

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

(As read a first time)

COMPANIES (TRANSITIONAL PROVISIONS) BILL 1981

TABLE OF PROVISIONS

Clause

1. Short title
2. Commencement
3. Object
4. Interpretation
5. This Act additional to other saving provisions
6. General provisions
7. Particular provisions
8. Saving of certain provisions
9. Proceedings by or against Registrar to be proceedings by or against Commission
10. Property vested in Registrar vests in Commission
11. Registers, funds and accounts
12. Companies Auditors Board to continue in existence
13. Acts of Minister under Companies Ordinance deemed to be acts of Ministerial Council or Commission, &c.
14. Names
15. Continued application of Table A and Table B in certain circumstances
16. Existing prospectuses and section 82 statements
17. Interests in partnership agreements
18. Registration of charges
19. Certificate that person is an executive officer of a company
20. Application of Companies Act to financial years ending before commencement of Act
21. Annual general meeting held before commencement of Companies Act
22. Special investigations
23. Investigation by resolution of company
24. Lodging of accounts by person administering compromise or arrangement
25. Winding up
26. Registered auditors and liquidators
27. Power of Minister to consent to institution of proceeding

TABLE OF PROVISIONS—*continued*

Clause

28. Recognized companies
29. Recognized companies under corresponding laws
30. Foreign companies
31. Commission may destroy or dispose of documents
32. Certain provisions of *Companies Ordinance* 1931 to continue to apply
33. Marketable Securities Ordinance
34. Court may resolve difficulties
35. Regulations

1980-81

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 30 April 1981

(Minister for Business and Consumer Affairs)

A BILL

FOR

**An Act to enact transitional provisions consequent upon
the enactment of the *Companies Act 1981***

5 BE IT ENACTED by the Queen, and the Senate and the House of
Representatives of the Commonwealth of Australia, as follows:

Short title

1. This Act may be cited as the *Companies (Transitional Provisions)
Act 1981*.

10 **Commencement**

2. This Act shall come into operation on the day on which the *Com-
panies Act 1981* comes into operation.

Object

15 3. The object of this Act is to enact transitional provisions consequent
upon the enactment of the *Companies Act 1981* and this Act has effect, and
shall be construed, accordingly.

Interpretation

20 4. Expressions used in this Act that are defined by the *Companies and
Securities (Interpretation and Miscellaneous Provisions) Act 1980* or by
section 5 of the *Companies Act 1981* have in this Act, unless the contrary
intention appears, the respective meanings given to those expressions
by the *Companies and Securities (Interpretation and Miscellaneous Pro-
visions) Act 1980* or by section 5 of the *Companies Act 1981*, as the case
may be.

This Act additional to other saving provisions

5. Unless the contrary intention appears, the provisions of this Act are in addition to, and not in derogation of, the provisions of sub-section 29 (2) of the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980*. 5

General provisions

6. Unless the contrary intention appears in this Act or in the *Companies Act 1981*, all persons, things and circumstances appointed or created by or under the *Companies Ordinance 1962* or existing or continuing under that Ordinance immediately before the commencement of the *Companies Act 1981* shall, under and subject to this Act and to the *Companies Act 1981*, continue to have the same status, operation and effect as they respectively would have had if the *Companies Act 1981* had not been enacted. 10

Particular provisions

7. Without affecting the generality of section 6, unless the contrary intention appears in this Act or in the *Companies Act 1981*, the *Companies Act 1981* does not disturb the continuity of status, operation or effect of any order, rule, regulation, scale of fees, appointment, conveyance, mortgage, charge, deed, agreement, resolution, direction, approval, application, requisition, instrument, document, memorandum, articles, incorporation, nomination, affidavit, call, forfeiture, minute, assignment, register, registration, transfer, list, licence, certificate, security, notice, compromise, arrangement, right, priority, liability, duty, obligation, proceeding, matter or thing made, done, effected, given, issued, passed, taken, validated, entered into, executed, lodged, filed, accrued, incurred, existing, pending or acquired by or under the *Companies Ordinance 1962* before the commencement of the *Companies Act 1981*. 15
20
25

Saving of certain provisions

8. Notwithstanding section 4 of the *Companies Act 1981*, for the purposes of the operation of sub-section 29 (2) of the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980* in relation to the repeals effected by section 4 of the *Companies Act 1981*— 30

- (a) the provisions of section 7 of the *Companies Ordinance 1962*, of the Second Schedule to that Ordinance and of any regulations prescribing fees for the purposes of paragraph 7 (12) (b) of that Ordinance; 35
- (b) any other provisions of the *Companies Ordinance 1962* that are necessary for the effectual operation of the provisions mentioned in paragraph (a); and
- (c) any appointments in force under section 7 of that Ordinance, 40

continue in force as if that Ordinance had not been repealed, but it is not a contravention of sub-section 7 (9) of the *Companies Ordinance 1962* as

so continuing in force to divulge or communicate information to the Commission or to a person authorized by the Commission to receive the information.

