

An Act to incorporate “The Pacific Fire and
Marine Insurance Company.” [9th December,
1862.]

WHEREAS a Joint Stock Company called “The Pacific Fire and Marine Insurance Company” has been lately established at Sydney in the Colony of New South Wales under and subject to the rules regulations and provisions contained in a certain Deed of Settlement bearing date the eighth day of August one thousand eight hundred and sixty two purporting to be a Deed of Settlement of the said Company And whereas by the said Deed of Settlement the several parties thereto have respectively and mutually covenanted and agreed that they whilst holding shares in the capital of the said Company should remain and continue until dissolved under the provisions in that behalf therein contained a Joint Stock Company under the name style and title of “The Pacific Fire and Marine Insurance Company” for the purpose of effecting either alone or jointly with any other Company or individual insurances against fire and marine risks of all kinds upon ships vessels and goods on board in harbour and at sea and also against risk by fire upon houses warehouses and other buildings goods wares merchandises stock effects and all other kinds of property And whereas it was by the said Deed of Settlement agreed that the capital of the Company should consist of five hundred thousand pounds sterling to be divided into ten thousand shares of the amount of fifty pounds each And whereas by the said Deed of Settlement provision has been made for the due management of the affairs of the said Company by certain directors and auditors already appointed and
by

Preamble.

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by other directors and auditors to be from time to time elected and appointed as their successors by the shareholders of the said Company And whereas the whole of the capital of five hundred thousand pounds has been subscribed for and a deposit of two pounds per share has been paid up And whereas the said Company is desirous of being incorporated and it is considered that it will be advantageous not only to the said Company but also to the mercantile and shipping interests of New South Wales that it should be incorporated accordingly Be it therefore 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—

Interpretation
clause.

1. The following words and expressions in the Act shall have the several meanings hereby assigned to them unless there be something in the subject or the context repugnant to such construction (that is to say)—

"The Company."

The expression "the Company" shall mean the Company incorporated by this Act.

"The Directors."

The expression "the Directors" shall mean the Board of Directors of the Company duly appointed under the provisions of the said Deed of Settlement.

"Shareholder."

The word "Shareholder" shall mean shareholder proprietor or member of the Company.

Company
incorporate l.

2. Every person who has already become or at any time hereafter shall or may in the manner provided by and subject to the rules regulations and provisions contained in the said deed of settlement become holders of shares of or in the capital for the time being of the said Company shall for the purposes aforesaid but subject nevertheless to the conditions regulations and provisions hereinafter contained be one body politic and corporate in name and in deed by the name of "The Pacific Fire and Marine Insurance Company" and by that name shall and may sue any person whether a member of the Company or not and may be sued implead and be impleaded in all courts whatsoever at law or in equity and may prefer lay and prosecute any indictment information or prosecution against any person whomsoever for any stealing embezzlement fraud forgery crime or offence and in all indictments informations and prosecutions it shall be lawful to state the money and goods effects bills notes securities or other property of whatsoever nature to be the money goods effects bills notes securities or other property of the Company and to designate the Company or co-partnership by its corporate name whenever for the purpose of any allegation of an intent to defraud or otherwise howsoever such designation shall be necessary and the Company shall have perpetual succession with a common seal which may be altered varied and changed from time to time at the pleasure of the Company.

Deed of settlement
confirmed and
clauses &c. therein
to be the by-laws for
the time being of the
Company.

3. The several laws rules regulations clauses and agreements contained in the said deed of settlement or to be made in pursuance of the provisions for that purpose therein contained are and shall be the by-laws for the time being of the Company save and except in so far as any of them are or shall or may be altered varied or repealed by or are or shall or may be inconsistent with or repugnant to any of the provisions of this Act or of any of the laws or statutes in force in the said Colony subject nevertheless to be and the same may be amended altered or repealed either wholly or in part in the manner provided by the said deed of settlement but no rule or by-law shall on any account or pretence whatsoever be made by the Company either under or by virtue of the said deed of settlement or of this Act in opposition to the general scope or true intent and meaning of the said deed of settlement or of this Act or of any of the laws or statutes in force in the said Colony.

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4. The production of a written or printed copy of the said deed of settlement or of any by-laws to be made in pursuance thereof or in pursuance of this Act having the common seal of the Company affixed thereto shall be sufficient evidence in every court of civil or criminal jurisdiction of such deed of settlement or of such by-laws. Evidence of by-laws.

5. It shall be lawful for the Company subject to the restrictions and provisions herein contained either alone or jointly with any other Company or individual to carry on the business of effecting insurances against fire and marine risks of all kinds upon ships vessels and goods on board in harbour and at sea and also against risk by fire upon houses warehouses and other buildings goods wares merchandises stock effects and all other kinds of property and also with the capital advanced and with the accumulating premiums and in the corporate name of the Company to invest in Government securities or on or in the shares debentures or stock of any public or private Company or upon a mortgage of land or other property and in such other way consistently with the provisions hereof as to the Directors may seem best for the interests of the Company. General business of the Company.

