

Queensland



ANNO NONO

ELIZABETHAE SECUNDAE REGINAE.

No. 24.

**An Act to Amend "The Companies Acts, 1931 to 1955,"
in certain particulars and for other purposes.**

[ASSENTED TO 28TH NOVEMBER, 1960.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. (1.) This Act may be cited as "*The Companies Acts Amendment Act of 1960.*" Short title.

(2.) "*The Companies Acts, 1931 to 1955,*" are in this Act referred as the Principal Act. Principal Act.

(3.) The Principal Act and this Act may be collectively cited as "*The Companies Acts, 1931 to 1960.*" Collective title.

* 2. This Act shall come into operation on a date to be fixed by the Governor in Council by Proclamation published in the *Gazette*. Commencement of Act.

*Commenced 3rd January 1961. (Proc. published *Gazette* 10 Dec., 1960, p. 2244.)

Amendment
of s. 3.

3. Section three of the Principal Act is amended by inserting after the words "PART IV.—SHARE CAPITAL AND DEBENTURES;" the words "PART IVA.—INTERESTS OTHER THAN SHARES, DEBENTURES, &C.;"

Amendment
of s. 5.

4. Section five of the Principal Act is amended—
(a) By inserting after the definition "Liquidator," the following definition:—

Marketable
securities.
N.S.W.
(No. 33 of
1936, as
amended)
s. 6.
Vic.
(No. 6455, as
amended)
s. 3.

" "Marketable securities"—Any debentures, funds, stocks, shares or bonds of any Government or of any local government authority or of any corporation or society and includes any right or option in respect of shares in any corporation and any interest as defined in section 83A;" ;

Tas. (No. 29
of 1959) s. 3.

(b) By omitting the definition "Prospectus" and inserting in its stead the following definition:—

Prospectus.
N.S.W. s. 6.
Vic. s. 3.
Tas. s. 3.

" "Prospectus"—Any prospectus, notice, circular, advertisement or invitation inviting applications or offers from the public to subscribe for or purchase or offering to the public for subscription or purchase any shares in or debentures of or any units of shares in or units of debentures of a company or proposed company whether incorporated or to be incorporated in the State or elsewhere;" ; and

(c) By inserting after the definition "Prospectus", as previously inserted by this Act, the following definition:—

Public
company.

" "Public company"—A company other than a private company;" .

Amendment
of s. 47.

5. Section forty-seven of the Principal Act is amended by inserting after subsection three the following subsections:—

" (3A.) No person shall, in pursuance of a scheme, arrangement or contract involving the transfer of shares, or any class of shares, in a public company whether incorporated in the State or elsewhere (in this subsection referred to as the "transferor company") to another company whether incorporated in the State or elsewhere (in this subsection referred to as the "transferee company") or to a nominee for, or a related company of, the transferee company, make any offer to

purchase or otherwise acquire shares in the transferor company in consideration wholly or in part of the allotment or transfer of shares in or debentures of the transferee company where the offer is expressed to be conditional on acceptance as to the shares or as to each class of shares in the transferor company the transfer whereof is involved by the holders of a specified proportion of those shares or of the shares of that class unless the offer is accompanied by a prospectus relating to the transferee company which complies with the requirements of this Act and all enactments and rules of law as to contents of prospectuses and to liability in respect of statements and non-disclosures in prospectuses or otherwise relating to prospectuses shall apply to such a prospectus and have effect as if it were a prospectus inviting subscription for shares in or debentures of the transferee company and as if persons accepting the offer were subscribers for shares or debentures on the faith of the prospectus.

(3B.) For the purposes of subsection 3A where a company—

- (a) Is a holding company of another company ;
- (b) Is a subsidiary of another company ; or
- (c) Is a subsidiary of the holding company of another company,

the first-mentioned company and that other company shall be deemed to be related to each other.

(3C.) If default is made in complying with subsection 3A of this section every officer of a company or other person who knowingly commits, authorises or permits such a contravention shall be guilty of an offence and shall be liable to a penalty not exceeding five hundred pounds."

6. After section forty-seven of the Principal Act the following sections are inserted :—

" [47A.] (1.) No invitation to the public to deposit money with or to lend money to any company, whether incorporated in the State or elsewhere, shall, except where the deposit or loan is to be secured by and only by a mortgage or charge over specified real property of the company, be made unless a debenture is intended to be issued in respect of every deposit or loan so made and a debenture shall be issued in respect of every deposit or loan so made.

New ss. 47A,
47B and 47C.

As to
invitations
to the public
to deposit
money with
companies.
Vic. s. 36.
N.S.W.
s. 137A.
Tas. s. 35.

(2.) Nothing in this section shall require a debenture or prospectus to be issued in connection with any invitation to the public to deposit money with a corporation authorised under a law of the Commonwealth relating to banking to carry on banking business in Australia.

(3.) Where an invitation is made to the public to deposit money with or lend money to any company and such deposit or loan is not to be secured by a charge over all or any of the company's assets the invitation shall legibly and prominently state that the document to be issued acknowledging the deposit or loan of money made pursuant to the invitation is to be an unsecured note or an unsecured deposit note, as the case may be, and shall not state that such document is to be a debenture.