Proceedings by or against Registrar to be proceedings by or against Commission

9. (1) Where, before the commencement of the *Companies Act* 1981, a proceeding under the *Companies Ordinance* 1962 had been commenced by or against the Registrar of Companies, the proceeding may be continued by or against the Commission.

(2) Where, but for the enactment of the *Companies Act* 1981, a proceeding under the *Companies Ordinance* 1962 could have been commenced by or against the Registrar of Companies, the proceeding may be commenced by or against the Commission.

Property vested in Registrar vests in Commission

10. Where, immediately before the commencement of the *Companies Act* 1981, property was vested in the Registrar of Companies by reason of the operation of section 310 of the *Companies Ordinance* 1962, the property vests by force of this section in the Commission and sections 462, 463 and 464 of the *Companies Act* 1981 apply in relation to the property in like manner as they would apply if the property had vested in the Commission pursuant to section 461 of that Act.

Registers, funds and accounts

11. Any register, fund or account kept immediately before the commencement of the *Companies Act* 1981 under any provision of the *Companies Ordinance* 1962 shall be deemed to be part of a register, fund or account kept under the corresponding provision of the *Companies Act* 1981.

Companies Auditors Board to continue in existence

12. (1) Notwithstanding the repeal of the *Companies Ordinance* 1962 by the *Companies Act* 1981, the Companies Auditors Board established by that Ordinance continues in existence for such period as is necessary for the Companies Auditors Board to complete any inquiry under sub-section 9 (10) of that Ordinance that had been commenced by the Companies Auditors Board but had not been completed before the repeal of that Ordinance and the Companies Auditors Board has, for the purposes of completing such an inquiry, all the powers that it would have had if that Ordinance had not been repealed.

(2) Where, pursuant to sub-section (1), the Companies Auditors Board completes an inquiry, the Companies Auditors Board shall not exercise any of the powers mentioned in sub-section 9 (12) of the *Companies Ordinance* 1962 but shall furnish to the Commission a report on the inquiry.

Acts of Minister under Companies Ordinance deemed to be acts of Ministerial Council or Commission, &c.

13. (1) In this section—

“ the Act ” means the *Companies Act 1981*;

“ the Ordinance ” means the *Companies Ordinance 1962*. 5

(2) Where the Minister had given consent under sub-section 22 (1) of the Ordinance to the registration of a company or an intended company by a specified name and the company had not been registered by that name before the commencement of the Act, the consent shall be deemed to have been a consent to the reservation or registration of that name in respect of that company or intended company given by the Ministerial Council under sub-section 38 (2) of the Act. 10

(3) A licence issued under section 24 of the Ordinance or the corresponding provision of a previous law of the Territory and in force immediately before the commencement of the Act continues in force as if— 15

(a) it were a licence issued by the Commission under section 66 of the Act; and

(b) in the case of a licence exempting a company from complying with provisions of the Ordinance—it exempted the company from complying with the corresponding provisions of the Act, 20

and a reference in the Act to a licence under section 66 of the Act shall be construed as including a reference to a licence to which this sub-section applies.

(4) A declaration made by the Minister under paragraph 38 (7) (b) or (c) of the Ordinance and in force immediately before the commencement of the Act shall be deemed to be a declaration made by the Commission under paragraph 97 (7) (b) or (c), as the case may be, of the Act. 25

(5) A notice by the Minister published under sub-section 38 (8) of the Ordinance and in force immediately before the commencement of the Act shall be deemed to be a notice by the Commission published under sub-section 97 (9) of the Act. 30

(6) Where the Minister had, under sub-section 44 (3) of the Ordinance, exempted an allotment of shares or debentures from the operation of section 44 of the Ordinance, and that exemption was in force immediately before the commencement of the Act, that allotment of shares or debentures shall be deemed to have been exempted by the Commission, under sub-section 105 (3) of the Act, from the operation of section 105 of the Act. 35

(7) A declaration made by the Minister by notice published in the *Gazette* under paragraph 69A (2) (b) or (c) of the Ordinance and in force immediately before the commencement of the Act shall be deemed to be a declaration made by the Ministerial Council by order published in the *Gazette* under paragraph 134 (2) (b) or (c), as the case may be, of the Act. 40

(8) An approval given by the Minister under paragraph 74 (1) (e) of the Ordinance and in force immediately before the commencement of the Act shall be deemed to be an approval given by the Commission under paragraph 152 (1) (g) of the Act.

5 (9) An order made by the Minister under sub-section 74D (2) of the Ordinance and in force immediately before the commencement of the Act shall be deemed to be an order made by the Commission under sub-section 156 (2) of the Act.

10 (10) Where the Minister had, under sub-section 74D (2) of the Ordinance, directed a trustee for the holders of debentures to apply to the Court for an order under sub-section 74D (4) of the Ordinance and at the commencement of the Act the trustee had not complied with that direction, the trustee shall be deemed to have been directed by the Commission under sub-section 156 (2) of the Act to apply to the Court for an order under sub-section 156 (4) of the Act.

