



See also No 289 of 1803
312 of 1804, sec 95(2)
And No 408 of 187
Refd 559 of 92,
1st vol

ANNO TRICESIMO TERTIO ET TRICESIMO QUARTO

VICTORIÆ REGINÆ.

A.D. 1870-71.

No. 22.

An Act to amend the Companies Act, 1864.

[Assented to, 13th January, 1871.]

WHEREAS it is expedient to amend "The Companies Act, 1864"—Be it therefore Enacted by the Governor of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows:—

Preamble.

1. Wherever in the said Act or in this Act the "Supreme Court" or "The Court" is mentioned or referred to, the Supreme Court in its Equitable Jurisdiction shall be intended; and wherever in the said Act or in this Act a "Judge" is mentioned or referred to, the Primary Judge in Equity shall be intended; and if there shall be no such Judge, then any one of the Judges of the Supreme Court sitting in Chambers may do all such acts, and hear and determine all such matters and things as by the said Act or by this Act is authorized to be done, heard, or determined by a Judge of the said Court.

Court to mean Supreme Court in its Equitable Jurisdiction.

Judge to mean Primary Judge.

2. So far as shall not be inconsistent with the provisions of this Act, "The Companies Act, 1864," shall be read and construed as if the same had been passed after the Equity Act, 1866," came into operation; and this Act and "The Companies Act, 1864," shall be read and construed as one Act.

"Companies Act 1864," to be read as if passed after Equity Act, 1866, and to be read with this Act.

3. The provisions of "The Companies Act, 1864," shall not apply to any company or co-partnership which carries on the business of insurance

"Companies Act, 1864," not to apply to insurance companies.

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insurance against loss or damage by fire, or the business of marine or life insurance, either alone or in common with any other business or businesses: Provided always that this section shall not apply to any such company or co-partnership already registered under "The Companies Act, 1864."

Proviso as to companies already registered.

"Companies Act, 1864," not to apply to banking companies.

4. The provisions of "The Companies Act, 1864," shall not apply to any company or co-partnership formed, or to be formed, for the purpose of carrying on the business of banking.

Prohibition of partnerships, exceeding a certain number of persons.

5. No company, association, or partnership, consisting of more than twenty persons, shall be formed after this Act shall come into operation, for the purpose of carrying on any business that has for its object the acquisition of gain, by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under "The Companies Act, 1864," or unless it is formed or constituted under the provisions of some Act of the Imperial Parliament, or of the Parliament of the said Province, or by Letters Patent, or by Royal Charter: Provided always that the provisions of this Act, and of "The Companies Act, 1864," shall not apply to Friendly Societies, Benefit Societies, or Building Societies or Companies, and shall not affect or apply to "The Miners' Act, 1865," nor to "The Industrial and Provident Societies Act, 1864."

Exceptions.

Where documents delivered to the Registrar are to be kept.

6. All documents delivered to the Registrar of Companies, under the provisions of this Act, shall be kept at such office or place in Adelaide, as the Governor shall by notice in the *South Australian Government Gazette*, from time to time direct.

Amendment of schedules in "Companies Act, 1864."

7. Wherever in the schedules to "the Companies Act, 1864," the word "Associate" or "Chief Clerk" occurs, the said schedules shall be read and construed as if, in lieu of such words, the words "Chief Clerk in Equity" were contained in such schedules; or the title of the officer of the Supreme Court, for the time being, appointed under the provisions of the Act No. 31 of 1855-6, to discharge the duties of the Chief Clerk in Equity.

Company may have directors with unlimited liability.

8. Where, after the commencement of this Act, a company is formed as a limited company, under the provisions of "The Companies Act, 1864," the liability of the directors or managers of such company, or the managing director may, if so provided by the memorandum of association, be unlimited.

Liability of directors, past and present, when liability is unlimited.

9. The following modifications shall be made in the thirty-seventh section of "The Companies Act, 1864," with respect to the contributions to be required, in the event of the winding up of a limited company under the last mentioned Act, from any Director or Manager whose liability is in pursuance of this Act, unlimited:—

First—Subject to the provisions hereinafter contained, any such director or manager, whether past or present, shall, in addition

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tion to his liability (if any) to contribute as an ordinary member, be liable to contribute, as if he were at the date of the commencement of such winding up a member of an unlimited company.

