

WESTERN AUSTRALIA

**COMPANIES, AND SECURITIES AND
FUTURES INDUSTRIES,
LEGISLATION (ACTS AMENDMENT)
ACT**

No. 36 of 1989

AN ACT to amend the *Companies (Application of Laws) Act 1981*, the *Companies (Acquisition of Shares) (Application of Laws) Act 1981*, the *Securities Industry (Application of Laws) Act 1981* and the *Futures Industry (Application of Laws) Act 1986*.

[Assented to 22 December 1989]

The Parliament of Western Australia enacts as follows:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Companies, and Securities and Futures Industries, Legislation (Acts Amendment) Act 1989*.

Commencement

2. This Act shall come into operation on the day on which Part 9 of the *Co-operative Scheme Legislation Amendment Act 1989* of the Commonwealth commences.

PART 2—AMENDMENT OF *COMPANIES (APPLICATION OF LAWS) ACT 1981*

Principal Act

3. In this Part, the *Companies (Application of Laws) Act 1981** is referred to as the principal Act.

[*Act No. 119 of 1981 amended by Act No. 10 of 1982 and by regulations published in the Gazette on 25 June and 12 November 1982, 30 December 1983, 25 May 1984, 27 March, 27 June and 18 July 1986, and 26 June (erratum 3 July) and 24 December 1987 respectively.]

Section 4 amended: Interpretation

4. (1) Section 4 of the principal Act is amended in subsection (1) by inserting—

(a) before the definition of “Agreement”, the following—

“ “act” includes thing; ”;

(b) after the definition of “Agreement”, the following—

“ “chargeable matter” means a matter of the kind referred to in any of the paragraphs (a) to (h), inclusive, of section 8 (1); ”;

and

(c) after the definition of “Commissioner for Corporate Affairs”, the following—

“ “fee” includes tax; ”;

“ “for”, in relation to a fee, includes in respect of; ”; and

“ “lodge” means lodge with the Commission; ”.

(2) After section 4 (1) of the principal Act the following subsections are inserted—

“ (1A) In this Act, a reference to the *Companies (Fees) Act 1981* of the Commonwealth includes a reference to the *Companies (Fees: Taxation Component) Act 1989* of the Commonwealth.

(1B) Subject to this section, an expression in section 8, 8A, 8B, 8C or 8D has the same meaning as in the applied provisions. ”.

Section 8 repealed and new section substituted: Fees

5. (1) Section 8 of the principal Act is repealed and the following section is substituted—

Fees payable

“ 8. (1) There shall be paid to the Commissioner for Corporate Affairs, for and on behalf of the State, for—

- (a) the lodgement of documents under the applied provisions;
- (b) the registration of documents under the applied provisions;
- (c) the inspection or search of registers kept by, or documents in the custody of, the Commission under the applied provisions;
- (d) the making available by the Commission, under the applied provisions, of information (whether in the form of a document or otherwise);
- (e) the production by the Commission, under a subpoena, of such registers or documents;
- (f) the issuing of documents or copies of documents, the granting of licences, consents or approvals, or the doing of other acts, by the Ministerial Council or the Commission under the applied provisions;
- (g) the making of inquiries of, or applications to, the Ministerial Council or the Commission in relation to matters arising under the applied provisions; and
- (h) the submission to the Commission of documents for examination by the Commission,

such fees (if any) as are prescribed by regulations in force for the time being under the *Companies (Fees) Act 1981* of the Commonwealth and specified in the Schedule to those regulations

as if amended as set out in Schedule 3 and as if, unless the contrary intention appears, the expressions used had the same respective meanings as in the applied provisions.

(2) Despite subsection (1), where but for this subsection the fee, or the total of the fees, payable under that subsection for a chargeable matter would exceed \$25 000, so much of that fee, or of that total, as exceeds \$25 000 is not payable.