15 (11) A declaration made by the Minister under sub-section 74F (7) of the Ordinance and in force immediately before the commencement of the Act shall be deemed to be a declaration made by the Commission under sub-section 158 (10) of the Act.

20 (12) A notice by the Minister published under sub-section 74F (8) of the Ordinance and in force immediately before the commencement of the Act shall be deemed to be a notice published by the Commission under paragraph 158 (11) (a) of the Act.

25 (13) A direction given by the Minister under sub-section 84 (3) of the Ordinance and in force immediately before the commencement of the Act shall be deemed to be a direction given by the Commission under sub-section 172 (5) of the Act.

30 (14) Where the Minister had, by notice published under section 88 of the Ordinance, exempted a company from complying, in relation to an interest, or class of interests, specified in the notice, with all or any of the provisions of Division 5 of Part IV of the Ordinance and that exemption was in force immediately before the commencement of the Act, that company is, subject to such terms and conditions (if any) as were specified in that notice, deemed to have been exempted from complying
35 in relation to that interest or class of interests with the provisions of Division 6 of Part IV of the Act that correspond with the provisions specified in that notice.

40 (15) A notice by the Minister published under sub-section 160 (2) of the Ordinance and in force immediately before the commencement of the Act shall be deemed to be an order made by the Commission published under sub-section 265 (2) of the Act requiring the company to comply with the provisions of Division 5 of Part V of the Act and of the regulations made for the purposes of that Division that correspond with the provisions of the Ordinance specified in the notice.

(16) A declaration made by the Minister by notice published in the *Gazette* under sub-section 334 (2) of the Ordinance and in force immediately before the commencement of the Act shall be deemed to be a declaration made by the Commission by order published in the *Gazette* under sub-section 490 (3) of the Act. 5

(17) A declaration made by the Minister by notice published in the *Gazette* under paragraph 339 (b) of the Ordinance and in force immediately before the commencement of the Act shall be deemed to be a declaration made by the Commission by order published in the *Gazette* under sub-section 495 (2) of the Act. 10

(18) A declaration made by the Minister by notice published in the *Gazette* under paragraph 348 (5) (b) or (c) of the Ordinance and in force immediately before the commencement of the Act shall be deemed to be a declaration made by the Commission by order published in the *Gazette* under paragraph 516 (7) (b) or (c), as the case may be, of the Act. 15

(19) Where the Minister had given consent under sub-section 353 (1) of the Ordinance to the registration of a foreign company by a specified name and the foreign company had not been registered by that name before the commencement of the Act, the consent shall be deemed to be a consent to the reservation or registration of that name in respect of that foreign company given by the Ministerial Council under sub-section 38 (2) of the Act. 20

(20) Where the Minister had given consent under sub-section 353 (2) of the Ordinance to the registration of a change in the name of a foreign company to a specified new name and the change of name had not been registered before the commencement of the Act, the consent shall be deemed to be a consent to the reservation or registration of that name in respect of that foreign company given by the Ministerial Council under sub-section 38 (2) of the Act. 25

(21) Where the Minister had, under paragraph 374 (2) (b) of the Ordinance, exempted a corporation from the provisions of sub-section 374 (1) of the Ordinance, and that exemption was in force immediately before the commencement of the Act, that corporation shall be deemed to have been exempted by the Commission under sub-section 552 (2) of the Act from the provisions of sub-section 552 (1) of the Act. 30 35

Names

14. (1) A name under which a company was registered under the *Companies Ordinance* 1962 immediately before the commencement of the *Companies Act* 1981 shall, for the purposes of Division 2 of Part III of that Act, be deemed to be registered under that Division in respect of that company unless and until the registration of the name is cancelled, or ceases to be in force, under that Division. 40

5 (2) A reference in sub-section (1) to a company shall be construed as including a reference to a corporation that, immediately before the commencement of the *Companies Act* 1981, was registered under the *Companies Ordinance* 1962 as a foreign company, whether that corporation is, for the purposes of that Act, a recognized company or a foreign company.

(3) Where, within the period of 2 months immediately preceding the date of commencement of the *Companies Act* 1981—

10 (a) a name was reserved under sub-section 22 (8) of the *Companies Ordinance* 1962; or

(b) the period for which a name was reserved under the *Companies Ordinance* 1962 was extended by the Registrar under sub-section 22 (9) of that Ordinance,

15 the name shall, for the purposes of the *Companies Act* 1981, be deemed to be reserved under Division 2 of Part III of that Act until the date on which the reservation of that name under the *Companies Ordinance* 1962 would have ceased.

