

COMPANIES (AMENDMENT) ACT.

New South Wales



ANNO VICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 20, 1973.

An Act to enable two or more firms to act jointly as auditors of a company; to make further provisions with respect to liquidators and preferential debts on the liquidation of a company; for these and other purposes to amend the Companies Act, 1961; and for purposes connected therewith. [Assented to, 17th April, 1973.]

BE it enacted by the Queen'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, 1973".
(2) Short title and construction.

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No. 20, 1973 (2) The Companies Act, 1961, is in this Act referred to as the Principal Act.

Commencement. 2. (1) Subject to subsection (2), this Act commences on the date of assent.

(2) Sections 3, 7 (c), 7 (g) and 8 shall be deemed to have commenced on 1st January, 1972.

Amendment of Act No. 71, 1961. Sec. 5. (Interpretation.) 3. The Principal Act is amended by omitting from the definition of "Official liquidator" in section 5 (1) the word "eleven" and by inserting instead the figures "231".

Further amendment of Act No. 71, 1961. 4. The Principal Act is further amended—

Sec. 165B. (Exempt proprietary company need not appoint auditor in certain circumstances.) (a) by inserting in section 165B (3) after the words "in the" the words "book containing the";

Sec. 166. (Appointment of auditors.) (b) (i) by inserting in section 166 (1) after the word "firm" the words "or firms";
 (ii) by inserting in section 166 (3) after the word "firm" the words "or firms";
 (iii) by omitting from section 166 (4) the words "or persons";
 (iv) by omitting from section 166 (4) the words "unless the company is, by the operation of section 165A, not required to appoint an auditor at that meeting";

(v)

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- (v) by omitting from section 166 (5) the words No. 20, 1973 "retirement or";
- (vi) by inserting in section 166 (5) after the word "firm" the words "or firms";
- (vii) by inserting in section 166 (10) (a) after the word "firm" the words "or firms";
- (viii) by inserting in section 166 (10) (b) after the word "firm" the words "or firms";
- (ix) by omitting from section 166 (12) the words "or his retirement from office";
- (x) by inserting in section 166 (12) after the word "firm" the words "or firms";
- (c) by inserting in section 166A (1) after the words "shall not" the words "by resolution"; Sec. 166A.
(Nomina-
tion of
auditors.)
- (d) by omitting from section 166B (1) (b) the words "; or a firm, as auditor or auditors in his or their place" and by inserting instead the words "or a firm or firms as auditor or auditors in place of the auditor or auditors named in the resolution". Sec. 166B.
(Removal,
retirement
and
resignation
of auditors.)
- 5.** The Principal Act is further amended by inserting next after section 178 (1) the following new subsection :— Further
amendment
of Act No.
71, 1961.
- (1A) An inspector appointed before or after the date of assent to the Companies (Amendment) Act, 1973, may, when making a report under this section, give to the Minister any books of which he has taken possession under subsection (4) of section 173 and the Minister— Sec. 178.
(Reports by
inspectors,
&c.)
- (a) may retain the books for such period as he considers to be necessary to enable a decision to be made as to whether or not any legal proceedings ought to be instituted as a result of the investigation;
- (b)

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- (b) may retain the books for such further period as he considers to be necessary to enable any such proceedings to be instituted and prosecuted;
- (c) may permit other persons to inspect the books while they are in his possession;
- (d) may permit the use of the books for the purposes of any legal proceeding instituted as a result of the investigation; and
- (e) shall permit a person who would be entitled to inspect any one or more of the books if they were not in the possession of the Minister to inspect at all reasonable times such of the books as that person would be so entitled to inspect.

Further amendment of Act No. 71, 1961.

Sec. 234.
(Statement of company's affairs to be submitted to liquidator.)

6. The Principal Act is further amended—

- (a) (i) by inserting in section 234 (2) after the word "liquidator" where firstly occurring the words ", by notice in writing,";
- (ii) by inserting next after section 234 (2) the following new subsection :—
 - (2A) A liquidator may serve a notice under subsection (2) either personally or by sending it by post to the address of the person to whom it is given last known to the liquidator.
- (iii) by omitting section 234 (3) and by inserting instead the following subsections :—
 - (3) A person required to submit a statement referred to in subsection (2) shall, subject to subsection (3A), submit it not later than fourteen days after the liquidator serves notice of the requirement.