(4.) Where any document is issued by a company (being one of a series of such documents) which either expressly or by implication acknowledges the indebtedness of the company in respect of money borrowed by it but is not secured by a charge over all or any of the company's assets the document shall be described as an unsecured note or as an unsecured deposit note, as the case may be, and shall not be described as a debenture.

(5.) Every company which contravenes this section and every officer of the company who is in default shall be guilty of an offence and shall be liable to a penalty not exceeding one thousand pounds.

Invitation
to lend
money
deemed
invitation to
purchase
debentures.

[47B.] For the purposes of this Act any invitation to the public to deposit money with or to lend money to a company, whether incorporated in the State or elsewhere, shall be deemed to be an invitation to subscribe for or purchase debentures of the company.

Certain
advertisements
deemed to be
prospectuses.
Vic. s. 37 (4).
N.S.W.
s. 138.
Tas. s. 36 (6).
Sth. Africa,
No. 46 of
1952, s. 56
(3) (c).

[47C.] (1.) Every advertisement offering, or calling attention to an offer or intended offer of, shares in or debentures of a company or proposed company to the public for subscription or purchase shall, whether the company is incorporated or to be incorporated in the State or elsewhere, be deemed to be a prospectus issued by the person responsible for publishing or disseminating the advertisement (and all enactments and rules of law as to the contents of prospectuses and as to liability in

respect of statements in and omissions from prospectuses or otherwise relating to prospectuses shall apply and have effect accordingly) unless it contains no information or matter other than the following :—

- (a) The number and description of the shares or debentures concerned ;
- (b) The name and date of registration of the company and its paid-up share capital ;
- (c) The general nature of the main business or proposed main business of the company ;
- (d) The names of the directors or proposed directors and of the brokers or underwriters to the issue ; and
- (e) The place at which copies of the full prospectus and forms of application for the shares or debentures may be obtained,

and states that application for shares or debentures will proceed only on one of the forms of application referred to and attached to a printed copy of the prospectus.

(2.) No statement that, or to the effect that, the advertisement is not a prospectus shall affect the operation of this section.

(3.) This section shall apply to advertisements published or disseminated in the State by newspaper broadcasting, television, cinematograph or any other means whatsoever.

(4.) Where an advertisement that is deemed to be a prospectus by virtue of subsection one of this section does not comply with the requirements of this Act as to the contents of prospectuses, the person who published or disseminated the advertisement, and every officer of the company concerned, or other person, who knowingly authorised or permitted the publication or dissemination, shall be guilty of an offence and shall be liable to a penalty not exceeding five hundred pounds.

(5.) Nothing in this section shall limit or diminish any liability which any person may incur under any rule of law or under any enactment or this Act apart from this section.”

New Part
IVA.

7. After section eighty-three of the Principal Act the following Headnote and sections are inserted:—

“PART IVA.—INTERESTS OTHER THAN SHARES,
DEBENTURES, &C.

Definitions.
Vic. s. 63 (1).
N.S.W.
s. 173A.
Tas. s. 62 (1).

[83A.] (1.) In this Part, unless inconsistent with the context or subject matter—

“Company” means a public company, and includes a company that is a public company under the law of a proclaimed State and is registered under Part X. of this Act;

“Interest” means any right to participate or interest whether enforceable or not and whether actual prospective or contingent—

(a) In any profits, assets or realisation of any financial or business undertaking or scheme whether in the State or elsewhere;

(b) In any common enterprise whether in the State or elsewhere in which the holder of the right or interest is led to expect profits, rent or interest from the efforts of the promoter of the enterprise or a third party; or

(c) In any investment contract, whether or not the right or interest is evidenced by a formal document and whether or not the right or interest relates to a physical asset, but does not include—

(d) Any share in or debenture of a company or society whether incorporated in the State or elsewhere;

(e) Any interest in or arising out of a policy of life assurance;

(f) Any interest in a partnership agreement;

(g) A common fund established and kept under “*The Public Curator Acts, 1915 to 1957*,” “*The Queensland Trustees, Limited, Acts, 1888 to 1959*,” or “*The Union Trustee Company of Australia, Limited, Acts, 1890 to 1959*”; or

(h) Any prescribed right or interest or any right or interest of a prescribed class or kind;

“Investment contract” means any contract, scheme or arrangement which in substance and irrespective of the form thereof involves

the investment of money in or under such circumstances that the investor acquires or may acquire an interest in or right in respect of property which under or in accordance with the terms of investment will or may at the option of the investor be used or employed in common with any other interest in or right in respect of property acquired in or under like circumstances ;

“ Proclaimed State ” means a State or Territory of the Commonwealth declared by Proclamation to be a proclaimed State or Territory for the purposes of this Part ;

“ Registrar ” means the Registrar at Brisbane.

(2.) A reference in this Part to a deed shall be read as including a reference to any instrument amending or affecting the deed.

[83B.] For the purposes of this Part, a deed is an approved deed if—

- (a) The registrar has granted his approval under this Part to the deed ; and
- (b) The Crown Law Officer or registrar has granted his approval under this Part to the trustee or representative appointed for the purposes of the deed acting as trustee or representative and that approval has not been revoked and the trustee or representative has not ceased to hold office.