Continued application of Table A and Table B in certain circumstances

20 15. (1) Nothing in this Act or in the *Companies Act* 1981 affects—

25 (a) Table A, or any part of Table A, of the Fourth Schedule to the *Companies Ordinance* 1962 (either as originally made or as amended from time to time) or the corresponding Table, or any part of the corresponding Table, in any corresponding previous law of the Territory (either as originally made or as so amended) so far as it applies to a company existing immediately before the commencement of the *Companies Act* 1981; or

30 (b) Table B, or any part of Table B, of the Fourth Schedule to the *Companies Ordinance* 1962 (either as originally made or as amended from time to time) or the corresponding Table, or any part of the corresponding Table, in any corresponding previous law of the Territory (either as originally made or as so amended) so far as it applies to a company existing immediately before the commencement of the *Companies Act* 1981.

35 (2) This section does not prevent the articles of a company adopting, in accordance with sub-section 75 (1) of the *Companies Act* 1981, all or any of the regulations contained in Table A or Table B of Schedule 3 to that Act.

Existing prospectuses and section 82 statements

40 16. (1) Where a prospectus was registered under the *Companies Ordinance* 1962 within the period of 6 months before the commencement of the *Companies Act* 1981, the prospectus shall, for the purposes of the *Companies Act* 1981, until the expiration of the period of 6 months after the date on which it was registered, be deemed to be a prospectus registered under that Act.

(2) Where a statement under section 82 of the *Companies Ordinance* 1962 was registered as a prospectus under that Ordinance within the period of 6 months before the commencement of the *Companies Act* 1981, the statement shall, for the purposes of the *Companies Act* 1981, until the expiration of the period of 6 months after the date on which it was registered, be deemed to be a statement under section 170 of the *Companies Act* 1981 that has been registered as a prospectus under that Act. 5

Interests in partnership agreements

17. Section 169 of the *Companies Act* 1981 does not apply to or in relation to an issue to the public of an interest, an offer to the public for purchase of an interest, or an invitation to the public to purchase an interest, that— 10

- (a) is an interest in a partnership agreement; and
- (b) was subscribed for or first purchased before the date of commencement of that Act. 15

Registration of charges

18. (1) In this section, “company” includes a foreign company that is registered as a foreign company under the *Companies Act* 1981.

(2) Where, before the commencement of the *Companies Act* 1981, a company created a relevant charge, or acquired property subject to a relevant charge— 20

- (a) if the charge was, immediately before the commencement of the *Companies Act* 1981, registered under Division 7 of Part IV of the *Companies Ordinance* 1962—

- (i) the charge shall be deemed to be duly registered under Division 9 of Part IV of the *Companies Act* 1981 from and including the commencement of that Act; and 25

- (ii) the Commission shall cause to be entered in the Register of Company Charges kept under sub-section 203 (1) of the *Companies Act* 1981, in relation to the charge, the time and date determined in accordance with sub-section (6) of this section and the particulars mentioned in sub-section 203 (2) of that Act; or 30

- (b) if the charge was, immediately before the commencement of the *Companies Act* 1981, registered under the provisions of a law of a State or of another Territory that corresponded with Division 7 of Part IV of the *Companies Ordinance* 1962 but was not registered under Division 7 of Part IV of that Ordinance— 35

- (i) the charge shall be deemed to be duly registered under Division 9 of Part IV of the *Companies Act* 1981 from and including the commencement of that Act; and 40

(ii) the Commission shall cause to be entered in the Register of Company Charges kept under sub-section 203 (1) of the *Companies Act* 1981, in relation to the charge, the time and date determined in accordance with sub-section (6) of this section and such of the particulars mentioned in sub-section 203 (2) of that Act as it is able to ascertain.

(3) Where all the documents relating to a relevant charge that were required by Division 7 of Part IV of the *Companies Ordinance* 1962 or the provisions of a law of a State or of another Territory that corresponded with that Division to be lodged for registration under that Division or those provisions, as the case may be, were duly lodged not later than 30 days before the date of commencement of the *Companies Act* 1981 but the charge had not been registered under that Division or those provisions before that date and registration had not been refused—

(a) the charge shall be deemed to be duly registered under Division 9 of Part IV of the *Companies Act* 1981 from and including the commencement of that Act; and

(b) the Commission shall cause to be entered in the Register of Company Charges kept under sub-section 203 (1) of the *Companies Act* 1981, in relation to the charge, the time and date determined in accordance with sub-section (6) of this section and the particulars mentioned in sub-section 203 (2) of that Act.

(4) A charge is a relevant charge for the purposes of sub-section (2) or (3) where—

(a) in the case of a charge created by the company—if the charge had been created after the commencement of the *Companies Act* 1981, the charge would have been required to be registered under Division 9 of Part IV of that Act; or

(b) in the case of a charge on property acquired by the company—if the company had acquired the property after the commencement of the *Companies Act* 1981, the charge would have been required to be registered under Division 9 of Part IV of that Act.

(5) Where 2 or more charges on the same property of a company are deemed by sub-section (2) or (3) to be duly registered under Division 9 of Part IV of the *Companies Act* 1981 from and including the commencement of that Act, those charges have, as between themselves, the respective priorities that they would have had if this Act had not been enacted.

(6) The time and date to be entered in the Register of Company Charges in relation to a charge pursuant to sub-section (2) or (3) is 9.00 a.m. on the date of commencement of the *Companies Act* 1981.

