

Version No. 001
Reconstructed Companies Act 1893
Act No. 1356/1893

Version incorporating amendments as at 21 February 2001

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An Act to facilitate the carrying out the Reconstruction Schemes of Certain Companies and the Compromise Schemes of Certain Societies.

Preamble

WHEREAS each of the several companies named in the first column of the Schedule to this Act has been reconstructed upon the basis of a compromise or arrangement or upon the basis of a sale under section one hundred and forty-six of the **Companies Act 1890** sanctioned in the case of those companies which were incorporated by or under the provisions of an Act of the colony of Victoria, by an order of the Supreme Court of the said colony; and in the case of those companies which were incorporated by or under the provisions of an Act of the United Kingdom or Royal Charter, by an order of a court of competent jurisdiction in the United Kingdom, short particulars of which several orders are set forth in the second column of the Schedule to this Act opposite the names of the companies to which they apply:

AND WHEREAS each of the companies so reconstructed is now an incorporated company incorporated under the Act specified in the third column of the Schedule to this Act opposite the name of the company, and is carrying on business in the colony of Victoria under the name in the fourth column of the said Schedule printed opposite its old name:

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AND WHEREAS it is expedient to facilitate the carrying out of the said compromises and arrangements and sales in the way and to the extent hereinafter appearing:

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1. Short title

This Act may be cited as the **Reconstructed Companies Act 1893**.

2. Definitions

In this Act where not inconsistent with the context—

"new company" means the company formed by reconstruction as recited in the preamble of a pre-existing company;

"old company" means the pre-existing company which was reconstructed as recited in the preamble;

"property" includes real property of any description whatsoever including corporeal and incorporeal hereditaments; also personal property of any description whatsoever including any chattels real any uncalled capital debt security and chose in action; also any estate interest right title claim or demand in to or in respect of any property real or personal; any right or claim against any person; and any other right or interest.

3. Assets etc. of old company vested in new

Immediately upon the passing of this Act all the property of each of the old companies mentioned in the Schedule to this Act incorporated by or under the provisions of some Act of the colony of Victoria vested in or belonging to such company at the date of the order of court sanctioning its reconstruction; and (subject to any order of a court of competent jurisdiction of the United Kingdom now or hereafter made affecting the same) all the property in Victoria of each of the old companies mentioned in the said Schedule incorporated under the provisions of some Act of the United Kingdom or by Royal Charter, vested in or belonging to such company at the date of the order of court sanctioning its reconstruction shall without any further or other conveyance assignment or transfer vest in pass to and become the property of the new company whose name appears in the fourth column of the said Schedule opposite the name of the old company absolutely for all the estate right title interest claim and demand which the old company had therein at the date of such order, subject nevertheless to the equities (if any) affecting the same respectively and to the terms and provisions of the compromise or arrangement or sale so sanctioned as aforesaid and to any conveyance transfer or other assurance or any dealing duly executed made or entered into since that date in pursuance of and in conformity with such compromise or arrangement or sale:

Provided always that any property of the old company which by its compromise or arrangement or sale (sanctioned as aforesaid) is expressly and specifically excepted or excluded from passing to the new company is excepted and excluded from the vesting operation of this section.

s. 4
amended by
No. 18/1989
s. 13(Sch. 2
item 70).

4. Property under the Transfer of Land Act 1890

As to any land lease mortgage or charge under the **Transfer of Land Act 1890** whereof the old company appears on the Register of the said Act as the proprietor the new company shall by virtue of the statutory transfer effected by the last preceding section on making application in writing to the Registrar of Titles and payment of the statutory fees be entitled to be registered proprietor of any such land lease mortgage or charge as from the date of lodgment of such application, in lieu of the old company; and as to any caveat or writ then appearing upon the Register in the name or interest of the old company or any application unregistered dealing claim notice direction or other matter at that date existing in the Office of Titles in the name of or affecting the old company the new company shall as from the date of the passing of this Act be deemed to be the caveator execution creditor or other person interested or affected in the place and stead of the old company.