Second—No contribution required from any past director or manager who has ceased to hold such office for a period of one year or upwards prior to the commencement of the winding up, shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company.

Third—No contribution required from any past director or manager in respect of any debt or liability of the company contracted after the time at which he ceased to hold such office, shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company.

Fourth—Subject to the provisions contained in the regulations of the company, no contribution required from any director or manager shall exceed the amount (if any) which he is liable to contribute as an ordinary member, unless the Court deems it necessary to require such contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding up.

10. In the event of the winding up of any limited company, the Court, if it think fit, may make to any director or manager of such company, whose liability is unlimited, the same allowance by way of set-off, as under the ninety-fifth section of "The Companies Act, 1864," it may make to a contributory where the company is not limited.

Director with unlimited liability may have set-off as under section 95 of "The Companies Act, 1864."

11. In any limited company in which in pursuance of this Act the liability of a director or manager is unlimited, the director or manager of the company (if any), and the member who proposes any person for election or appointment to such office, shall add to such proposal a statement that the liability of the person holding such office will be unlimited, and the promoters, directors, managers, and secretary (if any) of such company, or one of them shall, before such person accepts such office, or acts therein, give him notice in writing that his liability will be unlimited: If any director, manager, or proposer, make default in adding such statement, or if any promoter, director, manager, or secretary make default in giving such notice, he shall be liable to a penalty not exceeding One Hundred Pounds, and shall also be liable for any damage which the person so elected or appointed may sustain from such default; but the liability of the person elected or appointed shall not be affected by such default.

Notice to be given to director on his election that his liability will be unlimited.

12. Any limited company, under "The Companies Act, 1864," whether formed before or after the commencement of this Act, may, by a special resolution, if authorized so to do by its regulations as originally

Existing limited companies may, by special resolution, make liability of directors unlimited.

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originally framed, or as altered by special resolution from time to time, modify the conditions contained in its memorandum of association so far as to render unlimited the liability of the directors or managers, or of the managing director, and such special resolution shall be of the same validity as if it had been originally contained in the memorandum of association, and a copy thereof shall be embodied in or annexed to every copy of the memorandum of association which is issued after the passing of the resolution; and any default in this respect shall be deemed to be a default in complying with the provisions of the fifty-third section of "The Companies Act, 1864," and shall be punished accordingly.

No. 400 N^o 7, S. 3. Reduction of capital and shares:

Power to company to reduce capital.

13. Any company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed, or as altered by special resolution, as to reduce its capital, but no such resolution for reducing the capital of any company shall come into operation until an order of the Court is registered by the Registrar of Companies as hereinafter mentioned.

Company to add "and reduced" to its name for a limited period.

14. The company shall, after the date of the passing of any special resolution for reducing its capital, add to its name until such date as the Court may fix, the words "and reduced," as the last words in its name, and those words shall, until such date, be deemed to be part of the name of the company within the meaning of "The Companies Act, 1864."

Company to apply to the Court for an order confirming reduction.

15. A company which has passed a special resolution for reducing its capital, may apply to the Court, by petition, for an order confirming the reduction; and, on the hearing of the petition, the Court, if satisfied that, with respect to every creditor of the company who, under the provisions of this Act, is entitled to object to the reduction, either his consent to the reduction has been obtained, or his debt or claim has been discharged, or has determined, or has been secured, as hereinafter provided, may make an order confirming the reduction, on such terms and subject to such conditions as it deems fit.

Creditors may object to reduction; list of objecting creditors to be settled by the Court.

16. Where a company proposes to reduce its capital, every creditor of the company, who, at the date fixed by the Court, is entitled to any debt or claim, which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the proposed reduction, and to be entered in the list of creditors who are so entitled to object. And the Court shall settle a list of such creditors, and for that purpose shall ascertain, as far as possible, without requiring an application from any creditor, the names of such creditors, and the nature and the amount of their debts or claims; and may publish notices, fixing a certain day or days within which creditors of the company who are not entered on the list are to claim to be so entered, or to be excluded from the right of objecting to the proposed reduction.