(7) Nothing in section 205 of the *Companies Act* 1981 operates to render a charge to which sub-section (2) or (3) applies void as a security on property of the company as against a liquidator or official manager of the company.

(8) Where—

(a) before the commencement of the *Companies Act 1981* a company created a charge or acquired property subject to a charge, being in either case a charge that was required to be registered under Division 7 of Part IV of the *Companies Ordinance 1962*; 5

(b) at the commencement of the *Companies Act 1981*—

(i) the charge had not been registered under Division 7 of Part IV of the *Companies Ordinance 1962*;

(ii) the charge had not become void under sub-section 100 (1) of the *Companies Ordinance 1962*; and 10

(iii) the property was still subject to the charge;

(c) if the charge had been created, or the property had been acquired, after the commencement of the *Companies Act 1981*, the charge would have been required to be registered under Division 9 of Part IV of that Act; and 15

(d) sub-section (3) does not apply in relation to the charge,

Division 9 of Part IV of, and Schedule 5 to, the *Companies Act 1981* apply as if the company had created the charge, or had acquired the property, as the case may be, at the commencement of that Act, but, where 2 or more charges on the same property of a company, being charges to which this sub-section applies, are registered under Division 9 of Part IV of that Act then, notwithstanding the provisions of Schedule 5 to that Act, those charges have, as between themselves, the respective priorities that they would have had if they had not been registered under that Division. 20 25

(9) Where—

(a) before the commencement of the *Companies Act 1981* a company created a charge or acquired property subject to a charge, being in either case a charge that was required to be registered under Division 7 of Part IV of the *Companies Ordinance 1962*; 30

(b) at the commencement of the *Companies Act 1981*—

(i) the charge had not been registered under Division 7 of Part IV of the *Companies Ordinance 1962*;

(ii) the charge had not become void under sub-section 100 (1) of the *Companies Ordinance 1962*; and 35

(iii) the property was still subject to the charge; and

(c) if the charge had been created, or the property had been acquired, after the commencement of the *Companies Act 1981*, the charge would not have been required to be registered under Division 9 of Part IV of that Act, 40

the charge shall be deemed not to have been required to be registered under Division 7 of Part IV of the *Companies Ordinance 1962*.

(10) Where a charge referred to in paragraph (8) (a) had, before the commencement of the *Companies Act* 1981, become void under sub-section 100 (1) of the *Companies Ordinance* 1962 and the Court, being satisfied that it is just and equitable to do so, makes an order that sub-section (8) is to apply in relation to that charge—

- (a) sub-section (8) has effect as if the charge had not become void; and
- (b) sub-section 100 (1) of the *Companies Ordinance* 1962 shall be deemed not to have rendered the charge void in any respect.

Certificate that person is an executive officer of a company

19. Where it appears from a return lodged with the Registrar of Companies pursuant to a previous law of the Territory with which the *Companies Act* 1981 corresponds that a person was at a particular time a manager of a company, the Commission may give a certificate under sub-section 238 (10) of that Act that the person was at that time a principal executive officer of the company.

Application of Companies Act to financial years ending before commencement of Act

20. (1) The provisions of Division 2 of Part VI of the *Companies Act* 1981 (other than sections 267, 268 and 275) apply in relation to a company, being a company incorporated under a previous law of the Territory with which the *Companies Act* 1981 corresponds, and to the directors of such a company, in relation to a financial year or financial years of the company that ended before the commencement of that Act and so apply as if—

- (a) a requirement in any of those provisions (other than section 274) that an act or thing be done not less than 14 days before an annual general meeting of a company or, if no annual general meeting is held within the period within which it is required by section 240 to be held, not less than 14 days before the end of that period were a requirement that that act or thing be done within the period of 5 months (or, in the case of an exempt proprietary company, the period of 6 months) after the commencement of the *Companies Act* 1981;
- (b) a reference in those provisions to the last financial year of a company were a reference to each financial year of the company that ended before the commencement of the *Companies Act* 1981;
- (c) the reference in sub-section 274 (1) to each annual general meeting of the company were a reference to the annual general meeting at which accounts or group accounts are required by sub-section (2) of this section to be laid before the company;
- (d) a reference in those provisions to accounts or group accounts required by section 275 to be laid before a company at its annual general meeting were a reference to accounts or group accounts, as the case may be, required by sub-section (2) of this section to be laid before a company at an annual general meeting; and

- (e) a reference in sub-section 276 (1) to the preceding provisions of Division 2 included a reference to the provisions of sub-section (2) of this section.