(3A)

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(3A) For special reasons, a liquidator may, **No. 20, 1973**
 on application made before or after the expiration of the time limited by subsection (3) for the submission by the applicant of a statement under subsection (2), grant by notice in writing an extension of that time.

(3B) A liquidator—

(a) shall, within seven days after receiving a statement under subsection (2), cause a copy thereof to be filed with the Court and a copy thereof to be lodged with the Commission; and

(b) shall, where he gives a notice under subsection (3A), forthwith send a copy of the notice to the Commission.

(b) (i) by inserting next after section 292 (1A) the **Sec. 292.**
 following new subsections :— **(Priorities.)**

(1B) Where a contract of employment with a company being wound up was subsisting immediately before the relevant date, the employee under the contract shall, whether or not he is a person referred to in subsection (1C), be entitled to payments under subsection (1) as if his services with the company had been terminated by the company on the relevant date.

(1C) Where, for the purposes of the winding up of a company, a liquidator employs a person whose services with the company had been terminated by reason of the winding up, that person shall, for the purpose of calculating any leave entitlement, be deemed, while the liquidator employs him for those purposes, to be employed by the company.

(1D)

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(1D) Subject to subsection (1E), where, after the relevant date, an amount in respect of long service leave or extended leave becomes due to or in respect of a person referred to in subsection (1C) in respect of the employment so referred to, the amount is a cost of the winding up.

(1E) Where, at the relevant date, the length of qualifying service of a person employed by a company that is being wound up is insufficient to entitle him to any amount in respect of long service leave or extended leave but, by the operation of subsection (1C), he becomes entitled to such an amount after that date, that amount—

- (a) is a cost of the winding up to the extent of an amount that bears to that amount the same proportion as the length of his qualifying service after that relevant date bears to the total length of his qualifying service; and
- (b) shall, to the extent of the balance thereof, be deemed to be an amount referred to in paragraph (d) of subsection (1).

(ii) by omitting from section 292 (4) the words “meet any preferential debts specified in paragraphs (b) and (d) of subsection (1) of this section and any amount payable in priority by virtue of subsection (3) of this section, those debts” and by inserting instead the following words :—

meet—

- (a) any preferential debt specified in paragraphs (b) and (d) of subsection (1);

(b)

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- (b) any amount that, pursuant to sub-section (1D) or (1E), is a cost of the winding up, being an amount that, if it had been payable on or before the relevant date, would have been a preferential debt specified in paragraph (b) or (d) of subsection (1); and
- (c) any amount payable in priority by virtue of subsection (3),

those debts.

7. The Principal Act is further amended—

Further amendment of Act No. 71, 1961.

- (a) (i) by omitting from section 122 the word “is” where firstly occurring and by inserting instead the words “has been”;
- (ii) by omitting from section 122 (1) (b) the word “or”;
- (iii) by omitting from section 122 (1) (c) the word “provision,” and by inserting instead the following words and new paragraph :—
- provision; or
- (d) of an offence under subsection (3) of section 303, as enacted before 1st January, 1972, or under any of the corresponding provisions of the law of another State or of a Territory of the Commonwealth,;
- (b) (i) by omitting from section 367B (1) the words “that any” and by inserting instead the words “or a prescribed person that any other”;
- (ii)

Sec. 122. (Power to restrain certain persons from managing companies.)

Sec. 367B. (Power of Court to assess damages against delinquent officers.)

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- (ii) by omitting from section 367B (1) (b) the word "misfeasance" and by inserting instead the words "negligence, default, breach of duty";
- (iii) by omitting from section 367B (1) the words ", or any person who is authorised in that behalf by the Commission," and by inserting instead the words "or a prescribed person";
- (iv) by omitting from section 367B (1) the words "to examine the conduct of that person and for an order that that person" and by inserting instead the words "for an order that the other person";
- (v) by omitting from section 367B (1) (d) the word "misfeasance" and by inserting instead the words "negligence, default, breach of duty";
- (vi) by inserting next after section 367B (1) the following new subsection :—

(1A) In relation to a company referred to in subsection (1)—

- (a) a liquidator or provisional liquidator of the company;
- (b) a contributory of the company;
- (c) where the company is under official management—the official manager or a member of the company; and
- (d) a person authorised by the Commission to make an application under subsection (1),

are prescribed persons for the purposes of that subsection.

Sec. 367c.
(Interpretation.)