17. Where

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17. Where a creditor, whose name is entered on the list of creditors, and whose debt or claim is not discharged or determined, does not consent to the proposed reduction, the Court may (if it think fit), dispense with such consent on the company securing the payment of the debt or claim of such creditor, by setting apart and appropriating in such manner as the Court may direct a sum of such amount as is hereinafter mentioned, that is to say—

Court may dispense with consent of creditor on security being given for his debt.

First—If the full amount of the debt or claim of the creditor is admitted by the company, or though not admitted is such as the company are willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated.

Second—If the full amount of the debt or claim of the creditor is not admitted by the company, and is not such as the company are willing to set apart and appropriate, or if the amount is contingent, or not ascertained, then the Court may (if it think fit) inquire into and adjudicate upon the validity of such debt or claim, and the amount for which the company may be liable in respect thereof, in the same manner as if the company were being wound up by the Court, and the amount fixed by the Court on such inquiry and adjudication shall be set apart and appropriated.

18. The Registrar of Companies, upon the production to him of an order of the Court confirming the reduction of the capital of a company, and the delivery to him of a copy of the order and of a minute (approved by the Court), showing, with respect to the capital of the company as altered by the order, the amount of such capital, the number of shares in which it is to be divided, and the amount of each share, shall register the order and minute; and, on the registration, the special resolution confirmed by the order so registered shall take effect: Notice of such registration shall be published in such manner as the Court may direct. The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of this Act, with respect to the reduction of capital, have been complied with, and that the capital of the company is such as is stated in the minute.

Order and minute to be registered.

19. The minute, when registered, shall be deemed to be substituted for the corresponding part of the memorandum of association of the company, and shall be of the same validity, and subject to the same alterations, as if it had been originally contained in the memorandum of association; and subject, as in this Act mentioned, no member of the company, whether past or present, shall be liable, in respect of any share, to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute.

Minute to form part of memorandum of association.

20. If any creditor who is entitled, in respect of any debt or claim,

Saving of rights of creditors who are

to

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ignorant of proceeding.

“Companies Act, 1864,” sec. 76.

to object to the reduction of the capital of a company under this Act, is, in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction the company is unable, within the meaning of the seventy-sixth section of “The Companies Act, 1864,” to pay to the creditor the amount of such debt or claim, every person who was a member of the company at the date of the registration of the order and minute relating to the reduction of the capital of the company, shall be liable to contribute for the payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day prior to such registration; and on the company being wound up, the Court, on the application of such creditor, and on proof that he was ignorant of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, may, if it think fit, settle a list of such contributories accordingly, and make and enforce calls and orders on the contributories settled on such list, in the same manner in all respects, as if they were ordinary contributories in a winding-up; but the provisions of this section shall not affect the rights of the contributories of the company among themselves.

Minute to be embodied in every copy of memorandum of association.

21. A minute when registered shall be embodied in every copy of the memorandum of association, issued after its registration, and if any company makes default in complying with the provisions of this section, it shall incur a penalty not exceeding One Pound for each copy, in respect of which such default is made; and every director and manager of the company, who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Penalty on concealment of name of creditor.

22. If any director, manager, or officer of the company wilfully conceals the name of any creditor of the company, who is entitled to object to the proposed reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the company, or if any director or manager of the company aids or abets in, or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager, or officer, shall be guilty of a misdemeanor.

Supreme Court may make and enforce rules.

23. The powers of making and enforcing rules concerning winding-up, conferred by the one hundred and fifty-sixth and the one hundred and fifty-seventh sections of “The Companies Act, 1864,” shall respectively extend to making and enforcing rules concerning matters in which jurisdiction is by this Act given to the Supreme Court, and until such rules are made the practice of the Court, in matters of the same nature shall, so far as the same is applicable, be followed.

Subdivision of Shares :

Shares may be divided into shares of smaller amount.

24. Any company limited by shares, may, by special resolution, so far modify the conditions contained in its memorandum of association, if

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if authorized so to do by its regulations as originally framed, or as altered by special resolution, as by subdivision of its existing shares, or any of them, to divide its capital, or any part thereof, into shares of smaller amount than is fixed by its memorandum of association: Provided that, in the subdivision of the existing shares, the proportion between the amount which is paid, and the amount (if any) which is unpaid on each share of reduced amount, shall be the same as it was in the case of the existing share or shares from which the share of reduced amount is derived.