(2) The directors of a company to which sub-section (1) applies shall cause to be laid before the first annual general meeting of the company held after the expiration of the period of 5 months or 6 months, as the case requires, referred to in paragraph (1) (a), in respect of each financial year of the company that ended before the commencement of the *Companies Act 1981*— 5

- (a) a copy of the profit and loss account made out in accordance with sub-section 269 (1) of that Act; 10
- (b) a copy of the balance sheet made out in accordance with sub-section 269 (2) of that Act;
- (c) in the case of a company that, at the end of the relevant financial year, was not a holding company—a copy of the directors' report made out in accordance with sub-section 270 (1) of that Act; 15
- (d) in the case of a company that, at the end of the relevant financial year, was a holding company—a copy of the group accounts made out in accordance with sub-section 269 (3) of that Act and a copy of the directors' report made out in accordance with sub-section 270 (2) of that Act in respect of the profit or loss and the state of affairs of the group of companies of the holding company as at the end of that financial year; 20
- (e) a copy of any auditor's report required by sub-section 269 (5) of that Act to be attached to the accounts or group accounts of the company; and 25
- (f) a copy of the statement by the directors required by sub-section 269 (9) or (10) of that Act to be attached to the accounts or group accounts of the company.

(3) A reference in sub-section (2) of this section to a provision of the *Companies Act 1981* shall be read as a reference to that provision of that Act as it applies by virtue of sub-section (1) of this section. 30

(4) In this section, "financial year", in relation to a company in relation to which this section applies has the same meaning as it has in relation to such a company under the *Companies Act 1981* by virtue of paragraph (a) of the definition of "financial year" in sub-section 5 (1) of that Act. 35

Annual general meeting held before commencement of Companies Act

21. Where, before the commencement of the *Companies Act 1981*, an annual general meeting of a company was held and at the commencement of that Act the company had not complied with section 158 or 159 of the *Companies Ordinance 1962* in relation to that annual general meeting, that section continues to apply in relation to that company in relation to that annual general meeting as if the *Companies Act 1981* had not been enacted. 40

Special investigations

22. (1) Part VII of the *Companies Act* 1981 applies to and in relation to an investigation to which Part VIA of the *Companies Ordinance* 1962 applied immediately before the commencement of that Act (other than an investigation being carried out by an inspector or inspectors appointed under section 170 of that Ordinance) and so applies as if—

(a) where an inspector was appointed by the Minister to carry out the investigation pursuant to an application under sub-section 169 (1) of that Ordinance—the inspector was appointed, and the investigation is being carried out, pursuant to a direction given by the Minister pursuant to sub-section 290 (4) of that Act; and

(b) where an inspector was appointed by the Minister under sub-section 173 (1) of that Ordinance to carry out the investigation—the inspector was appointed, and the investigation is being carried out, pursuant to a direction given by the Minister in the exercise of a power under sub-section 291 (1) of that Act otherwise than in response to a request made by the Commission under sub-section 291 (4) of that Act.

(2) Where, before the commencement of the *Companies Act* 1981, an act, matter or thing had been done or had arisen in the course of an investigation to which Part VIA of the *Companies Ordinance* 1962 applied immediately before that commencement, that act, matter or thing shall have the same status, operation and effect in relation to the investigation after that commencement as if that act, matter or thing had been done or had arisen after that commencement.

(3) In particular and without affecting the generality of sub-section (2), an order, application, examination, deposition, writ, summons, proceeding, record, note or report made, effected, issued or given in relation to an investigation to which Part VIA of the *Companies Ordinance* 1962 applied immediately before the commencement of the *Companies Act* 1981 shall have the same status, operation and effect in relation to the investigation after that commencement as if the order, application, examination, deposition, writ, summons, proceeding, record, note or report had been made, effected, issued or given after that commencement.

Investigation by resolution of company

23. An investigation to which section 170 of the *Companies Ordinance* 1962 applied immediately before the commencement of the *Companies Act* 1981 may be continued as if that Ordinance had not been repealed.

Lodging of accounts by person administering compromise or arrangement

24. Where—

(a) section 330 of the *Companies Act* 1981 applies, by virtue of sub-section 315 (11) of that Act, in relation to a person or persons appointed to administer a compromise or arrangement; and

(b) that person or those persons was or were so appointed before the commencement of that Act,

references in section 330 of that Act to the date of appointment of that person or of those persons shall be deemed to be references to the date of commencement of that Act.

Winding up

25. (1) The provisions of the *Companies Act* 1981 with respect to winding up other than the provisions of Subdivision F of Division 4 of Part XII do not apply to any company the winding up of which was commenced before the commencement of that Act and any such company shall be wound up in the same manner and with the same incidents as if that Act had not been enacted and, for the purposes of the winding up, the *Companies Ordinance* 1962 shall be deemed to remain in force. 5 10

(2) In this section, “company” includes an unregistered company within the meaning of Division 5 of Part X of the *Companies Ordinance* 1962.