[83C.] (1.) Where a deed makes provision for the appointment of a person as trustee for or representative of the holders of interests issued or proposed to be issued, the registrar may, subject to this section, grant his approval to the deed.

Approval
of deeds.
Vic. s. 63 (4).
N.S.W.
s. 173D.
Tas. s. 62 (4).

(2.) The registrar shall not grant his approval to a deed unless—

- (a) The deed—
 - (i.) Contains the covenants referred to in section 83E ; and
 - (ii.) Provides for such other matters and things as the registrar considers desirable, having regard to the nature of the interests to

which the deed relates, for regulating the rights and obligations of the trustee or representative and the holders of the interests ; or

(b) The deed has been approved under a law of a proclaimed State corresponding with this Part.

(3.) Within seven days after a deed has been approved under this section, the company concerned shall lodge in the office of the registrar the deed, or a copy of the deed verified by statutory declaration, and the copy shall for all purposes, in the absence of proof that it is not a true copy, be regarded as an original."

New ss. 83D,
83E and 83F.

8. After section 83c of the Principal Act, as previously inserted by this Act, the following sections are inserted :—

Approval of trustees.
Vic. s. 63 (5).
N.S.W. s. 173E.
Tas. s. 62 (5).

" [83D.] (1.) The Crown Law Officer may, subject to such terms and conditions as he thinks fit, grant his approval to a person acting as trustee or representative for the purposes of a deed.

(2.) Where, under a law of a proclaimed State corresponding with this section, approval has been granted to a person to act as trustee or representative for the purposes of a deed, the registrar shall also, on application, grant his approval to the person acting as trustee or representative for the purposes of the deed.

(3.) The Crown Law Officer may, at any time, by reason of a breach of a term or condition subject to which the approval was granted or for any other reason, revoke an approval granted by him, or by the registrar, under this section.

Covenants to be included in deeds.
Vic. s. 63 (6).
N.S.W. s. 173F.
Tas. s. 62 (10).

[83E.] (1.) The covenants required by section 83c, to be contained in a deed are covenants to the following effect, namely :—

(a) A covenant binding the company that it will use its best endeavours to carry on and conduct its business in a proper and efficient manner and to ensure that any undertaking scheme or enterprise to which the deed relates is carried on and conducted in a proper and efficient manner ;

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- (b) Covenants binding the trustee or representative that he will—
- (i.) Exercise all due diligence and vigilance in carrying out his functions and duties and in watching the rights and interests of the holders of the interests to which the deed relates ;
 - (ii.) Keep or cause to be kept proper books of account in relation to those interests ; and
 - (iii.) Post or cause to be posted each year a statement of the accounts, with the report thereon of an auditor who is qualified under subsection three of section one hundred and forty-three of this Act for appointment to the office of auditor of a company, to each of the holders of those interests ;
- (c) A covenant binding the company that, to the same extent as if the trustee or representative were a director of the company, the company will—
- (i.) Make available to the trustee or representative, or to any auditor who is qualified under subsection three of section one hundred and forty-three of this Act for appointment to the office of auditor of a company and who is appointed by the trustee or representative, for inspection the whole of the books of the company whether kept at the registered office or elsewhere ; and
 - (ii.) Give to the trustee or representative or to any such auditor such oral or written information as he requires with respect to all matters relating to the undertaking, scheme or enterprise of the company or any property (whether acquired before or after the date of the deed) of the company or otherwise relating to the affairs thereof ;
- (d) A covenant binding the company that the company will make available, or ensure that there is made available, to the trustee or

representative such details as he requires with respect to all matters relating to the undertaking, scheme or enterprise to which the deed relates ;

- (e) Covenants binding the company and the trustee or representative, respectively, that the company or the trustee or representative, as the case may be, will not exercise the right to vote in respect of any shares relating to the interests to which the deed relates held by the company, trustee or representative at any election for directors of a company, whether incorporated in the State or elsewhere, whose shares are so held, without the consent of the holders of the interests to which the deed relates given at a meeting of those holders summoned in the manner provided for in subparagraphs (i.) and (ii.) of paragraph (f) of this subsection for the purpose of authorising the exercise of the right in a particular case ; and
- (f) A covenant binding the company that the company will from time to time on but not in any case later than twenty-one days or such further time as the Registrar in special circumstances allows after the application, delivered to the company at its registered office, of not less than fifty, or one-tenth in number, whichever is the less, of the holders of the interests to which the deed relates—
- (i.) By giving notice at least seven days before the proposed meeting by prepaid letter through the post addressed to each of those holders at his last known address or in the case of joint holders a notice to the joint holder whose name stands first in the company's records ; and
- (ii.) By giving notice at least fourteen days before the proposed meeting by advertisement in a daily newspaper circulating generally throughout the State addressed to those holders,

summon a meeting of the holders for the purpose of laying before the meeting the accounts and balance-sheet which were laid

before the last preceding general meeting of the company held in pursuance of section one hundred and twenty-two of this Act or the last audited statement of accounts of the trustee or representative, and for the purpose of giving to the trustee or representative such directions as the meeting thinks proper.

