

COMPANIES.

No. 98 of 1969.

AN ACT to amend the Companies Act, 1961-1966.

[Assented to 25th November, 1969.]

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, 1969.* Short title and citation.

(2) In this Act the Companies Act, 1961-1966 is referred to as the principal Act. Reprinted, approved for reprint 20th March, 1968.

(3) The principal Act as amended by this Act may be cited as the Companies Act, 1961-1969.

Section 367A
added.

2. The principal Act is amended by adding after section 367 a section as follows—

Power to
examine
defaulting
officers.

367A. (1) Where it appears to the Attorney General that any officer or former officer of a company to which this section applies, has conducted himself in such a way that the officer or former officer has rendered himself liable to action by the company in relation to the performance of his duties as an officer of the company, the Attorney General, or any person who is authorised in that behalf by the Attorney General, may apply *ex parte* to the Court for an order that the officer or former officer shall attend before the Court on a day to be appointed by the Court to be examined as to his conduct and dealings as an officer of the company.

(2) Any examination under this section shall not be held in open court unless the Court otherwise orders.

(3) The Court, on making an order under subsection (1) of this section or at any subsequent time on the application of any person concerned, may give such directions as to the matters to be inquired into and as to the procedure to be followed in relation to the examination as it thinks fit.

(4) The applicant and with the leave of the Court, any creditor or member of the company may take part in the examination either personally or by a solicitor or counsel.

(5) The person examined—

(a) shall be examined on oath;

(b) shall answer all questions which the Court puts or allows to be put to him; and

(c) is not entitled to refuse to answer any question that is relevant or material to the examination on the ground that his answer might tend to incriminate him,

but if he claims that the answer to any question might incriminate him and but for this subsection he would have been entitled to refuse to answer the question, the answer shall not be used in any subsequent criminal proceedings against him except in the case of a charge against him for perjury committed by him in answer to that question.

(6) A person ordered to be examined under this section may be represented by a solicitor with or without counsel who shall be at liberty to put to him questions for the purpose of enabling him to explain or qualify any answer given by him.

(7) Notes of the examination—

- (a) shall be reduced to writing;
- (b) shall be read over to or by and signed by the person examined;
- (c) may thereafter, subject to subsection (5) of this section, be used in evidence in any legal proceedings against the person examined; and
- (d) may be inspected and copied by the person examined, the Attorney General, the Registrar or applicant or, with the consent of the Court, by any creditor or member of the company.

(8) The Court may, if it thinks fit, adjourn the examination from time to time.

(9) Where the Court is satisfied that an order for an examination under this section was obtained without reasonable cause, it may order the whole or any part of the costs incurred by the person ordered to be examined to be paid by the applicant or by any other person who with the consent of the Court takes part in the examination.

S. 367B
added.

3. The principal Act is amended by adding a section as follows:—

Power of
Court to
assess dam-
ages against
delinquent
officers.

367B. (1) Where it appears to the Attorney General that any person who has taken part in the formation, promotion, administration, management or winding-up of a company to which this section applies—

- (a) has misapplied or retained or become liable or accountable for any money or property of the company; or
- (b) has been guilty of any misfeasance or breach of trust in relation to the company,

the Attorney General or any person who is authorised in that behalf by the Attorney General, may apply to the Court to examine into the conduct of that person and for an order that that person do—

- (c) repay or restore the money or property or such part thereof as the Court thinks fit together with interest at such rate as the Court thinks just; or
- (d) pay to the company such sum by way of damages in respect of the misapplication, retainer, misfeasance or breach of trust, as the Court thinks just.

(2) This section extends and applies to the receipt of any money or property by any officer or former officer of the company, whether by way of salary or otherwise, which appears to the Court to have been unfair or unjust to the company or its members.

(3) The provisions of this section apply notwithstanding that the person concerned may be criminally liable in respect of the matters in respect of which the order is sought.

4. The principal Act is amended by adding a section as follows—

S. 367C
added.

367C. (1) In sections three hundred and sixty-seven A and three hundred and sixty-seven B “company to which this section applies” means a company—

Interpreta-
tion.

- (a) which is in course of being wound up;
- (b) which is under official management;
- (c) in respect of which an inspector has been appointed pursuant to Division 3 or Division 4 of Part VI.;
- (d) in respect of which a receiver or manager has been appointed whether by the Court or pursuant to the powers contained in any instrument;
- (e) which has ceased to carry on business or is unable to pay its debts.