Registered auditors and liquidators 15

26. (1) For the purposes of the *Companies Act* 1981, a person who was, immediately before the date of commencement of that Act, registered as an auditor or as a liquidator or appointed as an official liquidator under the *Companies Ordinance* 1962 shall, subject to section 27 of that Act, be deemed to be registered under Division 2 of Part II of that Act as an auditor, as a liquidator or as an official liquidator, as the case may be, for the period of 6 months commencing on the date of commencement of that Act. 20

(2) Where—

(a) a person who is deemed by reason of sub-section (1) to be registered under Division 2 of Part II of the *Companies Act* 1981 as an auditor or as a liquidator for the period of 6 months commencing on the date of commencement of that Act has applied to be registered under that Division as an auditor or as a liquidator, as the case may be, within that period of 6 months; and 25 30

(b) at the expiration of that period, the person has not been notified of the results of his application,

the person shall, subject to section 27 of that Act, be deemed to be registered as an auditor or liquidator, as the case may be, for a further period commencing at the expiration of the period referred to in paragraph (a) and ending— 35

(c) in the case of an application for registration as an auditor—on the day on which the application is granted or refused; and

(d) in the case of an application for registration as a liquidator—on the day on which the person is notified of the results of his application. 40

5 (3) Where the registration as a liquidator of a person to whom sub-section (2) applies comes into force under Division 2 of Part II of the *Companies Act* 1981, that person shall be deemed to have been registered as a liquidator under that Division for the period commencing at the expiration of the day referred to in paragraph (2) (d) and ending at the expiration of the day before the day on which that registration comes into force.

10 (4) A person who is deemed to be registered as an auditor, as a liquidator or as an official liquidator under the provision of a law of a participating State or participating Territory that corresponds with sub-section (1) shall be deemed to be registered as an auditor, as a liquidator or as an official liquidator, as the case may be, under the *Companies Act* 1981.

Power of Minister to consent to institution of proceeding

15 27. Where—

- (a) the institution of a particular proceeding under the *Companies Ordinance* 1962 was subject to the consent of the Minister; and
- (b) the proceeding was not instituted before the repeal of that Ordinance but may be instituted after the repeal of that Ordinance by reason of the operation of sub-section 29 (2) of the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act* 1980,

the repeal of that Ordinance does not affect the power of the Minister to consent to the institution of the proceeding.

25 **Recognized companies**

28. (1) Where a corporation that is a recognized company for the purposes of the *Companies Act* 1981 was, immediately before the commencement of that Act, registered as a foreign company under the *Companies Ordinance* 1962, the registered office of that corporation in the Territory the situation of which was specified—

- (a) in a case to which paragraph (b) does not apply—in a notice lodged under sub-section 346 (1) of that Ordinance; or
- (b) if a notice or notices have been lodged under sub-section 347 (1) of that Ordinance in relation to the situation of the registered office of the corporation—in that notice or in the later or latest of those notices,

shall be deemed to be the principal office within the Territory of the corporation for the purposes of section 507 of the *Companies Act* 1981.

(2) Where—

- (a) before the commencement of the *Companies Act* 1981 an act, matter or thing had been done or commenced under the *Companies Ordinance* 1962 in relation to a corporation that was a foreign company for the purposes of that Ordinance;
- (b) the corporation is a recognized company for the purposes of the *Companies Act* 1981; and

(c) that act, matter or thing could have been done or commenced under the *Companies Act* 1981 after the commencement of that Act in relation to a recognized company,
 that act, matter or thing shall be deemed to have been done or commenced, as the case may be, and, in the case of an act, matter or thing that has been commenced, may be continued or completed, under the *Companies Act* 1981, in relation to that corporation as a recognized company.

5

Recognized companies under corresponding laws

29. (1) Section 501 of the *Companies Act* 1981 applies in relation to a company that, immediately before the commencement of that Act, had a place of business or carried on business in a State or Territory that is a participating State or participating Territory as if the company had established a place of business or commenced to carry on business, as the case may be, in that State or Territory at the commencement of that Act.

10

15

(2) Where a company had, before the commencement of the *Companies Act* 1981, lodged under the provision of a law of a State or Territory that is a participating State or participating Territory that corresponds with sub-section 346 (1) or 347 (1) of the *Companies Ordinance* 1962 a notice or notices that specified the days and hours during which the registered office of the company in that State or Territory was open and accessible to the public, the company shall, for the purposes of sub-section 502 (2) of the *Companies Act* 1981, be deemed to have lodged a notice under sub-section 501 (2) in relation to that State or Territory.

20

25

(3) Where, immediately before the commencement of the *Companies Act* 1981, a company maintained a branch register in a State or Territory that is a participating State or participating Territory in accordance with the provision of the law of that State or Territory that corresponded with section 354 of the *Companies Ordinance* 1962, that register shall be deemed to be a branch register of the company kept under section 262 of the *Companies Act* 1981 and section 262 applies in relation to that register as if it had been established, and as if the office where it is kept had been opened, on the date of commencement of that Act.

30

Foreign companies

35

30. (1) A corporation formed outside the Territory, other than a corporation that is a recognized company for the purposes of the *Companies Act* 1981, that was, immediately before the commencement of that Act, registered as a foreign company under the *Companies Ordinance* 1962 shall be deemed to be registered, as from the commencement of the *Companies Act* 1981, as a foreign company for the purposes of that Act.