25. The statement of the number and amount of the shares into which the capital of the company is divided, contained in every copy of the memorandum of association issued after the passing of any such special resolution, shall be in accordance with such resolution; and, any company which makes default in complying with the provisions of this section, shall incur a penalty not exceeding One Pound for each copy in respect of which such default is made, and every director and manager of the company, who knowingly or wilfully authorizes or permits such default, shall incur the like penalty.

Special resolution to be embodied in memorandum of association.

Calls upon shares:

26. Nothing contained in "The Companies Act, 1864," shall be deemed to prevent any company under that Act, if authorized by its regulations as originally framed, or as altered by special resolution, from doing any one or more of the following things, namely:—

Company may have some shares fully paid and others not.

First—Making arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid and in the time of payment of such calls.

Second—Accepting from any member of the company who assents thereto the whole or a part of the amount remaining unpaid on any share or shares held by him either in discharge of the amount of a call payable in respect of any other share or shares held by him, or without any call having been made.

Third—Paying dividend in proportion to the amount paid up on each share, in cases where a larger amount is paid up on some shares than on others.

27. Every share in any company shall be deemed and taken to have been issued, and to be held, subject to the payment of the whole amount thereof in cash, unless the same shall have been otherwise determined by a contract, duly made in writing, and filed with the Registrar of Companies, at or before the issue of such shares.

Manner in which shares are to be issued and held.

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Transfer of shares:

28. A company shall, on the application of the transferor of any share or interest in the company, enter in its register of members the

Transfer may be registered at request of transferor.

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the name of the transferee of such share or interest, in the same manner and subject to the same conditions as if the application for such entry were made by the transferee.

Share warrants to bearer:

Warrant of limited shares fully paid up, may be issued in the name of bearer.

29. In the case of a company limited by shares, the company, if authorized so to do by its regulations as originally framed, or as altered by special resolution, and subject to the provisions of such regulations, may, with respect to any share which is fully paid up, or with respect to stock, issue under their common seal, a warrant stating that the bearer of the warrant is entitled to the share or shares, or stock, therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the share or shares, or stock, included in such warrant, hereinafter referred to, as a share warrant.

Effect of share warrant.

30. A share warrant shall entitle the bearer of such warrant to the shares or stock specified in it, and such shares or stock may be transferred by the delivery of the share warrant.

Re-registration of bearer of a share warrant in the register.

31. The bearer of a share warrant shall, subject to the regulations of the company, be entitled, on surrendering such warrant for cancellation, to have his name entered as a member in the register of members, and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register of members the name of any bearer of a share warrant in respect of the share or stock specified therein without the share warrant being surrendered and cancelled.

Regulations of the company may make the bearer of a share warrant a member.

32. The bearer of a share warrant may, if the regulations of the company so provide, be deemed to be a member of the company within the meaning of "The Companies Act, 1864," either to the full extent or for such purposes as may be prescribed by the regulations: Provided that the bearer of a share warrant shall not be qualified in respect of the shares or stock specified in such warrant for being a director or manager of the company in cases where such a qualification is prescribed by the regulations of the company.

Entries in register where share warrant issued.

33. On the issue of a share warrant in respect of any share or stock the company shall strike out of its register of members the name of the member then entered therein as holding such share or stock, as if he had ceased to be a member, and shall enter in the register the following particulars:—

- I. The fact of the issue of the warrant:
- II. A statement of the shares or stock included in the warrant, distinguishing each share by its number:
- III. The date of the issue of the warrant:

And until the warrant is surrendered the above particulars shall be deemed

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deemed to be the particulars which are required by the twenty-fourth section of "The Companies Act, 1864," to be entered in the register of members of a company; and on the surrender of a warrant the date of such surrender shall be entered as if it were the date at which a person ceased to be a member.

34. After the issue by the company of a share warrant the half-yearly summary required by the twenty-fifth section of "The Companies Act, 1864," shall contain the following particulars:—The total amount of shares or stock for which share warrants are outstanding at the date of the summary, and the total amount of share warrants which have been issued and surrendered respectively since the last summary was made, and the number of shares or amount of stock comprised in each warrant.

Particulars to be contained in annual summary.

