

## COMPANIES.

11° Elizabeth II., No. XXX.

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No. 30 of 1962.

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**AN ACT to amend the Companies Act, 1961.**

*[Assented to 4th October, 1962.]*

**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, 1962.* Short title and citation.

(2) In this Act the Companies Act, 1961, is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Companies Act, 1961-1962.

Commence-  
ment.

2. This Act shall come into operation on the day the principal Act comes into operation.

S. 4  
amended.

3. Section four of the principal Act is amended by repealing subsection (5) and substituting the following subsections:—

(5) In the application of paragraph (b) of subsection (1) of section nine to a person who became indebted to a corporation before the coming into operation of this Act, that indebtedness shall, until the expiration of five years after the coming into operation of this Act be disregarded if—

(a) the ordinary business of the corporation includes to a substantial degree the lending of money and the indebtedness was incurred in the ordinary course of that business; and

(b) the indebtedness would not have disqualified that person from appointment as auditor of the corporation if this Act had not come into operation.

(6) Paragraph (c) of subsection (1) of section nine does not apply to any person in relation to a proprietary company until the expiration of twelve months after the coming into operation of this Act, if he was appointed as auditor of that company before the coming into operation of this Act.

S. 5  
amended.

4. Section five of the principal Act is amended—

(a) by substituting for subsection (7) the following subsection:—

(7) For the purposes of the definition of “exempt proprietary company” in subsection (1) of this section, a share in a proprietary company shall be deemed

to be owned by a public company if any beneficial interest in the share is held directly or indirectly by—

- (a) a public company;
  - (b) a proprietary company a beneficial interest in a share in which is held, directly or indirectly, by a public company; or
  - (c) a proprietary company a beneficial interest in a share in which is held, directly or indirectly, by a proprietary company a beneficial interest in a share in which is held, directly or indirectly, by—
    - (i) a public company; or
    - (ii) another proprietary company a beneficial interest in a share in which is held, directly or indirectly, otherwise than by a natural person. ;
- (b) by substituting for paragraph (a) of subsection (8) the following paragraphs—
- (a) a reference in that subsection to a public company shall be read as including a reference to a foreign company other than a foreign company that (whether or not Division 3 of Part XI. applies to it) is a foreign company of a kind referred to in subsection (5) of section three hundred and forty-eight;
  - (b) a reference in that subsection to a public company or to a proprietary company shall be read as not including a reference to a company in respect of which a license under section twenty-four, or under any corresponding previous enactment, is in force;

(c) where a corporation holds a beneficial interest in a redeemable preference share in a proprietary company and—

(i) no voting rights attach to the share; or

(ii) any voting rights attaching to the share are exercisable only in special circumstances and do not include the right (except where any dividend in respect of the share is in arrears) to vote at an election of directors of the proprietary company,

the share shall be treated as if the beneficial interest in the share were held by a natural person; and

(c) by substituting for the paragraph designation (b) in subsection (8), the paragraph designation (d).

S. 9  
amended.

5. Section nine of the principal Act is amended—

(a) by adding after the word, “not” in line one and again in line two of subsection (1), the word, “knowingly”;

(b) by adding after the word, “or” in line five of subsection (2), the passage, “except where the Board if it thinks fit in the circumstances of the case directs otherwise, he”; and

(c) by adding after the word, “not” in line one and again in line two of subsection (4), the word, “knowingly”.

S. 20  
amended.

6. Subsection (2) of section twenty of the principal Act is amended by adding after the word, “asserted” in line two, the words, “or relied upon”.

7. Subsection (1) of section forty of the principal Act is amended by adding after the word, "and", being the first word in the fourth last line, the words, "unless it". S. 40  
amended.

8. Section fifty-four of the principal Act is amended— S. 54  
amended.

- (a) by adding after the word, "section" in line one of paragraph (d) of subsection (1), the words, "the full name or";
- (b) by adding after the word, "shall" in line two of subsection (4), the words, "if the Registrar so requests".

9. Section sixty of the principal Act is amended— S. 60  
amended.

- (a) by adding after paragraph (c) of subsection (2), the following paragraph—
  - (d) in the case of a company that carries on life insurance business in the Commonwealth by appropriation or transfer to any statutory fund established and maintained pursuant to any law of the Commonwealth relating to life insurance;
- (b) by substituting for the paragraph designations (d) and (e) respectively in subsection (2), the paragraph designations (e) and (f); and
- (c) by repealing subsection (3).