40

(2) A corporation formed outside Australia and the external Territories that was, immediately before the commencement of the *Companies Act* 1981, registered as a foreign company under the *Companies Ordinance*

1962 may, within one month after the date of commencement of the *Companies Act* 1981, or within such further period as the Commission allows, lodge with the Commission a notice in the prescribed form—

- 5 (a) stating whether the corporation wishes to continue to be registered as a foreign company under that Act; and
- (b) if the corporation states that it does not wish to continue to be registered as a foreign company under that Act—specifying one State or Territory (being a State or Territory under the law of which the corporation was registered as a foreign company immediately before the commencement of the *Companies Act* 1981 and which is a participating State or a participating Territory) as the State or Territory under the law of which the corporation wishes to be registered as a foreign company.
- 10

(3) A corporation is not entitled pursuant to paragraph (2) (b)—

- 15 (a) to specify a State in a notice if the corporation has specified a different State or a Territory in a notice under a corresponding provision of the law of a participating State or participating Territory; or
- 20 (b) to specify a Territory in a notice if the corporation has specified a State or another Territory in a notice under a corresponding provision of the law of a participating State or participating Territory.

(4) Where a corporation to which sub-section (2) applies lodges with the Commission a notice under that sub-section specifying pursuant to paragraph (2) (b) a State or Territory as the State or Territory under the law of which the corporation wishes to be registered as a foreign company—

- 25 (a) the corporation shall, as from the date on which the notice is so lodged, cease to be registered as a foreign company for the purposes of the *Companies Act* 1981; and
- 30 (b) the registered office of the corporation in the Territory the situation of which was specified—
- (i) in a case to which sub-paragraph (ii) does not apply—in a notice lodged under sub-section 346 (1) of the *Companies Ordinance* 1962; or
- 35 (ii) if a notice or notices has or have been lodged under sub-section 347 (1) of that Ordinance in relation to the situation of the registered office of the corporation—in that notice or in the later or latest of those notices,

40 shall be deemed to be the principal office within the Territory of the corporation for the purposes of section 507 of the *Companies Act* 1981.

Commission may destroy or dispose of documents

31. (1) Notwithstanding sub-section 31 (10) of the *Companies Act* 1981, where a corporation that is a recognized company for the purposes of the *Companies Act* 1981 was, immediately before the commencement of that Act, registered as a foreign company under the *Companies Ordinance* 1962, the Commission may, if in the opinion of the Commission it is no longer necessary or desirable to retain them, destroy or dispose of any documents lodged by or in relation to that corporation under the *Companies Ordinance* 1962 or under any corresponding previous law of the Territory. 5 10

(2) Notwithstanding sub-section 31 (10) of the *Companies Act* 1981, where a corporation that was, immediately before the commencement of the *Companies Act* 1981, registered as a foreign company under the *Companies Ordinance* 1962 becomes a recognized foreign company for the purposes of the *Companies Act* 1981, the Commission may, if in the opinion of the Commission it is no longer necessary or desirable to retain them, destroy or dispose of any documents lodged by or in relation to that corporation under the *Companies Ordinance* 1962 or under any corresponding previous law of the Territory. 15

Certain provisions of *Companies Ordinance* 1931 to continue to apply 20

32. Notwithstanding the repeal of the *Companies Ordinance* 1962 by the *Companies Act* 1981, the provisions of sub-sections 15 (2) and (4) of the *Companies Ordinance* 1931 continue to apply in relation to instruments, documents and certified copies handed over pursuant to section 15 of the last-mentioned Ordinance and in relation to the memorandum or articles, or a resolution or instrument, of a company to which that section applied. 25

Marketable Securities Ordinance

33. (1) A sufficient instrument of transfer under the *Marketable Securities Ordinance* 1971, in relation to a transfer of marketable securities or a transfer of rights to marketable securities, that was duly completed before the commencement of the *Companies Act* 1981 has the same effect, and may be used and dealt with, as if that Ordinance had not been repealed. 30

(2) An agreement, application, acceptance, warranty or indemnity deemed by the *Marketable Securities Ordinance* 1971 to have been made or given by a person continues to operate and has the same force and effect as if that Ordinance had not been repealed. 35

Court may resolve difficulties

34. (1) Where any difficulty arises in the application to a particular matter of this Act, or in the application to a particular matter of any of the provisions of the *Companies Act* 1981, the *Companies Ordinance* 40

1962 or the *Marketable Securities Ordinance* 1971 by reason of the operation of this Act, the Court may, on the application of an interested person, make such order as it thinks proper to resolve the difficulty.

5 (2) An order made under sub-section (1) has effect notwithstanding anything contained in this Act or in the *Companies Act* 1981, the *Companies Ordinance* 1962 or the *Marketable Securities Ordinance* 1971.

Regulations

10 **35. (1)** The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed by regulations, or necessary or convenient to be prescribed by regulations for carrying out or giving effect to this Act.

(2) The power of the Governor-General to make regulations shall be exercised only in accordance with advice that is consistent with resolutions of the Ministerial Council.