35. Whosoever forges, or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any share warrant or coupon issued in pursuance of this Act, or demands, or endeavors to obtain or receive any share or interest of or in any company under "The Companies Act, 1864," or to receive any dividend or money payable in respect thereof by virtue of any such forged or altered share warrant, coupon, or document purporting as aforesaid, knowing the same to be forged or altered, with intent in any of the cases aforesaid to defraud, shall be guilty of felony, and being convicted thereof shall be liable to the like punishment as if he had been convicted of forgery.

Penalties on persons committing forgery.

36. Whosoever falsely and deceitfully personates any owner of any share or interest of or in any company, or of any share warrant, or coupon issued in pursuance of this Act, and thereby obtains or endeavors to obtain any such share or interest, or share warrant, or coupon, or receives or endeavors to receive any money due to any such owner as if such offender were the true and lawful owner, shall be guilty of felony, and being convicted thereof shall be liable to like punishment as if he had been convicted of obtaining money under a false pretence.

Penalties on persons falsely personating owner of shares.

37. Whoever without lawful authority or excuse, the proof whereof shall be on the party accused, engraves or makes upon any plate, wood, stone, or other material any share warrant or coupon, purporting to be a share warrant, or coupon issued or made by any particular company, under, and in pursuance of this Act, or to be a blank share warrant, or coupon, issued or made as aforesaid, or to be a part of such a share warrant, or coupon, or uses any such plate, wood, stone, or other material for the making or printing any such share warrant, or coupon, or any such blank share warrant, or coupon, or any part thereof respectively, or knowingly has in his custody or possession any such plate, wood, stone, or other material, shall be guilty of felony, and being convicted thereof shall be liable to the like punishment as if he had been convicted of forgery.

Penalties on persons engraving plates, &c.

*Companies Act Amendment Act.—1870-71.***Contracts :**

Prospectus, &c., to specify dates, and names of parties, to any contract made prior to issue of such prospectus, &c.

38. Every prospectus of a company, and every notice inviting persons to subscribe for shares in any company, shall specify the dates and the names of the parties to any contract entered into by the company, or the promoters, directors, or trustees thereof, before the issue of such prospectus or notice, whether subject to adoption by the directors of the company or otherwise, and any prospectus or notice not specifying the same, shall be deemed fraudulent on the part of the promoters, directors, and officers of the company, knowingly issuing the same, as regards any person taking shares in the company on the faith of such prospectus, unless he shall have had notice of such contract.

Meetings :

Company to hold meeting within four months after registration.

39. Every company formed under "The Companies Act, 1864," after the commencement of this Act shall hold a general meeting within four months after the memorandum of association is registered ; and if such meeting is not held, the company shall be liable to a penalty not exceeding Five Pounds a day for every day after the expiration of such four months until the meeting is held ; and every director or manager of the company, and every subscriber of the memorandum of association, who knowingly authorizes or permits such default, shall be liable to the same penalty.

Winding up :

Winding up—contributory, when not qualified to present petition.

40. No contributory of a company under "The Companies Act, 1864," shall be capable of presenting a petition for winding up such company unless the members of the company are reduced in number to less than seven or unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name for a period of at least six months during the eighteen months previously to the commencement of the winding up, or have devolved upon him through a death of a former holder: Provided that where a share has, during the whole or any part of the six months, been held by, or registered in the name of, the wife of a contributory, either before or after her marriage, or by or in the name of any trustee or trustees for such wife, or for the contributory, such share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the contributory.

Saving :

Not to exempt companies from the provisions of 174th section of "Companies Act, 1864."

41. Nothing in this Act contained shall exempt any company from the second and third provisions of the one hundred and seventy-fourth section of "The Companies Act, 1864."

Rules :

Supreme Court or Judges may make rules.

42. The Supreme Court, or any two of the Judges thereof, or the Primary Judge in Equity, may from time to time make such rules

as

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as the said Court or Judges shall deem necessary for carrying into effect the objects and provisions of this Act, and of "The Companies Act, 1864," and may from time to time alter, revoke, and vary such rules, and make such new and additional rules, as to the said Court or Judges shall seem necessary.

In the name and on behalf of the Queen I hereby assent to
this Act.

JAMES FERGUSSON, Governor.