

COMPANIES.

2° and 3° GEO. VI., No. XL.

No. 40 of 1938.

AN ACT to amend the Companies Act, 1893, by adopting provisions of the Companies Act, 1929 (Imperial), relating to the sale and allotment of Shares and Debentures, and offers of Shares or Debentures for sale.

[Assented to 31st January, 1939.]

BE 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, 1938*, and shall be read as one with the Companies Act, 1893, and its amendments, hereinafter referred to as the principal Act.

Interpreta-
tion.

cf. 19 & 20
Geo. V., s.
354.

S.A. No. 2196,
s. 365.

2. In this Act—

“Debenture” includes debenture stock, bonds, and any other securities of a company, whether constituting a charge on the assets of a company or not.

“Director” includes any person occupying the position of director by whatever name called.

“Dividend” includes interest.

“Prospectus” means any prospectus, notice, circular, advertisement, or other invitation offering to the public for subscription or purchase any shares or debentures of a company.

“Sale” or “Sell” where not contrary to the context includes “exchange.”

“Share” means share in the share capital of a company, whether a company within the meaning of the principal Act or not, and includes stock, bonds, debentures, debenture stock, and other securities and units, whether having the benefit of security over the assets of the company or not.

“Unit” means any right or interest by whatever name called in a share.

3. (1) It shall not be lawful for any person to go from house to house, or from place to place, offering shares for subscription or sale to the public or any member of the public: Provided that this subsection shall not apply to shares in a company to which the Registrar of Companies has granted a certificate of exemption from the provisions of this subsection. Such exemption may be in respect of the whole State or any particular district or districts thereof to be specified in the certificate and may be for a specified period only.

Restrictions
on offering
of shares for
subscription
or sale.

cf. ibid. s. 356.

S.A. No. 2196,
s. 368.

X.S.W. No. 33
of 1936, s.
343.

Q. No. 53 of
1931, s. 368;
Pas. 1927,
No. 89.

The Registrar shall not grant any such certificate unless he is satisfied that it is necessary and desirable for local or special reasons to grant it.

Every person acting under any such certificate shall produce the same or a copy thereof certified as such by the Registrar of Companies to any person to whom he is offering shares, and permit such person to inspect such certificate or certified copy thereof.

(2.) Subject as hereinafter provided in this subsection, it shall not be lawful to make an offer in writing to any member of the public (not being a person whose ordinary business or part of whose ordinary business it is to buy or sell shares, whether as principal or agent) of any shares for sale, unless the offer is accompanied by a statement in writing (which must be signed by the person making the offer and dated) containing such particulars as are required by this section to be included therein and otherwise complying with the requirements of this section:

Provided that the provisions of this subsection shall not apply where the offer was made only to persons with whom the person making the offer has been in the habit of doing regular business in the purchase or sale of shares.

(3.) The written statement aforesaid shall not contain any matter other than the particulars required by this section to be included therein, and shall not be in characters less large or less legible than the type known as eight point face.

(4.) The said statement shall contain particulars with respect to the following matters—

- (a) whether the person making the offer is acting as principal or agent, and if as agent the name of his principal and an address in Western Australia where that principal can be served with process;
- (b) the date on which and the country or State in which the company was incorporated and the address of its registered or principal office in Western Australia;
- (c) the authorised share capital of the company and the amount thereof which has been issued, the classes into which it is divided and the rights of each class of shareholders in respect of capital, dividends and voting;
- (d) the dividends, if any, paid by the company on each class of shares during each of the three financial years immediately preceding the offer, and if no dividend has been paid in respect of shares of any particular class during any of those years, a statement to that effect;
- (e) the total amount of any debentures issued by the company and outstanding at the date of the statement, together with the rate of interest payable thereon;
- (f) the names and addresses of the directors of the company, and of any person occupying the position of director of the company;
- (g) whether or not the shares offered are fully paid up, and, if not, to what extent they are paid up;
- (h) whether or not the shares are quoted on, or permission to deal therein has been granted by, any stock exchange in the Commonwealth or elsewhere, and, if so, which, and, if not, a statement that they are not so quoted or that no such permission has been granted;

- (i) where the offer relates to units, particulars of the names and addresses of the persons in whom the shares represented by the units are vested, the date of and the parties to any document defining the terms on which those shares are held, and an address in Western Australia where that document or a copy thereof can be inspected.

In this subsection the expression "company" means the company by which the shares to which the statement relates were or are to be issued.

(5.) If any person acts, or incites, causes or procures any person to act, in contravention of this section, he shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred pounds or to both such imprisonment and fine, and in the case of a second or subsequent offence to imprisonment for a term not exceeding twelve months or to a fine not exceeding five hundred pounds, or to both such imprisonment and fine.

(6.) Where a person convicted of an offence under this section is a company (whether a company within the meaning of this Act or not), every director and every officer concerned in the management of the company shall be guilty of the like offence, unless he proves that the act constituting the offence took place without his knowledge or consent.

(7.) Where any person makes an offer in contravention of the provisions of this section, any person contracting to take shares in consequence of such offer shall be in the same position as if such contract had been induced by the fraud of the offeror.

4. All offences under this Act made punishable by any penalty may be prosecuted and disposed of summarily under the Justices Act, 1902-1926.

Summary
proceedings.

19 & 20 Geo.
V., ch. 23, s
366.