

COMPANIES (No. 2).

9° Elizabeth II., No. LXXVIII.

No. 78 of 1960.

AN ACT to amend the Companies Act, 1943-1959.

[Assented to 12th December, 1960.]

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

1. (1) This Act may be cited as the *Companies Act Amendment Act (No. 2), 1960.* Short title and citation.

(2) In this Act the Companies Act, 1943-1959, is referred to as the principal Act. Vol. 7 of Reprinted Acts as approved for reprint 16th December, 1954, and further amended by Act No. 39 of 1959.

(3) The principal Act as amended by this Act may be cited as the Companies Act, 1943-1960.

Commence-
ment.

2. This Act shall come into operation on a day to be fixed by proclamation.

S. 2
amended.

3. Section two of the principal Act is amended by inserting before the passage, "Part IV.—Sections 99 to 161: Management and Administration." the following passage:—

PART IIIA.—SECTIONS 98A to 98N: INTERESTS
OTHER THAN SHARES, DEBENTURES, ETC.

Part IIIA.
added.

4. The principal Act is amended by adding after section ninety-eight the following heading and sections—

PART IIIA.—INTERESTS OTHER THAN SHARES,
DEBENTURES, ETC.

Inter-
pretation.

98A. (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 which is registered under Part XI. of this Act;

"corporation" means any body corporate formed or incorporated, whether in the State or outside the State, and includes any foreign company but does not include—

(a) any corporation incorporated by or under any Act other than this Act or any previous corresponding enactment; or

(b) any corporation sole;

"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; or

(g) 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;

“marketable securities” means any debentures, funds, stock, 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;

“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;

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

**Approved
deeds.**

98B. 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 Minister or the 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 as such.

**Approval of
deeds.**

98C. (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, upon application by or on behalf of the company seeking the approval to the deed, grant his approval to the deed.

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

- (a) the deed—
 - (i) contains the covenants referred to in section ninety-eight E of this Act; 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 on whose application or on whose behalf the deed was approved shall lodge in the office of the Registrar the deed, or a copy of the deed verified by statutory declaration, made by the secretary or a director of the company, and the copy shall for all purposes, in the absence of proof that it is not a true copy, be regarded as an original.

98D. (1) The Minister 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.

Approval of
trustees.

(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, if satisfied that such approval has been so granted and has not been revoked, grant his approval to the person acting as trustee or representative for the purposes of the deed.

(3) The Minister 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.

98E. (1) The covenants required by section ninety-eight C of this Act 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;
- (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 to each of the holders of those interests a statement of the last annual accounts in respect of the undertaking, scheme or enterprise to which the deed relates together with the report thereon of a person who is registered under this Act or a corresponding enactment of a proclaimed State as qualified to act as auditor of companies;
- (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 person appointed by him and who is so

registered as a company auditor under this Act or a corresponding enactment of a proclaimed State, for inspection the whole of the books of the company whether kept at the registered office of the company 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 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, or by the trustee or representative as such, 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 majority in number of the holders of those interests 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 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 but not in any case later than twenty-one days or such further time as the Registrar in special circumstances allows after the application has been so delivered—

(i) by giving notice at least seven days before the proposed meeting by prepaid letter sent 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 fourteen of this Act or of an equivalent section of a corresponding enactment of a proclaimed State or the last audited

statement of accounts of the trustee or representative in respect of the undertaking, scheme or enterprise to which the deed relates, and for the purpose of the holders giving to the trustee or representative such directions as the meeting thinks proper.

(2) A meeting summoned pursuant to or for the purposes of a covenant contained in a deed in pursuance of subsection (1) 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 Minister; or
- (c) in the absence of the trustee or representative or approved 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.

98F. 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 or purchase any interest.

Interests to be issued by companies only.

98G. (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

Statement to be issued.

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 (2) of this section, all provisions of this Act and rules 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 Fourteenth Schedule to this Act with such modifications, if any, as the Registrar directs;
- (b) such of the matters and reports specified in Parts A and B of section forty-seven of this Act as the Registrar requires with such modifications, if any, as he directs; and
- (c) such other matters as the Registrar requires.

98H. (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 a person inserts or causes to be inserted in an approved deed or a copy of an approved deed or any other document referring to an approved deed a statement that the deed has been approved by the Registrar or that the deed has been approved under this Part, he

No issue
without
approved
deed and
approved
trustee.

shall insert or cause to be inserted immediately after the statement a further statement that the Registrar takes no responsibility as to the contents of the deed.

98I. (1) Where—

- (a) an interest issued by a company whether incorporated in the State or elsewhere before the date of commencement of the Companies Act Amendment Act (No. 2), 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,

Interests
issued
before the
commence-
ment of
Companies
Act Amend-
ment Act
(No. 2),
1960.

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 Minister may modify the application to a company of subsection (1) of this section by extending any period referred to in that subsection or may exempt any company from compliance with that subsection.

(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.

Returns,
balances,
sheets, etc.

98J. (1) Where a deed relating to interests issued by a company is or has at any time been an approved deed, the company 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 fourteen of this Act or of an equivalent section of a corresponding enactment of a proclaimed State—

(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 fourteen of this Act or of an equivalent section of a corresponding enactment of a proclaimed State 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 (2) 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

fourteen of this Act or of an equivalent section of a corresponding enactment of a proclaimed State, post or cause to be posted to any holder of an interest 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 (1) of this section—

- (a) a list of all parcels of land and marketable securities affecting such holders 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 affecting such holders 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 affecting such holders 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, description 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 (1) of this section, but subject to subsection (4) of this section, a company—

- (a) which has its registered office in the State 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 subsection (1) of this section,

need not lodge the return with the Registrar.

(4) The Governor may by Order in Council published in the *Government Gazette* require any company to which subsection (3) of this section applies to lodge with the Registrar the return referred to in subsection (1) of this section.

98K. 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.

Contravention of Part does not relieve from liability.

98L. A person shall not—

- (a) contravene or fail to comply with a provision of this Part;
- (b) fail to comply with a covenant contained in any deed that is or at any time has been an approved deed;
- (c) fail to comply with an order made under subsection (4) of section ninety-eight J of this Act.

Penalty for contravention of Part. etc.

Penalty: Imprisonment for twelve months or five hundred pounds.

98M. 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 representative, etc.

98N. (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 deed related, is 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.

(2) Subsection (1) 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 ninety-eight C of this Act, 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.

Fourteenth
Schedule
added.

5. The principal Act is amended by adding after the Thirteenth Schedule the following Schedule:—

FOURTEENTH SCHEDULE.

STATEMENTS REQUIRED PURSUANT TO PART IIIA. 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 ninety-eight H 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 ninety-eight G of this Act applies (in the Schedule 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, interests 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 interest.

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 registered under section four hundred and two of this Act or under an equivalent section of a corresponding enactment of a proclaimed State, 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.
