of this Act.

286. (1) In order to comply with this Part of this Act a prospectus in addition to complying with the provisions of subparagraphs (ii) and (iii) of paragraph (a) of subsection one of section two hundred and eighty-five shall—

Require-  
ments as to  
prospectus.  
19 and 20  
Geo. V,  
c. 23, s. 355.

(a) contain particulars with respect to the following matters:—

- (i) the objects of the company;
- (ii) the instrument constituting or defining the constitution of the company;
- (iii) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;
- (iv) an address in New South Wales where the instrument, enactments or provisions, or copies thereof, and if they are in a foreign language a translation thereof certified in the prescribed manner, can be inspected;
- (v) the date on which and the country in which the company was incorporated;
- (vi) whether the company has established a place of business in New South Wales, and, if so, the address of its principal office in New South Wales:

Provided that the provisions of subparagraphs (i), (ii), (iii) and (iv) of this paragraph shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business;

(b)

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(b) subject to the provisions of this section, state the matters specified in Part I of the Ninth Schedule to this Act (other than those specified in paragraph one of that Part) and set out the reports specified in Part II of that Schedule subject always to the provisions contained in Part III of that Schedule:

Provided that—

- (i) where any prospectus is published as a newspaper advertisement, it shall be a sufficient compliance with the requirement that the prospectus shall specify the objects of the company if the advertisement specifies the primary object with which the company was formed;
- (ii) in paragraph three of Part I of the Ninth Schedule a reference to the constitution of the company shall be substituted for the reference to the articles; and
- (iii) paragraph one of Part III of that Schedule shall have effect as if the reference to the memorandum were omitted therefrom.

(2) 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.

(3) In the event of non-compliance with or contravention of 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 or contravention, if—

- (a) with respect to any matter not disclosed, he proves that he was not cognizant thereof;

(b)

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- (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or
- (c) the non-compliance or contravention was in respect of matters which, in the opinion of the Court dealing with the case, were immaterial or were otherwise such as ought, in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in paragraph sixteen of Part I of the Ninth Schedule to this Act, no director or other person shall incur any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

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

287. (1) A person shall not go from house to house or from place to place offering shares for subscription or purchase to the public or any member of the public.

Restrictions on offering of shares for subscription or purchase.

(2) Subject to the provisions of this subsection, it shall not be lawful to make an offer in writing to any member of the public (not being a person whose ordinary business or part of whose ordinary business it is to buy or sell shares, whether as principal or agent) of any shares for purchase, unless the offer is accompanied by a statement in writing (which shall be signed by the person making the offer and dated) containing such particulars as are required by this section to be included therein and otherwise complying with the requirements of this section, or, in the case of shares in a company incorporated outside New South Wales, either by such a statement, or by such a prospectus as complies with this Part of this Act:

cf. 19 and 20 Geo. V, c. 23, s. 356.

Provided

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Provided that the provisions of this subsection shall not apply—

- (a) where the shares to which the offer relates are shares which are quoted on, or in respect of which permission to deal has been granted by, any recognised stock exchange in New South Wales and the offer so states and specifies the stock exchange;
- (b) where the offer was made only to persons with whom the person making the offer has been in the habit of doing regular business in the purchase or sale of shares.

(3) The written statement shall not contain any matter other than the particulars required by this section to be included therein, and shall not be in characters less large or less legible than any characters used in the offer or in any document sent therewith.

(4) The statement shall contain particulars with respect to the following matters:—

- (a) whether the person making the offer is acting as principal or agent, and, if as agent, the name of his principal and an address in New South Wales where that principal can be served with process;
- (b) the date on which and the country in which the company was incorporated and the address of its registered or principal office in New South Wales;
- (c) the authorised share capital of the company and the amount thereof which has been issued, the classes into which it is divided and the rights of each class of shareholders in respect of capital, dividends and voting;
- (d) the dividends, if any, paid by the company on each class of shares during each of the three financial years immediately preceding

preceding the offer, and if no dividend has been paid in respect of shares of any particular class during any of those years, a statement to that effect;

- (e) the total amount of any debentures issued by the company and outstanding at the date of the statement, together with the rate of interest payable thereon;
- (f) the names and addresses of the directors of the company;
- (g) whether or not the shares offered are fully paid up, and, if not, to what extent they are paid up;
- (h) whether or not the shares are quoted on, or permission to deal therein has been granted by, any recognized stock exchange in New South Wales or elsewhere, and, if so, which, and, if not, a statement that they are not so quoted or that no such permission has been granted;
- (i) where the offer relates to units, particulars of the name and addresses of the persons in whom the shares represented by the units are vested, the date of and the parties to any document defining the terms on which those shares are held, and an address in New South Wales where that document or a copy thereof can be inspected.

(5) In the last preceding subsection "company" means the company by which the shares to which the statement relates were or are to be issued.

(6) If any person acts, or incites, causes or procures any person to act, in contravention of this section, he shall be guilty of an offence and shall be liable for a first offence to a penalty not exceeding *two hundred pounds* or to imprisonment for *six months* or both; and for

a second or subsequent offence to a penalty not exceeding *five hundred* pounds, or imprisonment for *twelve* months, or both.

(7) Where a person convicted of an offence under this section is a company (whether a company within the meaning of this Act or not), every director and every officer concerned in the management of the company shall be guilty of the like offence unless he proves that the act constituting the offence took place without his knowledge or consent.

(8) In this section, unless the contrary intention appears—

“ Shares ” means the shares of a company, whether a company within the meaning of this Act or not, and includes debentures and units;

“ Unit ” means any right or interest (by whatever name called) in a share;

and for the purposes of this section a person shall not in relation to a company be regarded as not being a member of the public by reason only that he is a holder of shares in the company or a purchaser of goods from the company.

(9) Where any person is convicted of having made an offer in contravention of the provisions of this section, the court before which he is convicted may order that any contract made as a result of the offer shall be void, and, where it makes any such order, may give such consequential directions as it thinks proper for the repayment of any money or the retransfer of any shares.

(10) Where the court makes an order under subsection nine of this section (whether with or without consequential directions) an appeal against the order and the consequential directions, if any, shall lie to the Supreme Court in its equitable jurisdiction in accordance with rules of that court.



288. (1) A person shall not, whether as principal or agent, sell or offer, or agree to sell, or attempt to sell, any shares in any company, whether formed or to be formed within or outside New South Wales, if any of the objects of the company is to do any act in or outside New South Wales, or to carry on business in or outside New South Wales, which act or business would, if done or carried on within New South Wales, be illegal.

Restrictions on sale of shares in companies with illegal objects.

(2) In any proceedings for an offence against this section a document purporting to be a memorandum or proposed memorandum of association of a company shall on mere production be deemed prima facie evidence of the existence of the company, or proposal to form the company as the case may be, of the contents of its memorandum of association, and of the fact that its objects are those stated in the memorandum.

(b) (i) by omitting from section one the figures " 66 " and by inserting in lieu thereof the figures " 65 ";

Sec. 1.  
(Revision.)

(ii) by inserting in the same section next after the matter appearing under the heading of " Division 2 " the following new matter:—

DIVISION 2A.—*Prospectuses*—ss. 65A–65E.

DIVISION 2B.—*Allotment, etc.*—ss. 66A–66G.

(iii) by inserting in the same section next after the matter appearing under the heading of " Part VI " the following new matter:—

PART VII.—RESTRICTIONS ON SALE OF SHARES—ss. 285–288.

SCHEDULES 1–10.

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