(2) For the purposes of subsection (1) of this section a company shall be deemed—

- (a) to have ceased to carry on business if the Registrar has—
 - (i) sent to the company by post a letter pursuant to the provisions of subsection (1) of section three hundred and eight; or
 - (ii) published in the *Government Gazette* a notice pursuant to the provisions of subsection (3) of section three hundred and eight; and
- (b) to be unable to pay its debts if execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part.

S. 374A
added.

5. The principal Act is amended by adding after section 374 a section as follows—

Offences by
officers of
certain
companies.

374A. (1) Every person who, being a former officer or officer of a company to which this section applies—

- (a) does not, to the best of his knowledge and belief, fully and truly discover to the appropriate officer all the property, real and personal, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company;
- (b) does not deliver up to the appropriate officer, or as he directs—
 - (i) all the real and personal property of the company in his custody or under his control and which he is required by law to deliver up;
 - or
 - (ii) all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up;
- (c) within five years next before the relevant day or at any time on or after that day—
 - (i) has concealed any part of the property of the company to the value of one hundred dollars or upwards, or has concealed any debt due to or from the company;
 - (ii) has fraudulently removed any part of the property of the company to the value of one hundred dollars or upwards;

- (iii) has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company;
 - (iv) has made or has been privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company;
 - (v) has fraudulently parted with, altered or made any omission in, or has been privy to fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company;
 - (vi) by any false representation or other fraud, has obtained any property for or on behalf of the company on credit which the company has not subsequently paid for;
 - (vii) has obtained on credit, for or on behalf of the company, under the false pretence that the company is carrying on its business, any property which the company has not subsequently paid for; or
 - (viii) has pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing was in the ordinary course of the business of the company;
- (d) wilfully makes any material omission in any statement relating to the affairs of the company;

- (e) knowing or believing that a false debt has been proved by any person, fails for a period of one month to inform the appropriate officer of his knowledge or belief;
- (f) prevents the production of any book or paper affecting or relating to the property or affairs of the company;
- (g) within five years next before the relevant day or at any time on or after that day, has attempted to account for any part of the property of the company by making entries in the books of the company showing fictitious losses or expenses; or
- (h) within five years next before the relevant day or at any time on or after that day, has been guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding-up,

is guilty of an offence against this Act.

Penalty: Imprisonment for two years or five thousand dollars.

(2) It is a good defence to a charge under paragraphs (a), (b) or (d) or subparagraphs (i), (vii) or (viii) of paragraph (c) of subsection (1) of this section if the accused proves that he had no intent to defraud, and to a charge under paragraph (f) or subparagraphs (iii) or (iv) of paragraph (c) of that subsection if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(3) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under subparagraph (viii) of paragraph (c) of subsection (1) of this section, every person who takes in pawn or pledges or otherwise receives the property know-

ing it to be pawned, pledged or disposed of in those circumstances is guilty of an offence against this Act.

Penalty: Imprisonment for one year or two thousand five hundred dollars. .

6. The principal Act is amended by adding a section as follows—

S. 374B
added.

374B. (1) Where proper books of account have not been kept by a company to which this section applies throughout the period of two years immediately preceding the relevant day or the period between the incorporation of the company and the relevant day, whichever is the shorter, every officer who is in default is, unless he acted honestly and shows that in the circumstances in which the business of the company was carried on the default was excusable, guilty of an offence against this Act.

Liability
where
proper
accounts not
kept.

Penalty: Imprisonment for one year or two thousand five hundred dollars.

(2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any company—

- (a) if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day, in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stocktakings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified; or

- (b) if such books or accounts have not been kept in such manner as to enable them to be conveniently and properly audited, whether or not the company has appointed an auditor. .

S. 374C
added.

7. The principal Act is amended by adding a section as follows—

Offences.

374C. (1) If an officer of a company to which this section applies was knowingly a party to the contracting of a debt by the company and had at the time the debt was contracted no reasonable or probable grounds of expectation after taking into consideration the other liabilities, if any, of the company at the time, of the company being able to pay the debt, the officer is guilty of an offence against this Act.