5. Realty and chattels real under the general law

As to any lands tenements hereditaments leases mortgages charges or other realty or chattels real not under the **Transfer of Land Act 1890** of in or by which the old company appears by any memorial in the books of the Registrar-General under the provisions of the **Real Property Act 1890** to be the registered owner or person interested or affected, the new company shall immediately upon the passing of this Act become and be deemed as from that date the registered owner of or person interested in or affected by such land tenement hereditaments lease mortgage charge or other realty or chattel real respectively in the place and stead of the old company the same as if the name of the new company appeared

upon the memorial in the books of the Registrar-General instead of that of the old company.

6. Personalty under general law

As to any personalty not included in the last preceding section including any lien bill of sale or other security contract writ lis pendens or other matter (not under the provisions of the **Transfer of Land Act 1890**) of in or by which the old company appears by any memorandum or other writing entered filed or registered in the office of the Registrar-General under or by virtue of the **Instruments and Securities Act 1890** or any other Act to be the owner or person interested or affected, the new company shall immediately upon the passing of this Act become and be deemed as from that date the registered owner or person interested or affected in the place and stead of the old company the same as if the name of the new company appeared upon such memorandum or other writing instead of that of the old company.

7. Registrar of Titles, Registrar-General, and strangers dealing with new company not affected by scheme of reconstruction

Notwithstanding anything in this Act contained it shall not be the duty of the Registrar of Titles or Registrar-General either before or after any registration made in pursuance of this Act to investigate or inquire concerning the terms or provisions of the compromise or arrangement or sale so sanctioned as aforesaid. And after the registration of the new company as a proprietor of any estate or interest under the **Transfer of Land Act 1890** it shall for the purposes of any dealing be deemed to be the absolute proprietor thereof.

8. Scheme of reconstruction and conveyance to new company not chargeable with ad valorem duty

- (1) No compromise or arrangement of or sale by any of the companies named in the Schedule to this Act sanctioned as aforesaid and no conveyance or transfer executed or made in pursuance thereof by or on behalf of or by direction of the old company to the new company shall be deemed a conveyance or transfer on sale of real property within the meaning of section ninety-three of the **Stamps Act 1890** or be chargeable with ad valorem duty.
- (2) In no case shall any new company charge any debtor of such company any fees or costs incidental to the transfer of such debtor's security from the old company to the new company, and every debtor shall be entitled to a valid receipt from the new company for any interest or principal moneys paid to such new company by such debtor in respect of any debt due to the old company without payment of any fees or costs arising from or upon any transfer from the old company to the new company of any security of the debtor for such debt.

9. Actions etc. or against the old company not to abate or be affected by reason of reconstruction

- (1) Subject to the provisions of the compromise or arrangement or to the terms of sale sanctioned as aforesaid no action proceeding notice demand or act commenced given made or done by or on behalf of or against the old company previously to the passing of this Act shall abate or be affected by reason of the reconstruction sanctioned as aforesaid, but the same may be prosecuted acted on discontinued or otherwise dealt with by and in the name of or against the new company the same as though such action proceeding notice demand

or act had been instituted proceeded with given made or done by or on behalf of or against the new company, and subject to the provisions aforesaid the benefit or burden of any decree judgment order verdict award proceeding notice demand liability or contract to which the old company was entitled or subject at the passing of this Act shall enure to or be binding upon the new company as from the date of such order as aforesaid being made.

- (2) Any notice demand or act which it was provided by any Act deed instrument power of attorney undertaking agreement or otherwise should or might be given made or done to or by the old company or any particular officer of the old company or its transferees or assigns may be given made or done to or by the new company or a like officer of the new company or the transferees or assigns of the new company, and any agreement guarantee or other instrument given to or made with the old company and vested in the new company by the operation of this Act may be enforced by the new company as if it had been given to or made with or acquired by the new company:

Provided that where such instrument is under the **Transfer of Land Act 1890** the new company shall have first become the registered proprietor in respect thereof in lieu of the old company.

- (3) The new company and its assigns may prove rank claim and draw a dividend in the matter of the insolvency or sequestration of any debtor of the old company whose debt has by section three of this Act passed to the new company, and such new company and its assigns may execute any release or other document which the old company might execute in respect of such debtor's debt insolvency or sequestration.