10. Subsection (6) of section sixty-four of the principal Act is amended by adding after the word, "order" in line one, the words, "with the Registrar". S. 64  
amended.

11. Subsection (1) of section sixty-eight of the principal Act is amended by adding after the word, "granted" in line one, the words, "after the coming into operation of this Act". S. 68  
amended.

S. 74  
amended.

12. Section seventy-four of the principal Act is amended—

(a) by adding after subsection (5) the following subsections:—

(6) Notwithstanding anything contained in subsection (5) of this section, that subsection does not prevent a corporation (in this subsection called “the trustee corporation”) that is, or is deemed by virtue of subsection (5) of section six to be related to—

(a) a banking corporation;

(b) a corporation authorised to transact life insurance business under the law of the Commonwealth relating to life insurance; or

(c) a corporation authorised by the law of a State or Territory of the Commonwealth to take in its own name a grant of probate or of letters of administration of the estate of a deceased person,

from being appointed, holding office or acting as trustee for the holders of debentures of another corporation (in this subsection called “the other corporation”) by reason only that—

(d) the other corporation owes to the trustee corporation or to a corporation that is deemed by virtue of subsection (5) of section six to be related to the trustee corporation—

(i) moneys that (after deducting therefrom moneys referred to in subparagraphs (ii) and (iii) of this paragraph) do not exceed, at the time of the appointment or at any time within three months

after the debentures are first offered to the public, one-tenth of the amount of the debentures proposed to be offered to the public within that period and, at any time after the expiration of that period, one-tenth of the amount owed by the other corporation to the holders of the debentures;

- (ii) moneys that are secured by, and only by, a first mortgage over land of the other corporation, any debentures issued by the other corporation to the public or any debentures to which the trustee corporation, or the corporation so deemed to be related to the trustee corporation, is not beneficially entitled; or
  - (iii) moneys to which the trustee corporation, or the corporation so deemed to be related to the trustee corporation, is entitled as trustee for holders of any debentures of the other corporation in accordance with the terms of the debentures or of the relevant trust deed; or
- (e) the trustee corporation, or a corporation that is deemed by virtue of subsection (5) of section six to be related to the trustee corporation, is a shareholder of the other corporation in respect of shares that it holds beneficially if the shares in the

corporation held beneficially by it and by all other corporations that are deemed by virtue of subsection (5) of section six to be related to it, do not carry the right to exercise more than one-tenth of the voting power at any general meeting of the other corporation.

(7) Nothing in subsection (5) of this section affects the operation of a debenture or trust deed issued or executed before the coming into operation of this Act or applies to the trustee for the holder of that debenture unless, pursuant to that trust deed, a further offer of debentures is made to the public after the coming into operation of this Act. ;

- (b) by renumbering subsections (6), (7), (8), (9), (10), (11) and (12) respectively as (8), (9), (10), (11), (12), (13) and (14); and
- (c) by substituting for the passage, "Subsection (9)" in line one of subsection (10), the passage, "Subsection (11)".

S. 100  
amended.

13. Subsection (9) of section one hundred of the principal Act is repealed and re-enacted as follows:—

(9) (a) Notwithstanding the provisions of any other Act, a charge or assignment to which this section applies is not required to be filed or registered under the provisions of the Bills of Sale Act, 1899, and is not subject to avoidance under those provisions, but those provisions shall, subject to this section, continue to apply to any charge or assignment registered under that Act before the commencement of this Act until the charge or assignment is registered under this Act in accordance with the provisions of paragraph (b) of this subsection.



(b) An existing charge or assignment that—

- (i) is registered under the Bills of Sale Act, 1899; and
- (ii) is a charge or assignment to which this Division would have applied, if this Act had been in force at the date of such registration,

shall be registered under this Act at any time during a period of sixty days before the date on which the registration of the charge or assignment would, but for this subsection, be next required, after the coming into operation of this Act, to be renewed under the Bills of Sale Act, 1899.

