

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1934.

# A BILL

To provide for the investigation of the affairs of certain companies; to amend the Companies Act, 1899, as amended by subsequent Acts; and for purposes connected therewith.

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. This Act may be cited as the "Companies (Investigation of Affairs) Act, 1934." Short title.

2. This Act shall be construed with the Companies Act, 1899, as amended by subsequent Acts and the Companies (Amendment) Act, 1906. Construction.

**3.** (1) This Act shall apply to and in respect of such one or more of the companies specified in the Schedule to this Act as at the commencement of this Act or at any time thereafter is registered under the Companies Act, 1899, or is registered in New South Wales as a foreign company pursuant to the Companies (Amendment) Act, 1906. Application.

(2) The Governor may from time to time at the request of the Government of another country, colony, dominion, state or territory, by proclamation add the name of any company registered in New South Wales as a foreign company to the Schedule to this Act and as from the date of the publication in the Gazette of such proclamation this Act shall extend to and in respect of such company.

**4.** In this Act unless the contrary intention appears— Definitions.  
 “Inspector” means an inspector appointed under this Act.

“Officer or agent” means an officer or agent of the company in respect of which the inspector is appointed and includes any banker or solicitor of the company, and any person employed by the company as auditor, whether that person is or is not an officer of the company, and any person who has at any time been an officer or agent of the company or has acted as a banker, solicitor or auditor of the company.

**5.** The Governor may appoint any person to be an inspector to investigate the affairs of any company, to which this Act applies, specified in the instrument of appointment, and to report thereon to him, and in such other manner as the Governor directs. Inspectors.

**6.** (1) Every officer or agent of the company shall, on demand, produce, for the examination of the inspector, any book or document in his custody or power. Inspection of books and examination of officers, etc.

(2) An inspector may examine on oath any officer or agent of the company in relation to the business of the company, and may administer oaths accordingly.

(3) Any officer or agent of the company who refuses to produce to an inspector any book or document in accordance with the provisions of this section, or refuses to

to answer any question which is put to him by an inspector with respect to the affairs of the company shall be guilty of an offence against this Act.

7. (1) On the conclusion of the investigation the inspector shall report his opinion to the Governor and such report shall be written or printed as the Governor directs. Report.

(2) A copy of the report shall be forwarded by the Minister to the registered office of the company and a further copy forwarded to the Attorney-General.

8. (1) If from any report made under section seven of this Act it appears to the Attorney-General that any person has been guilty of any offence in relation to the company for which he is criminally liable, and the Attorney-General considers that the case is one in which a prosecution should be instituted, he shall cause proceedings to be instituted accordingly, and every officer or agent of the company, past and present (other than the defendant in the proceedings) shall give all assistance in connection with the prosecution which they are reasonably able to give. Proceed-ings on report by inspector.

(2) A prosecution in respect of any such offence shall not be instituted without the consent of the Attorney-General.

9. (1) The costs and expenses of and incidental to an investigation under this Act shall be defrayed as follows:— Costs and expenses.

(a) where as a result of the investigation the Attorney-General causes a prosecution to be instituted the costs and expenses shall be defrayed by the State; and

(b) in any other case the expenses shall be defrayed by the company, unless the Governor directs that they shall either be paid by the State or in part by the company and in part by the State.

(2) Any costs and expenses to be defrayed or paid by the company under this section shall be deemed to be a debt due to His Majesty from the company, and may be recovered from the company in any court of competent jurisdiction.

10. A copy of the report by an inspector, certified as correct by the Attorney-General shall be admissible in any legal proceedings as evidence of the opinion of the inspector in relation to any matter contained in the report.

Report of inspector to be evidence.

11. (1) Notwithstanding anything in the Companies Act, 1899, as amended by subsequent Acts, application to the Supreme Court in its equitable jurisdiction

Company to which this Act applies may on application by Attorney-General after receipt of inspectors' report be wound up by court.

- (a) (in the case of a company incorporated in New South Wales) for the winding up of a company to or in respect of which this Act applies; or
- (b) (in the case of a company formed or incorporated outside New South Wales and carrying on business within New South Wales) for the winding up, so far as New South Wales assets are concerned, of the affairs of a company to or in respect of which this Act applies,

may be made on petition presented by the Attorney-General at any time after a report has been made in respect of such company by an inspector or inspectors appointed pursuant to this Act, and thereupon the court shall have the same powers and the provisions of the Companies Act, 1899, as so amended, shall, with all necessary adaptations, apply as if—

- (i) (in the case of a company incorporated in New South Wales) a winding up petition had been duly presented to the court by the company; or
- (ii) (in the case of a company formed or incorporated outside New South Wales and carrying on business in New South Wales) a petition for an order for the affairs of the company so far as New South Wales assets are concerned to be wound up in New South Wales had been duly presented to the court by a creditor or contributory of the company on the going into liquidation of the company in the country in which it is incorporated.

(2) Where (in the case of a company formed or incorporated outside New South Wales and carrying on business within New South Wales) on any petition under subsection one of this section an order is made for the affairs

affairs of the company so far as New South Wales assets are concerned to be wound up in New South Wales such company shall not carry on business or establish or keep a place of business within New South Wales.

(3) Every company which fails to comply with the provisions of subsection two of this section and every officer or agent of the company shall be liable on summary conviction to a penalty not exceeding *five hundred* pounds, and, in the case of a continuing offence, to a penalty not exceeding *one hundred* pounds for every day during which the default continues.

Penalties.

**12.** (1) For the purpose of carrying out an investigation of the affairs of any company, an inspector may employ such assistance as he considers necessary, and may, by writing under his hand, authorise any person employed by him to do, in relation to the investigation, any act or thing which the inspector could do, except to examine any person on oath.

Inspectors may employ assistance.

(2) Any officer or agent of the company who refuses, on demand, to produce any book or document to any person so authorised, or refuses to answer any question put to him by any such person, shall be guilty of an offence against this Act.

**13.** (1) Any person who, with intent to defeat the purposes of this Act, or with intent to delay or obstruct the carrying out of an investigation under this Act, destroys or alters any book, document or record of or relating to any company, or sends or attempts to send or conspires with any other person to send out of New South Wales any such book, document or record, or any property of any description belonging to or in the disposition or under the control of the company, shall be guilty of an offence against this Act.

Destruction of records, etc.

(2) If in any prosecution for an offence against this section it is proved that the person charged with the offence has destroyed or altered any book, document or record, or has sent or attempted to send or conspired to send out of New South Wales any such book, document or record or any other thing, the onus of proving that in so doing he had not acted in contravention of this section shall be upon him.

**14.**

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**14.** (1) Any person being an individual who commits any offence against this Act shall be liable on summary conviction to a penalty not exceeding *five hundred* pounds, or to imprisonment for a term not exceeding *two* years. Offences.

(2) Any body corporate which commits an offence against this Act shall be liable on summary conviction to a penalty not exceeding *five hundred* pounds.

(3) Where any act which by this Act is declared to be an offence against this Act and which is committed by a body corporate is proved to have been committed with the consent or approval of, or to have been facilitated by any neglect on the part of, any director, manager, secretary or other officer or agent of the body corporate, he, as well as the body corporate, shall be deemed to be guilty of the offence, and shall be liable to be proceeded against and punished accordingly.

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SCHEDULE.

Sec. 3.

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