

**COMPANIES.**

13° Geo. VI., No. CXXXIII.

**No. 47 of 1949.****AN ACT to amend the Companies Act, 1943-1947.***[Assented to 26th October, 1949.]*

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

Short title.

1. This Act may be cited as the *Companies Act Amendment Act, 1949*, and shall be read as one with the Companies Act, 1943-1947 (No. 36 of 1943, as amended by Acts Nos. 31 of 1946, 32 and 84 of 1947), hereinafter referred to as the principal Act.

Citation of the principal Act as amended by this Act.

2. The principal Act, as amended by this Act, may be cited as the Companies Act, 1943-1949.

Amendment of s. 3.

3. Section three of the principal Act is amended by substituting for the interpretation "Officer," the following:—

"Officer" means a manager or secretary of a company.

Amendment of s. 28.

4. Section twenty-eight of the principal Act is amended by substituting for the word "Part" in subsection (5), line one, the word "Act".

Amendment of s. 46.

5. Section forty-six of the principal Act is amended by adding the following subsection:—

(7) The provisions of section forty-seven, subsection (8) of this Act are incorporated in this section as though they were set out herein and expressly made applicable to the provisions of this section.

6. Section forty-eight of the principal Act is amended by deleting from paragraph (ii) all words after the word "and" in line five. Amendment  
of s. 48.

7. Section fifty-three of the principal Act is amended by adding the following subsection:— Amendment  
of s. 53.

(6) The provisions of section forty-seven, subsection (8) of this Act are incorporated in this section as though they were set out herein and expressly made applicable to the provisions of this section.

8. Section fifty-four of the principal Act is amended by adding the following subsection:— Amendment  
of s. 54.

(4) The provisions of section forty-seven, subsection (8) of this Act are incorporated in this section as though they were set out herein and expressly made applicable to the provisions of this section.

9. Section fifty-nine of the principal Act is amended by adding after the word "company" in subsection (1), line one, the words " , other than a co-operative company registered under the provisions of the repealed Acts or those of Part VI. of this Act,". Amendment  
of s. 59.

10. Section one hundred and one of the principal Act is amended by— Amendment  
of s. 101.

(a) substituting for the words "notices, advertisements," in subsection (1), paragraph (c), line two, the words "business letters of the company and in all notices.":

(b) substituting for the words "notice, advertisement," in lines one and two of subsection (3), paragraph (c), the words "business letter of the company or any notice or other official publication of the company or any".

11. Section one hundred and two, subsection (2) of the principal Act is amended by adding after the word "prospectus" in line two, the words, "or which has issued a prospectus but has not proceeded to allot upon applications received in consequence of the prospectus, any of the shares offered to the public for subscription,". Amendment  
of s. 102.

Amendment  
of s. 106.

12. Section one hundred and six of the principal Act is amended by substituting for the word "twenty-eight" in line six, the word "fifty-six".

Amendment  
of s. 121.

13. Section one hundred and twenty-one of the principal Act is amended by adding after the word "resolutions" in subsection (4), paragraph (a), the words "which alter the capital or the memorandum or articles of a company".

Amendment  
of s. 126.

14. Section one hundred and twenty-six of the principal Act is amended by—

- (a) substituting for the word "three" appearing in subsection (1), firstly in line ten and secondly in line seventeen, the word "six";
- (b) substituting for the word "six" where it appears in subsection (1), firstly in line twelve and secondly in line seventeen, the word "nine".

Amendment  
of s. 137.

15. Section one hundred and thirty-seven of the principal Act is amended by adding the following subsection:—

(8) A partnership registered under the provisions of the Business Names Act, 1942-1946, may be appointed auditors under the business name so registered, if every partner resident in Australia is registered as an auditor under this Act.

Repeal and  
re-enactment  
of s. 138.

16. Section one hundred and thirty-eight of the principal Act is repealed and substituted by the following:—

138. (1) In this section—

"company" for the purposes of paragraphs (a), (b) and (d) of subsection (2) includes the company's subsidiary or holding company, and a subsidiary of its holding company;

"holding company" has the same meaning as in section one hundred and twenty-nine of this Act;

“officer or servant of the company” does not include an auditor of the company.

(2) Subject to the provisions of the next succeeding subsection, no person shall be qualified for appointment, or act, as auditor of a company while—

- (a) a director or officer or servant of the company;
- (b) a partner or employee of an officer or servant of the company, or the employer of an officer of the company;
- (c) a body corporate;
- (d) indebted to the company in a sum exceeding two hundred pounds.

Penalty—Fifty pounds.

(3) The provisions of the last preceding subsection shall not apply to any person referred to in paragraphs (a) and (b) of that subsection where—

- (a) the company is a proprietary company; and
- (b) the person has been appointed auditor of the proprietary company by a special resolution.

17. Section one hundred and fifty of the principal Act is amended by substituting for the word “fourteen” appearing in subsection (2), firstly in line eight and secondly in line eleven, the word “twenty-eight”.

Amendment  
of s. 150.

18. Section one hundred and fifty-four of the principal Act is amended by—

Amendment  
of s. 154.

(a) adding after subsection (3) a subsection as follows:—

(3a) Where a director, for the purpose of declaring his interest in contracts with the company as required by this section, gives such a general notice as is specified in the last preceding subsection, that notice shall be of no effect unless either it is given at a meeting of the directors, or he takes reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.;

No. 32 of  
1947, s. 7.

- (b) adding to paragraph (c) of subsection (6) the following words:—“or to a director of a public company if and so long as the articles of association of such company expressly provide that this subsection shall not apply in the case of that company.”

Amendment  
of s. 296.

