



ANNO QUADRAGESIMO NONO ET QUINQUAGESIMO

# VICTORIÆ REGINÆ.

A.D. 1886.

\*\*\*\*\*

## No. 375.

An Act to amend "The Companies Act, 1864."

[Assented to, November 17th, 1886.]

**W**HEREAS it is desirable 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:

1. Sections 25 and 87 of "The Companies Act, 1864," and rule 22 of Schedule vi. thereto, are hereby repealed. Nothing in this Act contained shall abridge, alter, or affect any existing rights, powers, or liabilities.

2. Every Company under this Act having a capital divided into shares, shall make, once at least in every half-year, a list of all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting, or, if there is more than one ordinary meeting in each half-year, the first of such ordinary general meetings is held, are members of the company; and such list shall state the names, addresses, and occupations of all the members therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the following particulars—

- i. The amount of the capital of the Company, and the number of shares into which it is divided:
- ii. The number of shares taken from the commencement of the Company up to the date of the summary:
- iii. The amount of calls made on each share:

iv. The

*The Companies Act Amendment Act.—1886.*

- iv. The total amount of calls received :
- v. The total amount of calls unpaid :
- vi. The total amount of shares forfeited :
- vii. The names, addresses, and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them :

The above list and summary shall be contained in a separate part of the register, and shall be completed within seven days after such fourteenth day, as is mentioned in this section, and a copy shall forthwith be forwarded to the Registrar of Companies.

Interest after payment of twenty shillings in the pound.

**3.** The contributories of any Company shall not be entitled to have any surplus, after payment of Twenty Shillings in the Pound on the debts of the Company, divided amongst themselves until, firstly, the creditors of the Company whose debts are entitled to carry interest shall have received interest on such debts at the rate of interest reserved or by law payable or provable thereon, to be calculated from the date of the order for winding up of the Company, and until, secondly, all other creditors shall have been paid interest on their debts, from the same date, at the rate of Six Pounds per centum per annum.

Appointment of official liquidators.

**4.** For the purpose of conducting the proceedings in winding up a Company and assisting the Court therein, there may be appointed a person or persons to be called an Official Liquidator or Official Liquidators ; and the Court having jurisdiction may appoint such person or persons, either provisionally or otherwise, as it thinks fit, to the office of Official Liquidator or Official Liquidators : Any person may be appointed an Official Liquidator, and no more than three Official Liquidators shall in any one case be appointed ; in all cases, if more persons than one are appointed to the office of Official Liquidator, the Court shall declare whether any act hereby required or authorised to be done by the Official Liquidator is to be done by all or any one or more of such persons : The Court may also determine whether any and what security is to be given by any Official Liquidator on his appointment, and whether a declaration of secrecy is to be demanded or otherwise ; if no Official Liquidator is appointed, or during any vacancy in such appointment, all the property of the Company shall be deemed to be in the custody of the Court.

Resignations, removals, filling up vacancies, and compensation.

**5.** Any Official Liquidator may resign or be removed by the Court on due cause shown, and any vacancy in the office of an Official Liquidator appointed by the Court may be filled by the Court. There shall be paid to the Official Liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct ; and if more liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the Court directs.

**6.** The

6. The 96 section of "The Companies Act of 1864" shall hereafter be read and construed, as far as regards companies to be hereafter incorporated, as if the following words were added thereto:—"Provided that in any Company hereafter registered, unless the contrary shall be provided by the memorandum and articles of association, no call shall be made for the purpose only of placing shares not fully paid up upon an equality with shares issued or paid up to a greater amount in cases where such greater amount shall not be actually paid in cash."

Amendment of section 96 of the principal Act.

## PART II.

### AS TO FOREIGN TRADING CORPORATIONS.

## PART II.

7. In this part of the Act—

Interpretation.

"Foreign company" means any joint-stock company or corporation duly incorporated for trading or other business purposes according to the laws in force in the country in which it is incorporated, other than a joint-stock company incorporated in Great Britain and Ireland or South Australia:

"Attorney" includes "attorneys," and also joint and several appointments, or appointments made for separate purposes.

8. Any foreign company may from time to time, by any instrument in writing under its common seal, or executed in such manner as to be binding on the Company, empower any person in the Province of South Australia, either generally or in respect of any specified matters, as its attorney, to sue and be sued, or otherwise appear or be impleaded in any Court of judicature in any civil or criminal proceedings whatsoever, or before any arbitrator or person having by law or consent of parties authority to hear evidence, and generally on behalf of such Company to do all acts and to execute deeds and instruments on its behalf within the colony.

Foreign company may appoint attorney within the province.

9. Every act or thing done or purported to be done, and every deed or instrument executed or signed by such attorney, on behalf of the Company by whom he is appointed, shall bind the same Company in the same way and to the same extent, and have the same force and effect in every respect, as if such act had been done by the Company, and as if such deed or instrument had been duly sealed with the common seal of the Company, or otherwise executed or signed in such manner as to bind such Company.

Acts of attorney to be binding on company.

10. Before any foreign Company shall commence business in the Province of South Australia, the attorney so appointed shall deposit in the office of the Registrar of Companies a certified copy of the original power of attorney under which he claims to represent such company, together with a like copy of the certificate of the incorporation of such Company as is hereinafter mentioned.

Certified copies of power of attorney and certificate of incorporation to be deposited in office of Registrar of Companies.

It shall be the duty of the Registrar of Companies to ascertain that such copies so deposited are true copies of the original instruments,

## PART II.

ments, and every such copy so deposited shall be open to the inspection of the public on payment of a fee of one shilling.

Foreign Company to have office in the province where notice, &c., may be served.