(2.) A meeting summoned for the purposes of a covenant contained in a deed in pursuance of subsection one of this section shall be held as soon as practicable, but in any case not later than two months after the receipt by the company of the application, at the time and place specified in the notice and advertisement under the chairmanship of—

- (a) The trustee or representative ;
- (b) In his absence, a nominee of the trustee or representative approved by the Crown Law Officer ; or
- (c) In the absence of the trustee or representative or a nominee, such other person as is appointed in that behalf by the holders present at the meeting,

and shall be conducted in accordance with the provisions of the deed or, in so far as the deed makes no provision, as directed by the chairman of the meeting.

[83F.] No person except a company or an agent of a company authorised in that behalf under the seal of the company shall issue or offer to the public for subscription or purchase or shall invite the public to subscribe for or purchase any interest."

Interests to be issued by companies only.
Vic. s. 63 (2).
N.S.W. s. 173B.
Tas. s. 62 (2).

9. After section 83F of the Principal Act, as previously inserted by this Act, the following sections are inserted :—

New ss. 83G,
83H and 83I.

“[83G.] (1.) Before a company or an agent of a company issues or offers to the public for subscription or purchase or invites the public to subscribe for or purchase any interest the company shall issue or cause to be issued a statement in writing in connection therewith which statement shall for all purposes be deemed to be a prospectus issued by a company, and subject to subsection two of this section, all provisions of this Act and rules

Statement to be issued.
Vic. s. 63 (3).
N.S.W. s. 173C.
Tas. s. 62 (3).

of law relating to prospectuses or to the offering or to an intended offering of shares for subscription or purchase to the public shall with such adaptations as are necessary apply and have effect accordingly as if the interest were shares offered or intended to be offered to the public for subscription or purchase and as if persons accepting any offer or invitation in respect of or subscribing for or purchasing any such interest were subscribers for shares.

(2.) The statement shall set out—

- (a) The matters and reports specified in the Thirteenth Schedule with such modifications, if any, as the registrar directs ;
- (b) Such of the matters and reports specified in the Fourth Schedule as the registrar requires with such modifications, if any, as he directs ; and
- (c) Such other matters as the registrar requires.

No issue without approved deed and approved trustee.

Vic. s. 63 (4).
N.S.W.
s. 173D.
Tas. s. 62 (4).

[83H.] (1.) A person shall not issue or offer to the public for subscription or purchase or invite the public to subscribe for or purchase any interest unless, at the time of the issue, offer or invitation, there is in force, in relation to the interest, a deed that is an approved deed.

(2.) Where an approved deed or a copy of an approved deed or any other document referring to an approved deed contains a statement that the deed has been approved by the registrar or under this Part, the deed, copy or document shall, immediately after the statement, contain a further statement that the registrar takes no responsibility as to the contents of the deed.

Interests issued before the commencement of Companies Acts Amendment Act of 1960.

[83I.] (1.) Where—

- (a) An interest issued by a company whether incorporated in the State or elsewhere before the date of commencement of “ *The Companies Acts Amendment Act of 1960*,” is in existence immediately before that date ;
- (b) This Part would have applied in relation to the issue of the interest if the interest had been issued on or after that date ;
- (c) There is not, at the expiration of three months after that date, a deed that is an approved deed in force in relation to the interest ; and

- (d) The company did not, within a period of one month after that date, apply for approval under this Part of a deed in relation to the interest or, if it did so apply, approval was refused,

the company shall, within fourteen days after the expiration of the period referred to in paragraph (c) of this section, give to the holder of the interest and to the registrar notice in writing in the prescribed form, and, if this section is not complied with, each director of the company shall, in addition to the company, be deemed to have failed to comply with this section.

(2.) The Crown Law Officer may modify the application to a company of subsection one of this section by extending any period referred to in that subsection or may exempt any company from compliance with this section.

(3.) Nothing in this section shall be construed as authorising the registrar to grant his approval to a deed that relates to an interest issued by a company that is not a company for the purposes of this Part.

(4.) Notwithstanding any other provision of this Part IVA. but subject to subsection five of this section the provisions of this Part IVA. shall not apply to any interest if—

- (a) In relation to the interest there remains in force a trust deed which was entered into prior to the fourteenth day of October, one thousand nine hundred and sixty ;
- (b) The interest is issued by a company incorporated under this Act or registered under Part X. thereof ;
- (c) The interest, or other interests under the trust deed in relation to the interest, was or were issued before the fourteenth day of October, one thousand nine hundred and sixty ; and
- (d) Not less than ninety per centum of the moneys, the subject of the trust deed in relation to the interest, invested for the time being are invested in—
- (i.) Debentures, funds, stocks or bonds of the Government of the Commonwealth or a State or Territory of the Commonwealth ;

(ii.) Debentures, funds, stocks or bonds of a local government authority or corporation in respect of which the Government of the Commonwealth or of a State or Territory of the Commonwealth has guaranteed the payment of the principal moneys and interest due thereunder; and

(iii.) Debentures, funds, stocks, shares or bonds of a corporation which are quoted on or in respect of which permission to deal has been granted by any prescribed Stock Exchange in the State.

(5.) The Governor in Council may by Order in Council published in the *Government Gazette* declare that this Part IVA. shall apply with respect to any interest specified in subsection four of this section with such modifications (if any) as are specified in the Order in Council and thereupon the provisions of this Part IVA. shall, notwithstanding subsection four of this section, apply accordingly."