(c) Upon the registration of a charge or assignment pursuant to paragraph (b) of this section—

- (i) the provisions of this Act shall apply to the charge or assignment and the charge or assignment is not required to be registered under the Bills of Sale Act, 1899;
- (ii) the original or copy of the charge or assignment filed in the registry under the Bills of Sale Act, 1899 shall be lodged by the Registrar under that Act with the Registrar.

(d) Registration of a charge or assignment under this subsection shall be effected by lodging with the Registrar for registration, within the period referred to in paragraph (b) of this subsection, a statement of the prescribed particulars together with the prescribed fee.

(e) If this subsection is not complied with in relation to a charge or assignment created by a company, the charge or assignment shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company.

S. 153  
amended.

14. Subsection (3) of section one hundred and fifty-three of the principal Act is amended by adding after the word, "days", being the last word in the third last line of the subsection, the words, "or within such further period as the Registrar considers reasonable in the circumstances".

S. 157  
amended.

15. Subsection (8) of section one hundred and fifty-seven of the principal Act is amended by deleting the words, "resident in the State" in line four of the subsection.

S. 158  
amended.

16. Section one hundred and fifty-eight of the principal Act is amended by adding after subsection (5) the following subsection:—

(6) This section shall come into operation on the first day of January, one thousand nine hundred and sixty-three.

S. 162  
amended.

17. Section one hundred and sixty-two of the principal Act is amended—

(a) by substituting for the word, "was" in the last line of subsection (15) the word, "were"; and

(b) by adding after subsection (15) the following subsection:—

(16) In respect to any annual general meeting held before the first day of January one thousand nine hundred and sixty-three it shall be lawful for a company to conduct proceedings and produce accounts in a manner as if this Act had not come into operation.

S. 167  
amended.

18. Section one hundred and sixty-seven of the principal Act is amended by repealing subsection (1) and re-enacting it as follows:—

(1) Every auditor of a company shall report to the members as to every balance sheet and profit and loss account laid before the company

in general meeting during his tenure of office and shall state in the report whether, in his opinion—

- (a) the balance sheet and profit and loss account are properly drawn up in accordance with the provisions of this Act and so as to give a true and fair view of the state of the company's affairs; and
- (b) the accounting and other records (including registers) examined by him are properly kept in accordance with the provisions of this Act.

19. Section three hundred and forty-eight of the principal Act is amended—

S. 348  
amended.

- (a) by substituting for the word, "This", being the first word in subsection (5), the passage, "Except as provided in subsections (6) and (7) of this section, this"; and
- (b) by adding after subsection (5), the following subsections:—

(6) A foreign company referred to in paragraph (a), (b) or (c) of subsection (5) of this section shall, at least once in every calendar year, lodge with the Registrar a return in the prescribed form made up to the date of its annual general meeting.

(7) The return shall be lodged within a period of one month after the date to which it is made up or within such further period as the Registrar, in special circumstances, allows.

20. Section three hundred and forty-nine of the principal Act is repealed and the following section substituted:—

S. 349  
repealed,  
new s. 349  
in lieu.

349. (1) Where, on the registration of a company as a foreign company or on the lodging by a foreign company of a notice under

Annual  
returns.  
Vic. s. 297.  
Tas. s. 295.

subsection (2) of section three hundred and forty-seven, the Registrar certifies in writing that he is satisfied that the company has established in the State a share transfer or share registration office but has not otherwise carried on, is not otherwise carrying on and does not propose otherwise to carry on, business in the State, the liability to pay such part, if any, of the fee payable under item eighteen or nineteen of the Second Schedule in respect of the registration or the lodging of the notice as exceeds five hundred pounds is, by force of this section, suspended until the company commences otherwise to carry on business in the State or fails to comply with subsection (2) of this section, whichever first occurs, but thereupon the company is liable to pay to the Registrar that part of that fee.

(2) A company shall, so long as a suspension under subsection (1) of this section of liability to pay a fee in respect of the company continues, lodge with the Registrar in each year at the time when a copy of its balance sheet or a return under section three hundred and forty-eight is lodged with the Registrar a notice in the prescribed form containing the prescribed particulars with respect to the business being carried on in the State by the company.