Penalty: Imprisonment for three months or five hundred dollars.

(2) If any business of a company to which this section applies has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, any person who was knowingly a party to the carrying on of the business in that manner is guilty of an offence against this Act.

Penalty: Imprisonment for one year or two thousand five hundred dollars.

S. 374D
added.

8. The principal Act is amended by adding a section as follows—

Powers of
Court.

374D. (1) Where a person has been convicted of an offence under subsection (1) or subsection (2) of section three hundred and seventy-four C, the Court on the application of the appropriate officer or, with the consent of the Attorney General, any creditor or contributory of the company may, if it thinks proper to do so, declare that the person is personally responsible without any limitation of liability—

- (a) in the case of a conviction under subsection (1) of section three hundred and seventy-four C, for the payment to the company of an amount equal to the whole or such part of the debt as the Court thinks fit in respect of which the conviction was made; and
- (b) in the case of a conviction under subsection (2) of section three hundred and seventy-four C, for the payment to the company of the amount required to satisfy all or any of the debts of the company as the Court directs.

(2) Where the Court makes any declaration under subsection (1) of this section in relation to a person, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular, may order that the liability of the person under the declaration is a charge on any debt or obligation due from the company to him, or on any charge or any interest in any charge on any assets of the company held by or vested in him or any corporation or person on his behalf, or any person claiming as assignee from or through the person liable or any corporation or person acting on his behalf, and may, from time to time, make such further order as is necessary for the purpose of enforcing any charge imposed under this subsection.

(3) For the purpose of subsection (2) of this section "assignee" includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration, not including consideration by way of marriage, given in good faith and without notice of any of the matters upon which the conviction or declaration was made.

(4) The provisions of this section have effect notwithstanding that the person concerned is

criminally liable in respect of the matters on the ground of which the declaration is made.

(5) On the hearing of an application under subsection (1) of this section the appropriate officer may himself give evidence or call witnesses.

S. 374E
added.

9. The principal Act is amended by adding a section as follows:—

Interpreta-
tion.

374E. (1) In sections three hundred and seventy-four A to three hundred and seventy-four D, both inclusive—

“appropriate officer” means—

- (a) in relation to a company which is being wound up, the liquidator;
- (b) in relation to a company which is under official management, the official manager;
- (c) in relation to a company in respect of which an inspector has been appointed pursuant to Division 3 or Division 4 of Part VI., the person nominated as the appropriate officer in the particular case by the Attorney General;
- (d) in relation to a company in respect of which a receiver or manager of all or any of the property of the company has been appointed whether by the Court or pursuant to the powers contained in any instrument, the receiver or manager; and
- (e) in relation to any company which has ceased to carry on business or is unable to pay its debts, the Registrar;

“company to which this section applies” means a company—

- (a) which is in course of being wound up;
- (b) which is under official management;
- (c) in respect of which an inspector has been appointed pursuant to Division 3 or Division 4 of Part VI.;
- (d) in respect of which a receiver or manager has been appointed whether by the Court or pursuant to the powers contained in any instrument;
- (e) which has ceased to carry on business or is unable to pay its debts;

“the relevant day” means—

- (a) in relation to a company which is being wound up, the day upon which, under the provisions of this Act, the winding-up is or is deemed to have commenced;
- (b) in relation to a company which is under official management, the day upon which it is determined that the company shall be placed under official management;
- (c) in relation to a company in respect of which an inspector has been appointed pursuant to Division 3 or Division 4 of Part VI., the day upon which the inspector was appointed;
- (d) in relation to a company in respect of which a receiver or manager has been appointed, the day upon which the receiver or manager was appointed;
- (e) in relation to a company which is unable to pay its debts, the day upon which the execution

or other process was returned unsatisfied in whole or in part; and

- (f) in relation to any company which has ceased to carry on business, the day upon which the last return was lodged by the company pursuant to the requirements of sections one hundred and fifty-eight or one hundred and fifty nine, as the case requires.

(2) For the purposes of subsection (1) of this section a company shall be deemed—

- (a) to have ceased to carry on business if the Registrar has—

(i) sent to the company by post a letter pursuant to the provisions of subsection (1) of section three hundred and eight; or

(ii) published in the *Government Gazette* a notice pursuant to the provisions of subsection (3) of section three hundred and eight; and

- (b) shall be deemed to be unable to pay its debts if execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part.