New ss. 83J,
83K and 83L.

10. After section 83I of the Principal Act, as previously inserted by this Act, the following sections are inserted:—

Returns,
balance-
sheets, &c.
Vic. s. 63 (8).
N.S.W.
s. 173G.
Tas. s. 62
(12), (13),
(14).

"[83J.] (1.) Where a deed is or has at any time been an approved deed, the company to which the deed relates shall, so long as the deed or any deed in substitution in whole or in part for the deed, remains in force—

(a) Once at least in every calendar year not more than thirty days after the general meeting of the company held in pursuance of section one hundred and twenty-two of this Act—

(i.) Prepare and lodge with the registrar a return containing a list of all persons who on the day of the general meeting of that year held in pursuance of section one hundred and twenty-two of this Act or such other day as may be approved by the registrar are holders of the interests to which the deed relates, showing the name and address of each holder and the extent of his interest and, if his interest consists of a specific interest in any real or

personal property a description of the property and its location sufficient to identify it precisely ; and

- (ii.) Lodge with the registrar a copy of the lists and statements referred to in subsection two of this section ; and
- (b) Not less than seven days before the general meeting of that year held in pursuance of section one hundred and twenty-two of this Act, post or cause to be posted to any holder who has requested the company so to do, a copy of each of the following documents :—
 - (i.) The balance-sheet, profit and loss account and directors' report to be laid before the company at that meeting ;
 - (ii.) A summary of all purchases and sales of land and marketable securities by the company affecting the interests of the holders during the period to which the accounts relate ;
 - (iii.) A statement of the total amount of brokerage affecting the interests of the holders paid or charged by the company during the period to which the accounts relate and the proportion thereof paid to any stock or share broker who, or any employee or nominee of whom, is an officer of the company and the proportion retained by the company ; and
 - (iv.) A list of all the investments of the company affecting the interests of the holders as at the date of the balance-sheet showing the names and quantities of the investments.

(2.) There shall accompany every balance-sheet posted to a holder in pursuance of subsection one of this section—

- (a) A list of all parcels of land and marketable securities held by the person who is the trustee or representative in relation to the deed, as at the date to which the accounts are made up, showing the quantities of those securities and the basis on which they have been valued ;

- (b) A list of all purchases and sales of land and marketable securities made by the trustee or representative, or by the company on behalf of the trustee or representative, during the period to which the accounts relate ;
- (c) A list of all the investments made during the period to which the accounts relate by the trustee or representative, or by the company on behalf of the trustee or representative, showing the names and quantities of those investments ; and
- (d) Such other statements and particulars (if any) as may be prescribed,

each of which shall be signed by the person who signed the balance-sheet.

(3.) Notwithstanding the provisions of subsection one of this section a company—

- (a) Which has its registered office within three miles of the office of the registrar ; and
- (b) Provides reasonable accommodation, facilities and opportunity for persons to inspect and take copies without fee of the return referred to in that subsection,

need not lodge the return with the registrar.

(4.) The Governor in Council may by Order in Council published in the *Government Gazette* require any company to which subsection three of this section applies to lodge with the registrar the return referred to in subsection one of this section.

(5.) If, with respect to a deed which provides for an annual accounting period with respect to the trust, the company shall have furnished lists and statements as specified in subsection two of this section in relation to the complete such annual accounting period last occurring before the date to which the accounts in question of the company are made up, and as at the date to which the accounts in respect of that annual accounting period are made up instead of the period and date specified in subsection two, such a furnishing shall be deemed a sufficient compliance with the requirements of the said subsection two.

[83K.] A person shall not be relieved from any liability to any holder of an interest by reason of any contravention of, or failure to comply with, a provision of this Part.

Contra-
vention of
Part
does not
relieve from
liability.
Vic. s. 63 (9).
N.S.W.
s. 173H.
Tas. s. 62
(15).

[83L.] A person who—

- (a) Contravenes or fails to comply with a provision of this Part ;
- (b) Fails to comply with a covenant contained in any deed that is or at any time has been an approved deed ;
- (c) Fails to comply with an order made under subsection four of section 83J,

Penalty for
contra-
vention of
Part,
&c.
Vic. s. 63
(10).
N.S.W.
s. 173I.
Tas. s. 62
(16).

shall be guilty of an offence against this Act and shall be liable on conviction to imprisonment for a term not exceeding twelve months or to a penalty not exceeding five hundred pounds.”

11. After section 83L of the Principal Act, as previously inserted by this Act, the following sections are inserted :—

New ss. 83M
and 83N.

“[83M.] This Part shall not apply in the case of the sale of any interest by a personal representative, liquidator, receiver or trustee in bankruptcy in the normal course of realisation of assets.

Non-
application
of Part to
personal
representa-
tive, &c.
Vic. s. 63
(11).
N.S.W.
s. 173J.
Tas. s. 62
(17).

[83N.] (1.) Subject to this section, any provision contained in a deed that is or at any time has been an approved deed, or in any contract with the holders of interests to which such a deed relates, shall be void in so far as it would have the effect of exempting a trustee or representative under the deed from, or indemnifying him against, liability for breach of trust where he fails to show the degree of care and diligence required of him as trustee or representative having regard to the provisions of the deed conferring on him any powers, authorities or discretions.