6. The shares in the capital of the Company and all the funds and property of the Company and all shares therein shall be personal estate and transmissible as such subject to the restrictions for that purpose contained in the said deed of settlement and shall not be of the nature of real estate. Shares to be personal estate.

7. Subject to the restrictions for this purpose in the said deed of settlement contained every shareholder may sell or transfer all or any of his shares in the capital of the Company (but not a fractional part of a share) and every such transfer shall be by deed and according to a form to be approved of by the directors. Transfer of shares to be by deed.

8. Upon the assignees or trustees of any bankrupt or insolvent shareholder or of any estate assigned for the benefit of creditors electing to accept the shares of any bankrupt or insolvent shareholder or of any such assigned estate such assignees or trustees shall forthwith nominate some other person or persons to become a proprietor or proprietors in respect of such shares such nominee or nominees to be subject to the approval of the directors but in no case shall such assignees or trustees be themselves entitled to become shareholders in respect of the shares of any bankrupt or insolvent shareholder or of any estate assigned for the benefit of creditors. The assignees or trustees of any bankrupt or insolvent to nominate some person to become proprietor in respect of shares of such bankrupt or insolvent.

9. The Company shall not be bound to see to the execution of any trust whether express implied or constructive to which any share may be subject and the receipt of the party in whose name any such share shall stand in the books of the Company or if it stands in the name of more parties than one the receipt of one of the parties named in the shareholders' register book hereinafter mentioned shall from time to time be a sufficient discharge to the Company for any dividend or other sum of money payable in respect of such share notwithstanding any trust to which such share may then be subject and whether or not the Company have had notice of such trusts and the Company shall not be bound to see to the application of the money paid upon such receipt. Company not bound to regard trusts.

10. In any action or suit to be brought by the Company against any shareholder to recover the money due for any call made by virtue of this Act or of the said deed of settlement it shall not be necessary to set forth the special matter but it shall be sufficient for the Company to declare that the defendant is the holder of one share or more in the Capital of the Company (stating the number of shares) and is indebted to the Company in the sum to which the calls in arrear shall amount in respect of one call or more upon one share or more (stating the number and amount of each of such calls) whereby an action hath accrued to the Company. Declaration in action for calls.

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Matter to be proved
in action for calls.

11. On the trial or hearing of such action or suit it shall be sufficient to prove that the defendant at the time of making such call was a holder of one share or more in the Capital of the Company and that such call was in fact made and such notice thereof given as is provided for that purpose in the said deed of settlement and it shall not be necessary to prove the appointment of the directors who made such call nor any other matter whatsoever and thereupon the Company shall be entitled to recover what shall be due upon such call with interest thereon.

Proof of proprietor-
ship.

12. The production of the shareholders' register book shall be *prima facie* evidence of such defendant being a shareholder and of the number of his shares.

Dividend to be out
of the profits only.

13. No dividend shall in any case be declared or paid out of the subscribed capital for the time being of the Company or otherwise than out of the net gains and profits of the business.

Company may hold
lands &c.

14. It shall be lawful for the Company notwithstanding any statute or law to the contrary to purchase take hold and enjoy to them and their successors for any estate term of years or interest any houses offices buildings or lands necessary or expedient for the purpose of managing conducting and carrying on the affairs concerns and business of the Company or to build a suitable office on land purchased for that purpose and also to take and to hold until the same can be advantageously disposed of for the purpose of reimbursement only any lands merchandise and ships which may be so taken by the Company in satisfaction liquidation or discharge of any debt due to the Company or in security for any debt or liability and to sell convey demise assign exchange or otherwise dispose of such houses offices buildings and lands merchandise and ships as occasion may require.

Conveyance to
corporation.

15. It shall and may be lawful for every person who is or shall be otherwise competent to grant sell alien and convey assign assure demise and dispose of unto and to the use of the Company and their successors for the purpose aforesaid or any of them any such houses offices or lands.

Borrowing money.

16. It shall be lawful for the directors from time to time as occasion shall arise for raising money for the purposes of the business of the Company to negotiate such of the bills or promissory notes for the time being held by the Company as they may consider advisable or to assign or sell any security belonging to the Company and the indorsement of such bills or promissory notes by the Chairman of the Company or other person authorized in that behalf by the directors for and on behalf of the Company shall be binding against every member thereof.

Property at present
in trustees to become
vested in corporation.

17. All the lands securities covenants debts moneys choses in action and things at present vested in the trustees of the Company or any other person on behalf of the Company shall immediately after the passing of this Act become vested in the Company for the same estate and interest and with the like powers and authorities as the same are now vested in the said trustees or other person without any assignment or conveyance whatsoever.

Act not to prejudice
any contract already
entered into.

18. Nothing in this Act contained shall be construed to prejudice any call made or any contract entered into by the Company or by any person on behalf of the Company before this Act shall have come into operation but the same call or contract shall be as valid to all intents and purposes as if this Act had not been passed and may be enforced in like manner as if the Company had been incorporated before such call was made or such contract was entered into.

