



*Repealed
557/1892*

ANNO QUINQUAGESIMO TERTIO ET QUINQUAGESIMO QUARTO

VICTORIÆ REGINÆ.

A.D. 1890.

No. 487.

An Act to amend the Law relating to the Liability of Directors and Promoters of Companies.

[Assented to, December 23rd, 1890.]

WHEREAS it is expedient to amend the law relating to the liability of directors and promoters of Companies—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. This Act may be cited as "The Directors and Promoters Liability Act, 1890."

Short title.

2. 1. Where, after the passing of this Act, a prospectus or notice invites persons to subscribe for shares in or debentures or debenture stock of a company, every person who is a director or provisional director of the company at the time of the issue of the prospectus or notice, and every person who, having authorised such naming of him, is named in the prospectus or notice as a director or provisional director of the company, or as having agreed to become a director of the company, either immediately or after an interval of time, and every promoter of the company, shall be liable to pay compensation to all persons who shall subscribe for any shares, debentures, or debenture stock on the faith of such prospectus or notice for the loss or damage they may have sustained by reason of any untrue or misleading statement in the prospectus or notice, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

Liability for statements in prospectus.

(a) With

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- (a) With respect to every such untrue or misleading statement, not purporting to be made on the authority of an expert or of a public official document or statement, that he had reasonable ground to believe, and did, up to the time of the allotment of the shares, debentures, or debenture stock, as the case may be, believe that the statement was true; and
- (b) With respect to every such untrue or misleading statement, purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an engineer, valuer, accountant, or other expert, that it fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of or extract from the report or valuation: Provided always that, notwithstanding that such untrue or misleading statement fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of an extract from the report or valuation, such director, person named, or promoter who authorised the issue of the prospectus or notice as aforesaid shall be liable to pay compensation as aforesaid if it be proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and
- (c) With respect to every such untrue or misleading statement, purporting to be a statement made by an official person, or contained in what purports to be a copy of or extract from a public official document that it was a correct and fair representation of such statement or copy of or extract from such document:

Or unless it is proved that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus or notice, and that the prospectus or notice was issued without his authority or consent, or that the prospectus or notice was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was so issued without his knowledge or consent, or that, after the issue of such prospectus or notice and before allotment thereunder, he, on becoming aware of any untrue or misleading statement therein, withdrew his consent thereto, and caused reasonable public notice of such withdrawal, and of the reason therefor, to be given.

II. A promoter in this section means a promoter who was a party to the preparation of the prospectus or notice, or of the portion thereof containing such untrue or misleading statement, but shall not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company.

III. Where any company existing at the passing of this Act, which has issued shares or debentures, shall be desirous of obtaining further

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further capital by subscription for shares or debentures, and for that purpose shall issue a prospectus or notice, no director of such company shall be liable in respect of any statement therein unless he shall have authorised the issue of such prospectus or notice or have adopted or ratified the same.

iv. In this section the word “expert” includes any person whose profession gives authority to a statement made by him.

3. Where any such prospectus or notice as aforesaid contains the name of a person as a director, provisional director, or promoter of the company, or as having agreed to become a director, provisional director, or promoter thereof, and such person has not consented to become a director, provisional director, or promoter, or has withdrawn his consent before the issue of such prospectus or notice, and has not authorised or consented to the issue thereof, the directors, provisional directors, or promoters of the company, except any without whose knowledge or consent the prospectus or notice was issued, and any other person who authorised the issue of such prospectus or notice, shall be liable to indemnify the person named as a director, provisional director, or promoter of the company, or as having agreed to become a director, provisional director, or promoter thereof as aforesaid, against all damages, costs, charges, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or notice, or in defending himself against any action or legal proceedings brought against him in respect thereof.

Indemnity where name of person has been improperly inserted as a director.

4. Every person who, by reason of his being a director, provisional director, or promoter, or named as a director, provisional director, or promoter, or as having agreed to become a director, provisional director, or promoter, or of his having authorised the issue of the prospectus or notice, has become liable to make any payment under the provisions of this Act, shall be entitled to recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment.

Contribution from co-directors, &c.

5. Sections 2, 3, and 4 of this Act shall not come into operation until the first day of January, one thousand eight hundred and ninety-one.

Commencement of sections 2, 3, 4.

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

KINTORE, Governor.