Liability of
trustees.
U.K. s. 88.

(2.) Subsection one of this section shall not invalidate—

- (a) Any release otherwise validly given in respect of anything done or omitted to be done by a trustee or representative before the giving of the release ; or
- (b) Any provision enabling such a release to be given—
 - (i.) On the agreement thereto of a majority of not less than three-fourths in nominal value of holders of interests present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose ; and
 - (ii.) Either with respect to specific acts or omissions or on the trustee or representative dying or ceasing to act.

(3.) The registrar may, except in the case of a deed that has been approved under a law of a proclaimed State corresponding with section 83c, refuse to grant his approval of a deed under that section if the deed contains a provision that, upon approval of the deed, would be void by virtue of this section.”

New ss.
100A and
100B.

12. After section one hundred of the Principal Act the following sections are inserted :—

Trustees for
debenture
holders.
N.S.W.
s. 172A.
Vic. s. 62.
Tas. s. 61.

“ [100A.] (1.) Every company, whether incorporated in the State or elsewhere, offering debentures to the public for subscription in the State shall (except where a debenture is given by one instrument to not more than twenty-five persons without any right to subdivide their interests) make provision in the debentures or in a trust deed for the appointment of not less than two persons (the appointment of one or more but not all of whom may if the debentures or deed so provide be reserved to be made by the holders of the debentures) as trustees for the holders of the debentures.

(2.) A company shall not allot any debenture until the appointments provided for in the debentures or in the trust deed pursuant to subsection one of this section have been made.

(3.) The debentures or deed shall contain covenants by the company or, if it does not expressly contain such covenants, shall be deemed to contain covenants, to the following effect :—

- (a) That the company will use its best endeavours to carry on and conduct its business in a proper and efficient manner ;
- (b) That, to the same extent as if the trustees for the holders of the debentures or any auditor, who is qualified under subsection three of section one hundred and forty-three of this Act for appointment to the office of auditor of a company and who is appointed by the trustees were directors of the company, it will—
 - (i.) Make available for their inspection the whole of the books of account of the company ; and
 - (ii.) Give to them such information as they require with respect to all matters relating to the books of account of the company ; and
- (c) That the company will, on the application of the holders of debentures of any class holding not less than one-tenth in nominal value of the issued debentures of that class delivered to its registered office, by giving notice—
 - (i.) At least seven days before the proposed meeting by prepaid letter through the post addressed to each of the holders of the debentures (other than debentures payable to bearer) of that class at his address as specified in the register of debentures ; and
 - (ii.) At least fourteen days before the proposed meeting by an advertisement in a daily newspaper circulating generally throughout the State addressed to all holders of debentures of that class,

summon a meeting to consider the accounts and balance-sheet which were laid before the last preceding general meeting of the company held in pursuance of section one hundred and twenty-two of this Act and give

to the trustees directions in relation to the exercise of their powers, such meeting to be held as soon as practicable, but in any case not later than two months after the receipt by the company of the application, at a time and place specified in the notice and advertisement under the chairmanship of a trustee or such other person as is appointed in that behalf by the holders of debentures present at the meeting.

(4.) Where any debenture or trust deed does not expressly contain the covenants referred to in subsection three of this section the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a penalty not exceeding one hundred pounds.

(5.) Without the leave of the court—

(a) A beneficial owner of a share in or a director solicitor or auditor of the company or of any other company which has entered into any guarantee in respect of the principal debt or interest thereon or itself holds beneficially shares of the first-mentioned company; or

(b) A company which is a subsidiary of the first-mentioned company or of which the first-mentioned company is a subsidiary,

shall not be appointed or act as a trustee.

For the purposes of this section, the Public Curator and the companies specified in "*The Queensland Trustees, Limited, Acts, 1888 to 1959,*" or "*The Union Trustee Company of Australia, Limited, Acts, 1890 to 1959,*" shall until the contrary is shown, be deemed not to be the beneficial owner of any share registered in his or its name.

(6.) The company shall in writing furnish the trustees, whether or not any demand therefor has been made, with particulars (within twenty-one days of the creation of the mortgage) of any mortgage within the meaning of subsection one of section eighty-four of this Act created by the company, other than a mortgage created in the ordinary course of the business of the company and when the amount to be advanced is

indeterminate, particulars (within seven days after the advance) of the amount or amounts in fact advanced but where any such advances are merged in a current account with bankers or trade creditors it shall be sufficient for particulars of the net amount outstanding in respect of any such advances to be furnished every three months.

(7.) The court may on the application of the trustees order a meeting (to be held and conducted in such manner as the court thinks fit, under the chairmanship of a trustee or such other person as the meeting appoints) of the holders of debentures of any class to be called to consider any matters in which they are concerned and advise the trustees thereon and may give such ancillary or consequential directions as it thinks fit.

(8.) The trustees shall exercise diligence in ascertaining whether or not the assets of the company which constitute or may constitute the security for the debentures are sufficient or are likely to become sufficient to discharge the principal debt and any interest thereon.