10. The principal Act is amended by adding a section as follows—

374F. (1) Any person who gives or agrees or offers to give to any member or creditor of a company any valuable consideration with a view of securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator or official manager is guilty of an offence against this Act.

Penalty: Five hundred dollars.

S. 374F
added.

Inducement
to be
appointed
liquidator or
official
manager.

(2) Every officer or contributory of any company who destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register or book of account or document belonging to the company with intent to defraud or deceive any person is guilty of an offence against this Act.

Penalty: Imprisonment for two years or five thousand dollars. .

11. The principal Act is amended by adding a section as follows—

S. 374G added.

374G. Every person who, while an officer of a company—

Frauds by officers.

- (a) has by false pretences or by means of any other fraud, induced any person to give credit to the company;
- (b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company; or
- (c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against the company—

is guilty of an offence against this Act.

Penalty: Imprisonment for two years or five thousand dollars. .

12. Sections 300 to 305, both inclusive, of the principal Act are hereby repealed.

Ss. 300 to 305, both inclusive, repealed.

13. The Second Schedule to the principal Act is repealed and re-enacted as follows—

Second Schedule repealed and re-enacted.

SECOND SCHEDULE.

TABLE OF FEES TO BE PAID TO THE REGISTRAR.

By a Company having a Share Capital.

- | | | |
|----|--|----------|
| 1. | For registration of a company whose nominal share capital does not exceed \$10,000 | \$60.00 |
| 2. | For registration of a company whose nominal share capital exceeds \$10,000 the above fee of \$60 with the following additional fees regulated according to the amount of nominal share capital (that is to say)— | |
| | For every \$2,000 of nominal share capital or part of \$2,000, after the first \$10,000, up to \$200,000 | \$2.00 |
| | For every \$2,000 of nominal share capital, or part of \$2,000, after the first \$200,000, up to \$1,000,000 | \$1.00 |
| | For every \$2,000 of nominal share capital, or part of \$2,000 after the first \$1,000,000 | 50 cents |
| 3. | On lodging notice of increase of share capital—an amount equal to the difference (if any) between the amount that would have been payable on first registration by reference to its capital as increased and the amount that would have been payable by reference to its capital immediately before the increase but in the case of a company registered before the 5th of October 1962 with a share capital of less than £5,000 the fee shall be \$15 per \$2,000 or any fractional part of \$2,000 for any increase up to \$10,000 and thereafter an amount calculated as aforesaid. | |

By a Company not having a Share Capital.

- | | | |
|----|---|---------|
| 4. | For registration of a company— | |
| | (a) where the number of members with which the company is registered does not exceed 20 | \$20.00 |
| | (b) where the number of such members exceeds 20 but does not exceed 100 | \$40.00 |

- (c) where the number of such members exceeds 100 but is less than 8,100—
 - for the first 100 \$40.00
 - for each 50 (or part of 50) by which the number of such members exceeds 100 \$1.00
- (d) where the number of such members is not less than 8,100 \$200.00

5. For registration of a company in which the number of members is stated in the articles of association to be unlimited \$200.00

6. On lodging with the Registrar notice of increase in the number of members, a fee equal to the difference (if any) between—

- (a) the registration fee that would be payable under this Act if the company were registering with a number of members equal to the number of its registered members immediately before the increase; and
- (b) the registration fee that would be payable under this Act, if the company were registering with a number of members equal to the number of its registered members after the increase.

Other Fees.

- 7. For every application for consent of the Minister to use of a name by a corporation \$10.00
- 8. For every Order of the Minister granting consent to use of name by a corporation \$20.00
- 9. For every approval of the Registrar to the change of the name of a company (otherwise than a change of name directed by the Registrar pursuant to the provisions of subsection (2) of section 23 or a change of name pursuant to subsection (2) of section 24) \$20.00