(3) Where a foreign company in respect of which the Registrar has issued a certificate under subsection (1) of this section commences to carry on business in the State otherwise than by reason of establishing or using a share transfer or share registration office, the company shall, within fourteen days after so commencing, lodge with the Registrar notice thereof in the prescribed form.

21. Section three hundred and eighty-four of the principal Act is amended by adding after the word, "Act", being the last word in paragraph (b), the passage, "the method of verifying any information required by or in those forms and the completion or preparation of the forms, as the case requires, in accordance with the directions contained therein".

22. The First Schedule to the principal Act is amended— First  
Schedule  
amended.

- (a) by substituting for the passage, “31 of 1943 Companies Act Amendment Act 1943. The whole.”, being the third last item in the Schedule, the following passage, “31 of 1946 Companies Act Amendment Act, 1946. The whole.”; and
- (b) by adding the following item, “10 of 1961 Companies Act Amendment Act, 1961. The whole.”.

23. The Second Schedule to the principal Act is amended— Second  
Schedule  
amended.

- (a) by substituting for the passage, “the Companies Act Amendment Act, 1960” in lines nine and ten of item 3, the words, “this Act”;
- (b) by substituting for the words, “the same fees as are” in line two of paragraph (a) of item 18, the words, “one-half of the appropriate fee”;
- (c) by substituting for the passage, “fees prescribed in paragraph (a) are” in line two of paragraph (b) of item 18, the passage, “fee prescribed in paragraph (a) is”;
- (d) by substituting for the words, “the same fees as are” in line six of item 19, the words, “one-half of the prescribed fee”;
- (e) by adding after the word, “registering” in line one of item 20, the passage, “under subsection (1) of Section 100”;
- (f) by adding to item 20 the following passage—

For registering under subsection (9) of Section 100 any charge created by a corporation ..... 3 0 0

and

(g) by substituting for item 38 the following item—

38. For search for and inspection of a document or documents filed by or in relation to a corporation ..... 0 10 0

Third  
Schedule  
amended.

24. Clause 12 of the Third Schedule to the principal Act is amended by adding after the word, “company” in line four, the words, “to secure or undertake in any way the repayment of money lent or advanced to or the liabilities incurred by any person or company”.

Fourth  
Schedule  
amended.

25. The Fourth Schedule to the principal Act is amended—

- (a) by deleting the words, “on such terms and in such manner as the company before the issue of the shares may by special resolution determine” in the last three lines of clause 3 of Table A; and
- (b) by deleting the words, “on such terms and in such manner as the company before the issue of the shares may by special resolution determine” in the last three lines of clause 3 of Table B.

Seventh  
Schedule  
amended.

26. Clause 34 of the Seventh Schedule is repealed and re-enacted as follows:—

34. A declaration—

- (a) that no units or sub-units of interests purchased or subscribed for pursuant to the statement shall be allotted later than six months after the date appearing in the statement pursuant to clause 1 of this Schedule; and
- (b) unless the conditions of issue of the units or sub-units expressly provide that certificates be not issued, that certificates shall be issued by the trustee or representative to purchasers

of or subscribers for units or sub-units of interests purchased or subscribed for pursuant to the statement not more than two months after the allotment of the units or sub-units.

27. The Ninth Schedule to the principal Act is amended— Ninth  
Schedule  
amended.

- (a) by substituting for the words, "other fixed" in line two of paragraph (e) of clause 1, the words, "fixed term";
- (b) by adding after the clause number, "2", the subclause designation, "(1)"; and
- (c) by repealing paragraph (i) of clause 2 and re-enacting it as follows—

(i) under separate headings—

- (i) amounts owing by subsidiaries of the company;
- (ii) trade debts and bills receivable (other than amounts owing by subsidiaries of the company);
- (iii) the amount outstanding of any loan made, guaranteed or secured by the company, being a loan made to a director of the company or of a company that is deemed by virtue of subsection (5) of section six to be related to the company or a loan made to another company in which a director of the company or of a company that is so deemed to be related to the company owns a controlling interest; and
- (iv) other debts owing to the company,

and where any amounts or debts shown under such a heading include any sums that consist of or are in the

nature of interest, accommodation charges, service charges, maintenance charges or insurance premiums those sums shall, except to the extent that they have become due and payable and have been demanded, be shown as a deduction from the amounts or debts shown under that heading.

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