(9.) Notwithstanding anything in any debenture or trust deed the security for any debentures which are irredeemable or redeemable only on the happening of a contingency or at an uncertain time shall be enforceable forthwith or at such time as the court directs if, on the application of a debenture holder (where there is no trustee for debenture holders) or the trustees, the court is satisfied that—

Enforce-
ability of
certain
debentures.

- (a) At the time of the issue of the debentures the assets of the company which constituted or were intended to constitute the security therefor were sufficient or likely to become sufficient to discharge the principal debt and any interest thereon ;
- (b) The security, if realised under the circumstances existing at the time of the application, would be likely to bring not more than sixty per centum of the principal sum of moneys outstanding (regard being had to all prior charges, if any) ; and
- (c) The assets covered by the security, on a fair valuation on the basis of a going concern, are worth less than the said principal sum

and the company is not earning the interest payable on the principal sum or (where no definite rate of interest is payable) interest thereon at such rate as the court considers would be a fair rate to expect from a similar investment, after allowing a reasonable amount for depreciation,

but this subsection shall not affect any power to vary rights or accept any compromise or arrangement created by the terms of the debentures or under a compromise or arrangement between the company and creditors.

(10.) Subject to subsection five of this section the appointment of a company, whether incorporated in the State or elsewhere, or the Public Curator as sole trustee for debenture holders shall be sufficient compliance with the provisions of this section relating to the appointment of trustees and the word "trustees" in this section includes a company or the Public Curator so appointed as sole trustee for the debenture holders.

(11.) If default is made in complying with any provision of this section, other than the provisions of subsection three of this section, or with a covenant contained or deemed to be contained in a debenture or trust deed in pursuance of that subsection, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default penalty.

Liability of
trustees for
debenture
holders.
U.K. s. 88.

[100B.] (1.) Subject to this section, any provision contained in a trust deed relating to or securing an issue of debentures, or in any contract with the holders of debentures secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from or indemnifying him against liability for breach of trust where he fails to show the degree of care and diligence required of him as trustee having regard to the provisions of the trust deed conferring on him any powers, authorities or discretions.

(2.) Subsection one of this section shall not invalidate—

(a) Any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or

(b) Any provision enabling such a release to be given—

- (i.) On the agreement thereto of a majority of not less than three-fourths in nominal value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose; and
- (ii.) Either with respect to specific acts or omissions or on the trustee dying or ceasing to act.

(3.) Subsection one of this section shall not operate—

- (a) To invalidate any provision in force at the commencement of this Act so long as any person then entitled to the benefit of that provision or afterwards given the benefit thereof under subsection four of this section remains a trustee of the deed in question; or
- (b) To deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force.

(4.) While any trustee of a trust deed remains entitled to the benefit of a provision saved by subsection three of this section, the benefit of that provision may be given either—

- (a) To all trustees of the deed, present and future; or
- (b) To any named trustee or trustees or proposed trustee or trustees thereof,

by a resolution passed by a majority of not less than three-fourths in nominal value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose in accordance with the provisions of the deed or, if the deed makes no provision for summoning meetings, a meeting summoned for the purpose in any manner approved by the court.”

Amendment
of s. 145.

13. Section one hundred and forty-five of the Principal Act is amended—

(a) By adding at the end of subsection one the following paragraph :—

“(d) In the case of a company which, either before or after the commencement of “*The Companies Acts Amendment Act of 1960*,” issued any interest within the meaning of section 83A of this Act, where the Crown Law Officer is satisfied that it is necessary for the protection of the holders of such interests, or any of them, that the affairs of the company should be investigated under this Act.”;

(b) By omitting from subsection two the words “The application” and inserting in their stead the words “An application under paragraphs (a), (b) or (c) of subsection one of this section”;

(c) By adding at the end of the second subparagraph of paragraph (i.) of subsection eight the following paragraphs :—

“(d) In the case of a company which, either before or after the commencement of “*The Companies Acts Amendment Act of 1960*,” issued any interest within the meaning of section 83A of this Act, the company is or has been carrying on business in such manner that the holders of such interests, or any of them, are not being or have not been protected; or

(e) The company has contravened the provisions of subsection four of section fifty-one of this Act by failing to repay money received from applicants for shares.”; and

(d) By omitting from paragraph (v.) of subsection eight the words “subparagraphs (a), (b) and (c) of paragraph (i.)” and inserting in their stead the words “paragraphs (a), (b), (c), (d) and (e) of the second subparagraph of paragraph (i.)”.

Amendment
of s. 146.

14. Section one hundred and forty-six of the Principal Act is amended by inserting in paragraph (a1) of subsection two, after the words “pursuant to the provisions of” the words “paragraph (d) of subsection one or”.