19. Subsection (6) of section two hundred and ninety-six of the principal Act is amended by—

- (a) adding after the word “register” in line three, the words, “under the provisions of this Act or the repealed Acts”;
- (b) adding after the word “aforesaid” in line six, the words, “or in the case of a company which has been struck off the Register under the provisions of the repealed Acts within six years of the commencement of this Act,”.

Amendment  
of s. 302.

20. Section three hundred and two of the principal Act is amended by adding after the word “Act” in line three the words “or the repealed Acts”.

Amendment  
of s. 304.

21. Section three hundred and twenty-nine of the principal Act is amended by substituting for the words “the company” in subsection (1), paragraph (c), line seven, the words “a company incorporated under this Act”.

Amendment  
of s. 334.

22. Section three hundred and thirty-four, subsection (4), of the principal Act is amended by substituting for the words “a registrar” in line three, the words, “any person”.

Amendment  
of s. 336.

23. Section three hundred and thirty-six of the principal Act is amended by deleting the word “advertisements” where it appears, firstly in paragraph (ii), subparagraph (b), lines two and three, and secondly in paragraph (iii), subparagraph (a), in lines three and four.

Amendment  
of s. 347.

24. Section three hundred and forty-seven of the principal Act is amended by—

- (a) adding after the word “State” in subsection (1), line three, the words “and having any shareholders who are resident in the State,”;

(b) adding the following subsection:—

Of. s. 5.

(4) Notwithstanding any other provision of this Act, the provisions of this section and sections three hundred and forty-eight to three hundred and sixty inclusive, shall apply to any company—

(a) incorporated outside the State; and

(b) carrying on, inside the State, the business of life assurance or banking and in respect of such a company the following provisions shall apply:—

(i) The local register shall be established within two calendar months from the date of commencement of the Companies Act Amendment Act, 1949.

(ii) For the purposes of this section and sections three hundred and forty-eight to three hundred and sixty inclusive of this Act the manager in this State of such Company shall be deemed to be the agent of the Company and the principal place of business of such company in this State shall be deemed to be the registered office.

25. The principal Act is amended by adding after section three hundred and sixty-eight, the following section:—

Amendment  
of s. 368.

368A. Notwithstanding anything in the last two preceding sections, where a prospectus complying with those sections has been issued, it shall not be

necessary in any advertisement of that prospectus in a public newspaper to insert the particulars or matters required by those sections, except those with respect to the date, the fact that a copy has been duly filed, the names, descriptions, and addresses of the directors or proposed directors, and the number of shares subscribed by them, respectively, and with respect to the minimum subscription on which the directors may proceed to allotment, provided that the advertisement—

(i) states—

- (a) that the advertisement is an abridgment of a prospectus;
- (b) that copies of the abridged prospectus and the full prospectus have been filed with the Registrar;
- (c) where in the City of Perth in the State, copies of the full prospectus and forms of application for shares may be obtained; and
- (d) the primary object with which the company was formed;

(ii) states that applications for shares will be received only on one of the forms of application referred to, and, as the case may be, either endorsed upon or annexed to, but detachable from, the full prospectus; and

(iii) does not contain anything to which the said requirements apply, and which is not in the prospectus, or is inconsistent with the prospectus.

Amendment  
of s. 397.

26. Section three hundred and ninety-seven of the principal Act is amended by adding the following subsection:—

(3) In this section, the term “solicitor” means a certificated practitioner of the Supreme Court of Western Australia, as defined by the Legal Practitioners’ Act, 1893-1948.

27. The principal Act is amended by adding the following section:— S. 434 added.

434. (1) Any register, index or accounts required by this Act to be kept by a company, may, notwithstanding anything in this Act, be kept either by making entries in bound books or by recording the matters in question in any other manner.

(2) Where any such register, index, or accounts are not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery, and where default is made in complying with this subsection, the company and every officer of the company who is in default, shall be liable to a penalty of fifty pounds, and in addition to a daily penalty of two pounds for every day during which the offence continues.

28. The Second Schedule to the principal Act is amended by— Amendment  
of Second  
Schedule.

(a) amending Table A by—

- (i) substituting for the word “special” where it appears in regulation forty-one, firstly and secondly in line two and thirdly in line seven, the word “extraordinary”;
- (ii) substituting for the word “special” in regulation forty-four, line two, the words “extraordinary general”;
- (iii) adding to regulation forty-four, the words “and directors”;
- (iv) deleting from regulation sixty-eight the words “and at such remuneration (whether by way of salary, or commission or participation in profits, or partly in one way and partly in another)”, in lines three and four;

(b) by amending Table B by—

- (i) substituting for the word “special” in regulation thirty-one, line two, and

in regulation thirty-two, firstly in line one, secondly in line two, and thirdly in line seven, the word "extraordinary";

- (ii) substituting for the word "special" in regulation thirty-five, line two, the words "extraordinary general";
- (iii) adding to regulation thirty-five the words "and directors";
- (iv) deleting from regulation sixty the words "and at such remuneration (whether by way of salary or commission, or participation in profits, or partly in one way and partly in another)", in lines three, four and five.

29. The Sixth Schedule to the principal Act is amended by—

Amendment  
of Sixth  
Schedule.

- (a) substituting for the words "do solemnly and sincerely declare" in Form C, the words "hereby certify";
- (b) substituting for the word "statement" where firstly appearing in Form C, the words "profit and loss account";
- (c) substituting for the word "statement" where secondly occurring in Form C, the word "certificate";
- (d) substituting for the words and figures "And I make this solemn declaration under the provisions of Section 106 of the Evidence Act, 1906. Declared at \_\_\_\_\_, in the State of Western Australia, this \_\_\_\_\_ day of \_\_\_\_\_" in Form C, the words "Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_."