10. Account-books of old company to be available as evidence for new company

The ledgers day-books cash-books and other account-books of the old company passing to the new company under this Act shall for the purpose of giving effect to the provisions of this Act and securing to the new company its transferees and assigns the full benefit of the property of the old company thereby vested in it be admissible in all legal proceedings as prima facie evidence for all parties within the provisions of Division 2 Part II of the **Evidence Act 1890** or any statutory modification thereof as though the same were and had always been the ledgers day-books cash-books and other account-books of the new company.

11. Members of old company to become liable as members of new company without application for shares

Whenever it was provided by any such compromise or arrangement as is hereinbefore mentioned entered into by any company incorporated by or under the provisions of any Act of the said colony that the members of the old company should accept shares in the new company every member of the old company shall without any application on his part be deemed to have become a member of the new company and to be the holder in the new company of the number of shares which by such compromise or arrangement he was required to accept with such liability in respect of such shares as by the compromise or arrangement was provided and his name shall be entered accordingly in the register of members of the new company, and any lien or charge given by him in favour of the old company upon or over shares therein shall be deemed to have been given in favour of the new company

upon or over the shares therein stated in such register to be held by him.

12. Name of deceased member may be entered in share register of new company

If the name of a person who at the time of his death was the owner of shares (not held by him jointly with any other person) in any such company incorporated by or under the provisions of any Act of the said colony remained notwithstanding his death on the register of members of the old company at the time when the compromise or arrangement was sanctioned his name may be entered in the register of members of the new company for such number of shares as would be equivalent to his holding in the old company and the liability of his executors or administrators and of his estate in respect of the shares stated in the said last-mentioned register as being held by him shall be the same as it would have been if he had been alive at the time when his name shall have been entered in such register and his executors or administrators may become registered as the holder of such shares as such executors or administrators and shall in respect thereof be subject to such and the same liabilities and no more as they would have been subject to if such shares had remained registered in the name of such deceased person.

13. Compromises or arrangements heretofore sanctioned declared valid

Every compromise or arrangement between such of the companies mentioned in the first column of the said Schedule as were incorporated by or under the provisions of any Act of the said colony and the creditors of such company or any class of such creditors and every sale under section one hundred and forty-six of the **Companies Act 1890**

which previous to the passing of this Act has been sanctioned by an order of the Supreme Court is hereby declared to be valid and binding in law and to be a compromise or arrangement within the meaning of the **Companies Act Amendment Act 1892**.

Provided always that nothing herein contained shall affect or prejudice the rights (if any) of the Crown or of any person to moneys paid into any old company by order of a court or paid in or deposited by any public officer whatsoever.

Provided always that no action suit proceeding or appeal pending at the time of the passing of this Act shall be abated or affected by any of the provisions of this section or of this Act.

14. Rules as to set-off under section 63 of the Supreme Court Act 1890 to apply

In the case of any new company mentioned in the said Schedule the same rules as to set-off in the case of mutual credits mutual debts or other mutual dealings as would have applied or would apply under the sixty-third section of the Supreme Court Act if such company were a company whose assets had proved to be insufficient for the payment of its debts and liabilities and which was being wound up under Part I of the **Companies Act 1890** shall be deemed to have applied as from the date of the commencement of the winding up of the old company and shall continue to apply as regards any debt or claim existing at the commencement of such winding up or arising out of founded upon or substituted for any debt or claim then existing:

Provided always that no person shall be entitled to any set-off by virtue of this section against such new company in respect of any sum secured by or mentioned in any deposit receipt or other

instrument received by him under or in pursuance of any such compromise or arrangement as is hereinbefore mentioned unless he shall surrender such receipt or instrument to such company, but upon surrendering the same he shall be entitled to receive from such company a new deposit receipt or instrument for the balance of the sum secured by or mentioned in the deposit receipt or instrument so surrendered after deduction from such sum of the amount of the set-off.

15. Sections 11 and 12 not to apply to certain company

Sections eleven and twelve of this Act shall not apply to the company named The Australian Deposit and Mortgage Bank Limited.

