

COMPANIES (AMENDMENT) ACT.

Act No. 56, 1940.

George VI. An Act to amend the Companies Act, 1936, as
No. 56, 1940. amended by subsequent Acts, in certain respects; and for purposes connected therewith. [Assented to, 11th December, 1940.]

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 :—

Short title. 1. This Act may be cited as the "Companies (Amendment) Act, 1940."

Amendment of Act No. 33, 1936. 2. The Companies Act, 1936, as amended by subsequent Acts, is amended—

Sec. 2. (a) by inserting in section two next after the matter relating to Part V the following words and figures :—
(Division into Parts.)

PART VA.—REGISTRATION AND INCORPORATION OF COMPANIES FORMED OUTSIDE THE STATE—
ss. 60A–60N.

(b)

(b) by inserting next after section sixty the following new Part:—

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New
Part VA.

PART VA.

REGISTRATION AND INCORPORATION OF COMPANIES
FORMED OUTSIDE THE STATE.

60A. (1) With the exceptions and subject to the provisions contained in this section, any company, incorporated either before or after the commencement of the Companies (Amendment) Act, 1940, in any part of His Majesty's dominions outside the State and being duly constituted according to the law of the place where it was so incorporated, may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee:

Companies capable of being registered. 19 and 20 Geo. V. c. 23, s. 321. 1899, No. 40, ss. 167, 168.

Provided that—

- (a) a company shall not register in pursuance of this section unless the law in force for the time being in the place in which it was incorporated authorises the transfer of its incorporation from that place;
- (b) a company having the liability of its members limited in accordance with the law of the place where it was incorporated, and not being a joint stock company as defined in section forty-seven of this Act, shall not register in pursuance of this section as a company limited by shares;
- (c) a company having the liability of its members limited in accordance with the law of the place where it was incorporated, shall not register in pursuance of this section as an unlimited company;
- (d) a company that is a joint stock company as defined in section forty-seven of this Act shall not register in pursuance of this section as a company limited by guarantee;

(e)

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(e) a company shall not register in pursuance of this section without the assent of either—

(i) such number of directors or members of the governing body of the company as under the constitution of the company, would constitute a quorum at meetings of such directors or members; or

(ii) a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed by the regulations of the company) at a general meeting summoned for the purpose.

(2) In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

Registration for purpose of winding up.

60B. The registration of a company in pursuance of this Part shall not be invalid by reason only that it has been effected with a view to the company being wound up.

Requirements for registration.

60c. Before the registration in pursuance of this Part of a company, there shall be filed with the Registrar-General the following evidence and documents:—

(a) evidence to the satisfaction of the Registrar-General that the company has been incorporated and that the law in force for the time being in the place where the company was incorporated authorises the transfer of its incorporation from that place;

(b) evidence that the assent referred to in paragraph (e) of subsection one of section 60A of this Act has been duly given;

(c)

- (c) a copy of the Memorandum and Articles of Association or other the instrument constituting or regulating the company, and, if such documents are not written in the English language a certified translation thereof;
- (d) in the case of a company to be registered as a company limited by guarantee, the number of members with which it proposes to register.

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60d. As soon as practicable after the registration of the company under this Part, and not in any case later than six months after such registration the company shall file with the Registrar-General the following documents:—

Certain documents to be filed.

- (a) a list showing the names, addresses, and occupations or descriptions of all persons who on a day named in the list, not being more than thirty clear days before the day of such filing, were members of the company, with the addition in the case of a company having shares or stock, the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number;
- (b) if the company is intended to be registered as a limited company, a statement specifying the following particulars:—
- (i) the nominal share capital of the company and the number of shares into which it is divided, or the amount of stock of which it consists;
 - (ii) the number of shares taken and the amount paid on each share;
 - (iii) in the case of a company intended to be registered as a company limited by guarantee, the particulars of the amount of the guarantee.

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Authentication
of statements.
19 and 20
Geo. V, c. 23,
s. 325.
1899, No. 40,
s. 174.

Registrar-
General may
require evi-
dence as to
nature of
company.
19 and 20
Geo. V, c. 23,
s. 326.
1899, No. 40,
s. 175.

Addition of
"limited" to
name.
19 and 20
Geo. V, c. 23,
s. 328.
1899, No. 40,
s. 178.

Certificate of
registration of
company re-
gistered under
Part Va.
19 and 20
Geo. V, c. 23,
s. 329.
1899, No. 40,
s. 179.

60E. The lists of members and any other particulars relating to the company required to be filed with the Registrar-General shall be verified by a statutory declaration of any two or more directors or other principal officers of the company.

60F. The Registrar-General may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint stock company as defined in section forty-seven of this Act.

60G. When a company registers in pursuance of this Part with limited liability, the word "Limited" shall form, and be registered as, part of its name, and the name of the company, or, if such name is not written in the English language, a translation thereof, having, as an addition or otherwise, the word "Limited" as the last word thereof shall form and be registered as the name of the company.