(3) Where—

(a) because of section 265A of the *Companies (Western Australia) Code*, a company is taken, for the purposes of that Code, to lodge a document at a particular time; and

(b) if the company had in fact lodged the document at that time, a fee would have been payable to the Commissioner for Corporate Affairs under subsection (1) for the lodgment,

then—

(c) the company shall be taken, for the purposes of this section (other than subsection (4)), to lodge the document at that time; and

(d) as from that time, the fee that, because of paragraph (c), is payable under subsection (1) for the lodgment of the document is a debt due to the State and payable by the company.

(4) Where—

(a) a fee is payable under subsection (1) for the lodgment of a document; and

(b) the document is submitted for lodgment without payment of the fee,

the document shall be taken not to have been lodged until the fee is paid.

(5) Subsection (4) does not apply where, at the time when the document is submitted for lodgment, the amount of the fee cannot be ascertained, but if the Commissioner for Corporate Affairs, before or at that time, requires under subsection (9) the payment of a deposit on account of the fee, the document shall be taken not to have been lodged until the deposit or the fee has been paid.

(6) Where a fee is payable to the Commissioner for Corporate Affairs for and on behalf of the State under subsection (1) for any matter involving the doing of an act by the Ministerial Council or the Commission, the Ministerial Council or the Commission shall not do that act until the fee has been paid.

(7) Subsection (6) does not prohibit the doing of an act at a particular time if, as at that time—

- (a) the amount of the fee cannot be ascertained; and
- (b) if the Commissioner for Corporate Affairs has required under subsection (9) the payment of a deposit on account of the fee—the deposit has been paid.

(8) This section has effect notwithstanding anything contained in the applied provisions.

(9) Where the amount of a fee payable under subsection (1) for—

- (a) the lodgment of a document; or
- (b) a matter involving the doing of an act by the Ministerial Council or the Commission,

cannot be ascertained, the Commissioner for Corporate Affairs may—

- (c) before or at the time when the document is submitted for lodgment; or
- (d) before the Ministerial Council or the Commission does the act,

as the case may be, require the payment to the Commissioner for Corporate Affairs, on account of the fee, of a deposit of a specified amount that the Commissioner for Corporate Affairs considers it reasonable to expect will be the amount of the fee. ”.

(2) After section 8 as is inserted by section 5 the following sections are inserted—

Fee not ascertainable when it becomes payable

- “ 8A. (1) This section applies where the amount of a fee under section 8 (1) cannot be ascertained when the fee becomes payable, but at a later time becomes able to be ascertained.

(2) If a person has paid a deposit on account of the fee, the Commissioner for Corporate Affairs shall apply towards payment of the fee so much of the deposit as does not exceed the amount of the fee and—

- (a) if the amount of the deposit exceeds the amount of the fee—the Commissioner for Corporate Affairs shall refund to the person the amount of the excess; or
- (b) if the amount of the fee exceeds the amount of the deposit—as from the later time, so much of the fee as exceeds the amount of the deposit is a debt due to the State and payable by the person.

(3) Otherwise, the fee is, as from the later time, a debt due to the State and payable by the person whom the Commissioner for Corporate Affairs determines in writing to be the person who it is reasonable to expect would have paid the fee had the fee been able to be ascertained when it became payable.

Waiver and refund of fees

8B. Nothing in section 8 or 8A prevents the Commissioner for Corporate Affairs for and on behalf of the State from—

- (a) waiving or reducing, in a particular case or in particular classes of cases, fees that would otherwise be payable under section 8 or 8A; or
- (b) refunding in whole or in part, in a particular case or in particular classes of cases, fees paid under section 8 or 8A.

Debts due to the State

8C. The Commissioner for Corporate Affairs may recover in a court of competent jurisdiction a debt due under section 8 or 8A.

Payment of fee does not give right to inspect or search

8D. To avoid doubt, nothing in section 8 or 8A, and nothing done under section 8 or 8A—

- (a) imposes on the Commission or the Commissioner for Corporate Affairs a duty to allow the inspection or search of a register or document, or to make available information; or

- (b) confers a right to inspect or search a register or document or to have information made available,

except so far as such a duty or right would exist under another provision of this Act or under some other law but for the effect of section 8 (6) and (7). ”.