16. Trustees etc. entitled to shares in new company Goldsbrough Mort and Co. Ltd. may register as holders of shares

Trustees executors and administrators in the estate of any deceased person entitled to become the holders of shares in the new company of Goldsbrough Mort and Company Limited may become registered as the holders of such shares as such trustees executors or administrators and shall in respect of such shares be subject to such and the same liabilities and no more as they would have been subjected to if such shares were registered in the name of such deceased person.

17. Power to extend time of making call or payment thereof in case of National Bank

Inasmuch as it was provided by the compromise or arrangement entered into by the National Bank of Australasia that a call should be made upon the contributories of that bank payable in such instalment or instalments and at such time or times as the Supreme Court at the time of sanctioning such compromise or arrangement

should think fit, and inasmuch as it was not practicable to settle the list of contributories and to make such call within the time as fixed by the Supreme Court:

It shall be lawful for the Supreme Court or a judge thereof in its or his discretion upon application in a summary way by the said bank or the liquidator thereof at any time or from time to time to extend the time for making such call or to alter or vary the time fixed by the court at the time of sanctioning such compromise or arrangement for making such call or for the payment of such call or any instalment or instalments thereof.

Provided always that any extension of the time for making such call or any alteration or variation of the time fixed by the said court as aforesaid shall not be made beyond the first day of April One thousand eight hundred and ninety-four, and that any extension of the time or times for the payment of such call or any instalment or instalments thereof shall not be made beyond the period of three months from the time or times fixed at the passing of this Act for the payment thereof.

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Sch.

SCHEDULE

<i>Old Company</i>	<i>Sanctioning Order: Court making and Date of</i>	<i>Incorporating Act</i>	<i>New Company</i>
The Commercial Bank of Australia Limited	Supreme Court of the Colony of Victoria, 26th April, 1893, as varied on appeal by the Full Court	The Act of the Legislature of Victoria cited and known as the Companies Act 1890	The Commercial Bank of Australia Limited
The National Bank of Australasia	Supreme Court of the Colony of Victoria, 2nd June, 1893	Ditto	The National Bank of Australasia Limited
The Bank of Victoria Limited	Supreme Court of the Colony of Victoria, 31st May, 1893	Ditto	The Bank of Victoria Limited
The City of Melbourne Bank Limited	Supreme Court of the Colony of Victoria, 3rd June, 1893	Ditto	The City of Melbourne Bank Limited
The Colonial Bank of Australasia	Supreme Court of the Colony of Victoria, 19th June, 1893	Ditto	The Colonial Bank of Australasia Limited
The Standard Bank of Australia Limited	Supreme Court of the Colony of Victoria, 28th June, 1893	Ditto	The Standard Bank of Australia Limited
Goldsbrough, Mort, & Company Limited	Supreme Court of the Colony of Victoria, 22nd August, 1893 The High Court of Justice in England, 23rd August, 1893	Ditto	Goldsbrough, Mort, & Company Limited
The London Chartered Bank of Australia	The High Court of Justice in England, 3rd August, 1893	Companies Acts (England), 1862 to 1890	The London Bank of Australia Limited
The English, Scottish, and Australian Chartered Bank	The High Court of Justice in England, 1st July, 1893	Ditto	The English, Scottish, and Australian Bank Limited
The Australian Deposit and Mortgage Bank Limited	Supreme Court of the Colony of Victoria, 26th July, 1892	The Act of the Legislature of Victoria cited and known as the Companies Act 1890	The Australian Deposit and Mortgage Bank Limited

ENDNOTES

1. General Information

The **Reconstructed Companies Act 1893** was assented to on 6 November 1893 and came into operation on 6 November 1893.

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Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Reconstructed Companies Act 1893** by Acts and subordinate instruments.

Transfer of Land (Computer Register) Act 1989, No. 18/1989

<i>Assent Date:</i>	16.5.89
<i>Commencement Date:</i>	3.2.92: Government Gazette 18.12.91 p. 3488
<i>Current State:</i>	All of Act in operation

3. Explanatory Details

No entries at date of publication.