60H. (1) On compliance with the requirements of this Part with respect to registration, the Registrar-General shall certify under his hand that the incorporation of the company applying for registration is changed to incorporation as a company under this Act, and in the case of a limited company that it is limited and in the case of a proprietary company that it is a proprietary company, and thereupon the incorporation of the company shall be so changed and the company shall be a company incorporated under this Part.

(2) The registration and incorporation of a company under this Part—

- (a) shall not create a new legal entity;
- (b) shall not in any way prejudice or affect the continuity of such company;
- (c) shall not affect any property, powers, rights, authorities, duties, functions, liabilities

liabilities or obligations of such company, or render defective any legal or other proceedings instituted or to be instituted by or against such company.

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60i. (1) Where a company is, at the date upon which it is registered in pursuance of this Part, already registered under Part VI of this Act, the provisions of this section shall have effect.

Companies
already
registered
under
Part VI.

(2) Upon registration in pursuance of this Part the company shall cease to be a foreign company, and shall cease to be incorporated outside the State, and the obligation of the company under Part VI of this Act to file with the Registrar-General any documents shall cease, and its registration under Part VI of this Act shall be cancelled.

(3) It shall be a sufficient compliance with the requirements of section 60b of this Act if the company files with the Registrar-General such of the documents and particulars specified in that section as have not already been filed by it under Part VI of this Act.

60j. (1) When a company is registered in pursuance of this Part, the provisions of this section shall have effect.

Effect of
registration.
19 and 20
Geo. V, c. 23,
s. 333.
1899, No. 40,
s. 184.

(2) All provisions contained in any memorandum and articles of association or other instrument constituting or regulating the company, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles.

(3) All provisions of this Act shall apply to the company and the members, contributories, and creditors thereof in the same manner in all respects as if it had been formed under this Act, subject as follows:—

(a) Table A shall not apply unless adopted by special resolution;

(b)

- (b) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to those debts or liabilities; but a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up; and
- (c) in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability, and, in the event of the death or bankruptcy of any contributory, or the marriage of any female contributory, the provisions of this Act with respect to the personal representatives, to the trustees of bankrupt contributories, and to the liabilities of husbands and wives respectively shall apply;
- (d) sections seventy-seven and one hundred and forty-three of this Act shall not apply;
- (e) Part IX of this Act shall not apply to or in respect of any charge created by a company before the date of its registration under this Part, but where any charge created by the company
has

has by virtue of section one hundred and ninety-eight of this Act, been registered under that Part before that date, such registration shall continue, and shall be deemed to have been effected under section one hundred and eighty-five of this Act.

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60κ. (1) Subject to the provisions of this section, a company registered in pursuance of this Part may by special resolution confirmed by the court alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

Power to substitute memorandum and articles for deed of settlement. 19 and 20 Geo. V, c. 23, s. 334.

(2) The provisions of this Act with respect to confirmation by the court and registration of an alteration of the objects of a company shall so far as applicable apply to an alteration under this section with the following modifications:—

- (a) there shall be substituted for the copy of the altered memorandum required to be filed with the Registrar-General a copy of the substituted memorandum and articles; and
- (b) on the registration of the alteration being certified by the Registrar-General, the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.

(3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.

(4) In this section the expression "deed of settlement" includes any Act or other instrument whatsoever constituting or regulating the company, not being an Imperial Act, a royal charter, or letters patent.

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Power of
court to stay
or restrain
proceedings.

19 and 20
Geo. V, c. 23,
s. 33E.

60L. The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order shall, in the case of a company registered in pursuance of this Part of this Act when the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company.

Actions stayed
on winding-
up order.

Ibid.
s. 330.

60M. Where an order has been made for winding up a company registered in pursuance of this Part, no action or proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court imposes.

Transfer of
incorpora-
tion.

60N. (1) The Governor may, upon the application of a company registered under this Part of this Act authorise the company to transfer its incorporation from the State upon such terms and subject to such conditions as the Governor may determine.

(2) Where the Registrar-General is satisfied that the terms and conditions so determined by the Governor have been complied with the Registrar-General shall certify under his hand to that effect and thereupon the company shall cease to be incorporated in the State.

Schedule
Thirteen.

- (c) (i) by inserting in Part I of Schedule Thirteen in appropriate numerical sequence the following words:—

Sec. 60H.—Form of certificate of registration of a company pursuant to Part VA.

- (ii) by inserting in Part II of the same schedule in appropriate numerical sequence the following words:—

Sec. 60K.—Application to confirm alteration of constitution of company registered under Part VA.

Sec.

Water (Amendment) Act. 505

Sec. 60L.—Application to stay or restrain ^{No. 56, 1940.}
proceedings.

Sec. 60M.—Application for leave to proceed after winding-up order against company registered under Part VA or any contributory.