15. Section three hundred and sixty-eight of the Principal Act is amended— Amendment
of s. 368.

(a) By omitting from subsection one the words “ or offering shares by way of barter or exchange, whether wholly or in part for other shares or securities or property of whatever nature belonging to the member of the public concerned ” ;

(b) By adding at the end of the proviso to subsection two the following word and paragraph :—

“ ; or

(c) Where the offer relates to—

(i.) An interest to which the provisions of Part IVA. of this Act apply and is accompanied by a statement in writing as required by that Part ; or

(ii.) Deposits or loans to a company of the kind referred to in subsection two of section 47A of this Act.” ;

(c) By inserting in subsection seven after the words “ unless the context otherwise requires,” the words “ the expression “ purchase ” includes barter or exchange ; and ” ;

(d) By inserting in subsection seven, after the words “ sounding only in damages ”, the words “ and also includes interests to which the provisions of Part IVA. of this Act apply ” ;

(e) By inserting after subsection seven the following subsection :—

“ (7A.) In this section a reference to an offer in writing of shares shall be construed as including an offer by means of broadcasting, television or cinematograph ; but where an offer is made by means of broadcasting, television or cinematograph, the statement or prospectus by which the offer is required to be accompanied by virtue of subsection two of this section shall be deemed to accompany the offer if—

(a) The statement or prospectus is prepared by the person on whose behalf the offer is made ;

(b) The public are informed at the same time and by the same means as that by which the offer is made that a copy of the statement or prospectus will be supplied on request being made at a specified address ; and

(c) Where request for a copy of a statement or prospectus is made at that address within one month after the offer was made the person making the request is supplied with a copy within seven days after the request was made."

New
Thirteenth
Schedule.

16. After the Twelfth Schedule of the Principal Act, the following Schedule is added :—

N.S.W. 14th
Sch.
Vic. 7th Sch.
Tas. 7th Sch.

“ THIRTEENTH SCHEDULE.

STATEMENT REQUIRED PURSUANT TO PART IV A. OF THIS ACT.

(a) *Matters Required to be Stated in Statement.*

1. The date of the statement.
2. The date of and parties to the deed referred to in section 83H of this Act.
3. The date of and parties to any deed or instrument by which any of the provisions of the first-mentioned deed has been amended or abrogated.
4. The name of the trustee or representative under any such deed and the address of the trustee's or representative's registered office.
5. A summary of the provisions of the deed regulating the retirement, removal and replacement of the trustee or representative.
6. The name of the company to which section 83G of this Act applies (hereinafter called “ the management company ”) and the address of its registered office.
7. A summary of the provisions of the deed regulating the retirement, removal and replacement of the management company.
8. The name and address of the auditor of the trust declared by the deed.
9. A summary of the provisions of the deed regulating the appointment, retirement, removal and replacement of such auditor.
10. The period of the trust declared by the deed and a summary of the provisions of the deed for the winding up of the trust on its termination.
11. The nature of the unit or sub-unit of interests issued or offered to the public for subscription or purchase and the description and number of the shares or the description of the property to which such interests attach.
12. The method of calculation provided by the deed of the greatest price at which the management company may sell any such unit or sub-unit of interests.

13. What obligations are imposed under the deed upon the management company to purchase from holders thereof the units or sub-units of interests for which they have subscribed or which they have purchased, and a statement of the method provided by the deed for the calculation of the purchase price of such units or sub-units.

14. A summary of any provisions of the deed whereby investments made thereunder may be varied.

15. Full information regarding the remuneration of the trustee and the management company respectively and the manner in which under the provisions of the deed such remuneration is provided for and what (if any) charges are made in respect of such remuneration upon the sale of or subscription for a unit or sub-unit of interests under the deed and upon the distribution of income and capital thereunder.

16. Whether units or sub-units of interests are transferable by the holders thereof and, if so, a summary of the provisions of the deed regulating such transfer.

17. A summary of the provisions of the deed regulating the distribution to the holders of units or sub-units of interests of the income of the trust.

18. If any reference is made to the yield of income obtained or to be obtained by the holders of units or sub-units of interests, a statement as to whether and to what extent anything other than cash receipts by way of dividends, interest or bonuses has been taken into account in calculating the yield.

19. A summary of the provisions of the deed regulating the convening of meetings of holders of units or sub-units of interests.

20. The names and the date of commencement of operation of any other unit trusts conducted by the management company during the five years immediately preceding the date of the statement.

21. A statement that certificates shall be allotted by the trustee to purchasers of or subscribers for units or sub-units of interests purchased or subscribed for pursuant to this statement not more than six months from the date appearing in paragraph 1 hereof.

(b) Reports to be set out in Statement.

22. A report by an auditor who is qualified under subsection three of section one hundred and forty-three of this Act for appointment to the office of auditor of a company, who shall be named, setting out—

(1) In respect of the interests referred to in the deed—

(a) A statement setting out the number of distributions of income in respect of each unit or sub-unit of interests during the five years immediately preceding the date of the statement, the amount of each such distribution and to what extent each such distribution consisted of anything other than dividends, interest or bonuses and if so the nature and amount of such other components ;

- (b) A statement setting out the selling price and the purchase price respectively of such units or sub-units of interests on each of the dates upon which each distribution of income was made by the trustees;
- (c) A statement setting out the selling price and the purchase price respectively of such units or sub-units of interests on the date immediately preceding the date of the statement; and

(2) In respect of units or sub-units of interests referred to in the deeds relating to each of the other unit trusts (if any) conducted by the management company during the five years immediately preceding the date of the statement, similar information to that required in respect of subparagraph (1) hereof.

23. If in the case of a company which has been carrying on business, or of a business which has been carried on, for less than five years, the accounts of the company or business have only been made up in respect of four years, three years, two years, or one year, this Schedule shall have effect as if references to four years, three years, two years, or one year, as the case may be, were substituted for references to five years."