Consequential amendment of sections 13 and 15

6. (1) Section 13 of the principal Act is amended, in subsection (1) (c) (ii), by inserting after “section 8” the following—

“ or 8A ”.

(2) Section 15 of the principal Act is amended by inserting after “section 8”, in each place where it occurs, the following—

“ , 8A, 8B, 8C or 8D ”.

PART 3—AMENDMENT OF COMPANIES (ACQUISITION OF SHARES) (APPLICATION OF LAWS) ACT 1981

Principal Act

7. In this Part, the *Companies (Acquisition of Shares) (Application of Laws) Act 1981** is referred to as the principal Act.

[*Act No. 30 of 1981 amended by Acts Nos. 10 of 1982 and 48 of 1988 and by regulations published in the Gazette on 25 September 1981, 25 June 1982, 30 December 1983, and 27 March, 27 June and 5 September 1986 respectively.]

Section 3 amended: Interpretation

8. (1) Section 3 of the principal Act is amended in subsection (1) by inserting—

- (a) before the definition of “Agreement”, the following—

“ “act” includes thing; ”;

(b) after the definition of “Agreement”, the following—

“ “chargeable matter” means a matter of a kind referred to in any of paragraphs (a) to (h), inclusive, of section 9 (1); ”;

and

(c) after the definition of “Commission”, the following—

“ “Commissioner for Corporate Affairs” means the Commissioner for Corporate Affairs for Western Australia and includes any Deputy or Assistant Commissioner for Corporate Affairs; ”;

“ “fee” includes tax; ”;

“ “for”, in relation to a fee, includes in respect of; ”; and

“ “lodge” means lodge with the Commission; ”.

(2) After section 3 (1) of the principal Act the following subsections are inserted—

“ (1A) In this Act, a reference to the *Companies (Acquisition of Shares—Fees) Act 1980* of the Commonwealth includes a reference to the *Companies (Acquisition of Shares—Fees: Taxation Component) Act 1989* of the Commonwealth.

(1B) Subject to this section, an expression in section 9, 9A, 9B, 9C or 9D has the same meaning as in the applied provisions. ”.

Section 9 repealed and new section substituted: Fees

9. (1) Section 9 of the principal Act is repealed and the following section is substituted—

Fees payable

“ 9. (1) There shall be paid to the Commissioner for Corporate Affairs, for and on behalf of the State, for—

(a) the lodgment of documents under the applied provisions;

(b) the registration of documents under the applied provisions;

(c) the inspection or search of registers kept by, or documents in the custody of, the Commission under the applied provisions;

- (d) the making available by the Commission, under the applied provisions, of information (whether in the form of a document or otherwise);
- (e) the production by the Commission, under a subpoena, of such registers or documents;
- (f) the issuing of documents or copies of documents, the granting of licences, consents or approvals, or the doing of other acts, by the Ministerial Council or the Commission under the applied provisions;
- (g) the making of inquiries of, or applications to, the Ministerial Council or the Commission in relation to matters arising under the applied provisions; and
- (h) the submission to the Commission of documents for examination by the Commission,

such fees (if any) as are prescribed by regulations in force for the time being under the *Companies (Acquisition of Shares—Fees) Act 1980* of the Commonwealth and specified in the Schedule to those regulations as if amended as set out in Schedule 3 and as if, unless the contrary intention appears, the expressions used had the same respective meanings as in the applied provisions.

(2) Despite subsection (1), where but for this subsection the fee, or the total of the fees, payable under that subsection for a chargeable matter would exceed \$25 000, so much of that fee, or of that total, as exceeds \$25 000 is not payable.

(3) Where—

- (a) a fee is payable under subsection (1) for the lodgment of a document; and
- (b) the document is submitted for lodgment without payment of the fee,

the document shall be taken not to have been lodged until the fee is paid.