- (c) (i) by inserting in section 367c (1) after the words "a company" the words ", or an unregistered company within the meaning of Division 5 of Part X";

(ii)

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- (ii) by omitting from section 367c (2) (a) (i) No. 20, 1973 the words "three hundred and eight" and by inserting instead the words "308 and has not, within the next succeeding period of one month, received an answer to the effect that the company is carrying on business";
- (d) by inserting in section 374B after the words "unless he" the words "shows that he"; Sec. 374B.
(Liability where proper accounts not kept.)
- (e) by inserting at the end of section 374c the following new subsection :— Sec. 374c.
(Officers.)
- (3) Notwithstanding anything in section 381, proceedings for an offence referred to in subsection (1), whenever committed, may be brought within the period of three years that next succeeds—
- (a) the date on which the company became a company to which this section applies; or
- (b) the date on which the debt was contracted, whichever is the later, but nothing in this subsection authorises the institution of proceedings with respect to a debt contracted more than three years before the company became a company to which this section applies.
- (f) (i) by omitting from section 374D (1) the words "the Court on the application of the appropriate officer or, with the consent of the Commission, any creditor or contributory of the company" and by inserting instead the words "or has been convicted of an offence under subsection (3) of section 303 or subsection (4) of section 304, as enacted before 1st January, 1972, the Court on the application of the Commission or a prescribed person"; Sec. 374D.
(Powers of Court.)

(ii)

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- (ii) by inserting next after section 374D (1) the following new subsection :—

(1A) In relation to a company to which a conviction referred to in subsection (1) relates—

- (a) the appropriate officer; and
 (b) a creditor or contributory of the company authorised by the Commission to make an application under subsection (1),

are prescribed persons for the purposes of that subsection.

Sec. 374E.
 (Interpretation.)

- (g) (i) by inserting in paragraph (a) of the definition of “appropriate officer” in section 374E (1) after the word “company” the words “, or an unregistered company within the meaning of Division 5 of Part X,”;
- (ii) by inserting in paragraph (e) of the definition of “appropriate officer” in section 374E (1) after the word “which” the words “, within the meaning of subsection (2),”;
- (iii) by inserting in the definition of “company to which this section applies” in section 374E (1) after the words “a company” the words “, or an unregistered company within the meaning of Division 5 of Part X”;
- (iv) by inserting in paragraph (e) of the definition of “company to which this section applies” in section 374E (1) after the word “which” the words “, within the meaning of subsection (2),”;
- (v) by inserting in paragraph (a) of the definition of “the relevant day” in section 374E (1) after the word “company” the words “, or an unregistered company within the meaning of Division 5 of Part X,”;

(vi)

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- (vi) by inserting in paragraph (e) of the definition No. 20, 1973 of "the relevant day" in section 374E (1) after the word "is" the words ", within the meaning of subsection (2),";
- (vii) by inserting in paragraph (f) of the definition of "the relevant day" in section 374E (1) after the word "has" the words ", within the meaning of subsection (2),";
- (viii) by omitting from section 374E (2) the words "three hundred and eight and has not received an answer within one month of the date of the letter" and by inserting instead the words "308 and has not, within the next succeeding period of one month, received an answer";
- (h) by omitting from section 374H (5) the words "a company" and by inserting instead the words "a corporation or an unregistered company within the meaning of Division 5 of Part X".

Sec. 374H.
(Court may disqualify person from acting as director, &c., in certain circumstances.)

8. The Principal Act is further amended—

Further amendment of Act No. 71, 1961.

- (a) by omitting from regulation 45 in Table A to the Fourth Schedule the word "seven" and by inserting instead the word "fourteen";
- (b) by omitting from regulation 28 in Table B to the Fourth Schedule the word "seven" and by inserting instead the word "fourteen".

9. (1) In this section "expenses order" means an order made under section 179 (2) of the Principal Act or section 5DB (3) of the Securities Industry Act, 1970. **Transitional provision.**

(2)

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(2) Where an expenses order was made on or after 1st January, 1972, and before the date of assent to this Act, or is made after the date of assent to this Act, for the payment of money by a company in respect of which the winding up commenced before 1st January, 1972, section 292 (1) of the Principal Act shall be applied as if—

- (a) the winding up had commenced immediately after the expenses order; and
- (b) the assets and liabilities of the company were those existing immediately after the making of the expenses order.

(3) The amendments made by section 6 (b) apply only in respect of a company for which the relevant date within the meaning of section 292 of the Principal Act is a date not earlier than the date of assent to this Act.