Registry of share-
holders.

19. The Company shall keep a book to be called the "Shareholders' Register Book" and in such book shall be fairly and distinctly entered from time to time the names and additions of the several persons

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persons entitled or who shall from time to time hereafter become entitled to shares in the Company together with the number of shares to which such shareholders shall be respectively entitled.

20. The production of the shareholders' register book shall be admitted in all courts of civil and criminal jurisdiction as *prima facie* evidence of the person named therein as a shareholder being such shareholder and of the number of his shares and every shareholder or other person having a judgment at law or a decree in equity against the Company may at all convenient times peruse the shareholders' register book gratis and may require a copy thereof or any part thereof and for every one hundred words so required to be copied the Company may demand a sum not exceeding one shilling.

Shareholders' Register Book to be evidence.

21. If any execution either at law or in equity shall have been issued against the property or effects of the Company and if there cannot be found sufficient whereon to levy such execution then such execution may be issued against any of the shareholders for the time being or any former shareholder of the Company Provided always that no such execution shall issue against any such shareholder or former shareholder except upon the order of the Court in which the action suit or other proceeding shall have been brought or instituted made upon motion in open Court after sufficient notice in writing to the person sought to be charged and upon such motion such Court may order execution to issue accordingly Provided further that in the case of execution against any former shareholder it shall be shown that such former shareholder was a shareholder of the Company at the time when any contract or engagement was entered into for breach of which contract or engagement such execution shall have issued or become a shareholder during the time such contract or engagement was unexecuted or unsatisfied or was a shareholder at the time the judgment or decree was obtained upon which judgment or decree such execution shall have issued Provided also that in no case shall such execution be issued against the person property or effects of any former shareholder after the expiration of two years after the person sought to be charged shall have ceased to be a shareholder of the Company.

Execution against shareholders.

22. Every person against whom or against whose property or effects execution upon any judgment decree or order obtained as aforesaid shall have been issued as aforesaid shall be entitled to recover against the Company all loss damages costs and charges which such person may have incurred by reason of such execution and that after due diligence used to obtain satisfaction thereof against the property and effects of the Company such person shall be entitled to contribution for so much of such loss damages costs and charges as shall remain unsatisfied from the several other persons against whom execution upon such judgment or decree obtained against the Company might also have been issued under the provision in that behalf aforesaid and that such contribution may be recovered from such persons as aforesaid in like manner as contribution in ordinary cases of co-partnership.

Reimbursement of shareholders.

23. In the cases provided by this Act for execution or any judgment decree or order in any action or suit against the Company to be issued against the person or against the property and effects of any shareholder or former shareholder of the Company or against the property and effects of the Company at the suit of any shareholder or former shareholder in satisfaction of any money damages costs and expenses paid or incurred by him as aforesaid in any action or suit against the Company such execution may be issued by leave of the Court or of a Judge of the Court in which such judgment decree or order shall have been obtained upon motion or summons for a rule to show cause or other motion or summons consistent with the practice of

Execution against shareholders for contributions.

New South Wales Co-operative Coal Mining Company.

of the Court without any suggestion or *scire facias* in that behalf and that it shall be lawful for such Court or Judge to make absolute or discharge such rule or allow or dismiss such motion (as the case may be) and to direct the costs of the application to be paid by either party or to make such other order therein as to such Court or Judge shall seem fit and in such cases such form of writs of execution shall be sued out of the courts of law and equity respectively for giving effect to the provisions in that behalf aforesaid as the Judges of such Courts respectively shall from time to time think fit to order and the execution of such writs shall be enforced in like manner as writs of execution are now enforced. Provided that any order made by a Judge as aforesaid may be discharged or varied by the Court on application made thereto by either party dissatisfied with such order. Provided also that no such motion shall be made nor summons granted for the purpose of charging any shareholder or former shareholder until ten days' notice thereof shall have been given to the person sought to be charged thereby.

Custody and use of
corporate seal.

24. The directors for the time being shall have the custody of the common seal of the Company and the form thereof and all other matters relating thereto shall from time to time be determined by the directors in the same manner as is provided by the said deed of settlement for the determination of other matters by the directors and the directors present at a board of directors of the Company shall have power to use such common seal for the affairs and concerns of the Company and under such seal to authorize and empower any person without such seal to execute any deeds and do all or any such other matters and things as may be required to be executed and done on behalf of the Company in conformity with the provisions of the said deed of settlement and of this Act but it shall not be necessary to use the corporate seal in respect of any of the ordinary business of the Company or for the appointment of an attorney or solicitor for the prosecution or defence of any action suit or proceeding.

Short title of the
Act.

25. In citing this Act in other Acts of Parliament and in legal instruments it shall be sufficient to use the expression "The Pacific Fire and Marine Insurance Company's Incorporation Act 1862."