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|--|------|------|------|----------|
| 10. For every application to the Minister to dispense with the word "limited" in the name of a company | | | | \$10.00 |
| 11. For every license of the Minister to dispense with the word "limited" in the name of a company | .... | .... | .... | \$20.00 |
| 12. For approval of the Minister to alter the memorandum or articles of a company | .... | .... | .... | \$4.00 |
| 13. On lodgment of request to the Registrar to exercise the powers conferred by section 309 or section 311 | .... | .... | .... | \$5.00 |
| 14. For every act done by the Registrar as representing a defunct company under section 309 | .... | .... | .... | \$10.00 |
| 15. For every act done by the Registrar as representing a defunct company under section 311 | .... | .... | .... | \$10.00 |
| 16. On the late lodging of any document under this Act, in addition to any other fee— | | | | |
| (a) if lodged within one month after the period prescribed by law | .... | .... | .... | \$4.00 |
| (b) if lodged more than one month after the period prescribed by law in addition to the fee payable under subparagraph (a) | | | | \$15.00 |
| The Registrar, if satisfied that just cause existed for the late lodgment, may waive in whole or in part the additional fee under paragraph (b). | | | | |
| 17. For registration of a foreign company— | | | | |
| (a) subject to paragraphs (b) and (c), one-half of the appropriate fee prescribed in respect of a company registered or incorporated under Part III of this Act; | | | | |
| (b) subject to paragraph (c) where the fee prescribed in paragraph (a) is not applicable | .... | .... | .... | \$200.00 |
| and | | | | |

(c) in the case of a corporation authorised by the law of any State or Territory to take in its own name a grant of probate or letters of administration of the estate of a deceased person	\$100.00
18. On lodging by a foreign company of notice of increase in share capital or in the case of a foreign company not having a share capital on the lodging of notice of increase in number of members beyond its registered number— one-half of the prescribed fee payable on the increase in share capital or on the increase in the number of members of a company incorporated or registered under Part III.	
19. For registering any charge created by a corporation	\$8.00
20. For registering particulars of a series of debentures	\$8.00
21. For registering particulars of each series of debentures where more than one issue in the series	\$4.00
22. On an application for the reservation of a name	\$6.00
23. On lodging articles of association of a company	\$4.00
24. On lodging a copy of any special resolution altering the articles of association of a company	\$4.00
25. On lodging a copy of any special resolution altering the objects clause of the memorandum of association of a company	\$4.00
26. On lodging any deed or copy of a deed under section 78 or on lodging any prospectus or statement in lieu of prospectus or statement required under section 82	\$20.00
27. On any subpoena served on the Registrar to produce any document in his custody	\$4.00

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28.	On lodging any application under section 44 or section 374	\$10.00
29.	On lodging any application to the Registrar under section 161A	\$20.00
30.	On lodging any appeal against a decision of the Registrar under section 161A	\$20.00
31.	On lodging any other application	\$4.00
32.	For entry in the register of charges of any memorandum of satisfaction	\$4.00
33.	For every certificate issued by the Registrar under any Act	\$2.00
34.	For copy or extract made and certified by the Registrar of or from any document in his custody—	
	For one page	\$2.00
	For each additional page	\$1.00
35.	For completion and certification by the Registrar of a copy or extract of any document in his custody of which a printed or typed copy is supplied—	
	For one page	\$1.00
	For each additional page	50 cents
36.	For photographic certified copies of documents in the custody of the Registrar—for each page	\$1.00
37.	For uncertified photographic copies of documents in the custody of the Registrar—	
	For each page—in addition to any fee payable under Item 39	40 cents
38.	For search as to availability of any name proposed to be adopted by a corporation or proposed corporation—for every name searched	\$1.00
39.	For a search and inspection of a document or documents filed by or in relation to a corporation	\$1.00

40. For an inquiry by letter involving a search of any document filed with the Registrar by or in relation to a corporation—	
For one document	\$1.00
For each additional document	25 cents
41. For a search in the office of the Registrar for which a fee is not elsewhere prescribed	50 cents
42. On lodging any annual return of a corporation	\$10.00
43. On lodging with the Registrar a balance sheet of a foreign company pursuant to subsection (1) of section 348	\$10.00
44. On lodging, registering, depositing, or filing any other document with or by the Registrar under any Act (where a fee is not elsewhere prescribed)	\$3.00
45. For an act done by the Registrar which he is required or authorised to do under this Act and for which a fee is not elsewhere prescribed	\$5.00

Fees payable with respect to corporations formed or incorporated outside the Commonwealth shall, where appropriate, be calculated after the conversion of the share capital of the corporation to Australian currency.