**11.** Every foreign Company shall have an office or place of business in the province where legal proceedings of any kind may be served upon it, and to which notices of any kind may be addressed or given; and for the purposes of this Act the following provisions shall have effect—

- (1) Before any foreign Company commences or carries on business in the Province of South Australia the attorney of every such Company shall cause a notice to be inserted in the *Government Gazette*, and in at least two public newspapers circulating in the city of Adelaide, stating the situation and locality of such office or place of business:
- (2) Such notice shall be inserted in at least three consecutive issues of such *Gazette* and newspapers:
- (3) If any change shall be made in the situation or locality of such office or place of business, the attorney shall cause a like notice of such change to be given in the manner hereinbefore provided:
- (4) The preceding provisions of this section shall extend and apply to every place where the Company may at any time carry on business in the province:
- (5) Service of legal proceedings or the delivery of any notice at any such office or place of business shall for all purposes be deemed good service on the Company; but nothing herein shall be deemed to control or affect any statute or rule now or hereafter in force regulating the service of legal process upon any person or corporate body according to the practice of the Court whence such process shall issue:
- (6) If any attorney of a foreign Company shall fail to comply with any of the foregoing provisions he shall be liable to a penalty of Five Pounds for every day the business of such Company is carried on contrary to this Act, and every such penalty may be recovered in a summary way.

Declaration as to incorporation of Company to be evidence.

**12.** A declaration indorsed upon or annexed to any instrument appointing, or purporting to appoint, an attorney as hereinbefore mentioned, made or purported to be made by one of the directors or the general manager of the foreign Company so appointing an attorney before a notary public, British Consul, or other person lawfully authorised to take such declaration, to the effect following, that is to say—

- (1) The same Company is incorporated in [*naming the country in which it has been incorporated*] under the style mentioned in the same instrument, in accordance with the law of the country where it is so incorporated:

(2) That

*The Companies Act Amendment Act.—1886.*

## PART II.

- (2) That the seal affixed thereto is the common seal of the same Company; and
- (3) That the seal has been so affixed, and the same instrument executed, and the powers and authorities purporting to be conferred by the same instrument upon the person or persons in the same instrument mentioned are authorised to be conferred under the constitution of the same Company, or in pursuance of the act of incorporation, articles of association, by-laws, or regulations for the time being thereof, and that the person making such declaration is a director or general manager thereof:

shall be final and conclusive evidence of the facts set forth therein :

- (4) In cases where, by the law of the foreign country, no seal is necessary, or the Company has no seal, a statement may be made in such declaration setting out the existence of such law, or the fact that the Company has no seal, and the requirements of the preceding parts of this section may be modified and shall take effect accordingly.

**13.** Any power of attorney in respect of which any such declaration has been made, as hereinbefore required, and any certified copy of any such power of attorney deposited under the provisions of this Act, shall for all purposes be receivable in evidence before any Court, person, or tribunal having authority by law to hear and receive evidence in the province without further proof of the sealing, signature, or other execution thereof.

Power of attorney receivable in evidence.

**14.** Every power of attorney purporting to be granted by any foreign Company as before mentioned shall, as between the Company, its successors, and assigns on the one hand, and the person or persons dealing with the attorney of such Company and all parties claiming through or under such person or persons on the other hand, continue in force (notwithstanding the same power may have been revoked or the Company wound up or dissolved) until the attorney of the Company or all and every the attorneys, if more than one, to whom the same power is given has or have received notice or information of such revocation, winding up, or dissolution.

Powers of attorney to continue in force until notice of revocation received.

**15.** Before any foreign Company shall voluntarily cease to carry on business in any part of the province at least three months' notice shall be given by its attorney of its intention so to do, and such notice shall be published in at least three consecutive issues of the *Government Gazette* and of two newspapers circulating in the city of Adelaide.

Foreign Company to give due notice of intention to cease carrying on business.

And for a period of three months after the first of such notices shall have been published legal proceedings, notices, or other documents may be served on the attorney of the Company under this Act, or, if there shall be no such attorney, by leaving the same at any office or place of business where the Company carried on business

*The Companies Act Amendment Act.—1886.*

## PART II.

ness prior to the giving of such notice as aforesaid, and service effected under this enactment shall be as effectual as if no such notice had been given.

Statutory declaration of attorney to be sufficient proof of non-revocation.

**16.** A statutory declaration made by the attorney of any foreign Company, whether joint or several, appointed under such instrument, that he has not received any notice or information of the revocation, winding up, or dissolution of the same, shall be taken to be conclusive proof that no such revocation, winding up, or dissolution has taken place.

Evidence of incorporation of Company.

**17.** A certificate of incorporation given under the hand of any officer who may, by the law of the country in which such Company purports to be incorporated, be authorised to grant such certificate, duly certified by declaration made by one of the directors or the general manager of such Company before a notary public or British Consul, or other person lawfully authorised to take such declaration, shall be conclusive evidence that such Company has been duly incorporated.

And the date of incorporation mentioned in such certificate, or in such declaration, or if no such date be mentioned then the date of such certificate, or the date of such declaration as aforesaid, shall be deemed to be the date at which such Company was incorporated.

Where no certificate of incorporation has been given, a copy of any act of incorporation or document of similar effect to a certificate of incorporation under which the company purports to be incorporated, duly certified as hereinbefore required, shall be sufficient for the purposes of this Act.

Act not to authorise issue of bank or promissory notes.

**18.** Nothing in this Act contained shall be construed to authorise any such Company as aforesaid to issue notes or promissory notes payable on demand within the province.

Foreign Companies not compelled to comply with Act within six months of passing thereof.

**19.** No foreign Company carrying on business in South Australia at the date of the passing of this Act shall be compelled, until the expiration of six months from that period, to comply with the provisions of this Act.

Short title.

**20.** This Act may be cited as "The Companies Act Amendment Act, 1886."

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

WM. C. F. ROBINSON, Governor.