(4) Subsection (3) does not apply where, at the time when the document is submitted for lodgment, the amount of the fee cannot be ascertained, but if the Commissioner for Corporate Affairs, before or at that time, requires under subsection (8) the payment of a deposit on account of the fee, the document shall be taken not to have been lodged until the deposit or the fee has been paid.

(5) Where a fee is payable to the Commissioner for Corporate Affairs for and on behalf of the State under subsection (1) for any matter involving the doing of an act by the Ministerial Council or the Commission, the Ministerial Council or the Commission shall not do that act until the fee has been paid.

(6) Subsection (5) does not prohibit the doing of an act at a particular time if, as at that time—

- (a) the amount of the fee cannot be ascertained; and
- (b) if the Commissioner for Corporate Affairs has required under subsection (8) the payment of a deposit on account of the fee—the deposit has been paid.

(7) This section has effect notwithstanding anything contained in the applied provisions.

(8) Where the amount of a fee payable under subsection (1) for—

- (a) the lodgment of a document; or
- (b) a matter involving the doing of an act by the Ministerial Council or the Commission,

cannot be ascertained, the Commissioner for Corporate Affairs may—

- (c) before or at the time when the document is submitted for lodgment; or
- (d) before the Ministerial Council or the Commission does the act,

as the case may be, require the payment to the Commissioner for Corporate Affairs, on account of the fee, of a deposit of a specified amount that the Commissioner for Corporate Affairs considers it reasonable to expect will be the amount of the fee. ”.

(2) After section 9 as is inserted by section 5 the following sections are inserted—

Fee not ascertainable when it becomes payable

- “ 9A. (1) This section applies where the amount of a fee under section 9 (1) cannot be ascertained when the fee becomes payable, but at a later time becomes able to be ascertained.

(2) If a person has paid a deposit on account of the fee, the Commissioner for Corporate Affairs shall apply towards payment of the fee so much of the deposit as does not exceed the amount of the fee and—

- (a) if the amount of the deposit exceeds the amount of the fee—the Commissioner for Corporate Affairs shall refund to the person the amount of the excess; or
- (b) if the amount of the fee exceeds the amount of the deposit—as from the later time, so much of the fee as exceeds the amount of the deposit is a debt due to the State and payable by the person.

(3) Otherwise, the fee is, as from the later time, a debt due to the State and payable by the person whom the Commissioner for Corporate Affairs determines in writing to be the person who it is reasonable to expect would have paid the fee had the fee been able to be ascertained when it became payable.

Waiver and refund of fees

9B. Nothing in section 9 or 9A prevents the Commissioner for Corporate Affairs for and on behalf of the State from—

- (a) waiving or reducing, in a particular case or in particular classes of cases, fees that would otherwise be payable under section 9 or 9A; or
- (b) refunding in whole or in part, in a particular case or in particular classes of cases, fees paid under section 9 or 9A.

Debts due to the State

9C. The Commissioner for Corporate Affairs may recover in a court of competent jurisdiction a debt due under section 9 or 9A.

Payment of fee does not give right to inspect or search

9D. To avoid doubt, nothing in section 9 or 9A, and nothing done under section 9 or 9A—

- (a) imposes on the Commission or the Commissioner for Corporate Affairs a duty to allow the inspection or search of a register or document, or to make available information; or

- (b) confers a right to inspect or search a register or document or to have information made available,

except so far as such a duty or right would exist under another provision of this Act or under some other law but for the effect of section 9 (5) and (6). ”.

Consequential amendment of sections 14 and 16

10. (1) Section 14 of the principal Act is amended, in subsection (1) (c) (ii), by inserting after “section 9” the following—

“ or 9A ”.

(2) Section 16 of the principal Act is amended by inserting after “section 9”, in each place where it occurs, the following—

“ , 9A, 9B, 9C or 9D ”.

PART 4—AMENDMENT OF *SECURITIES INDUSTRY (APPLICATION OF LAWS) ACT 1981*

Principal Act

11. In this Part, the *Securities Industry (Application of Laws) Act 1981** is referred to as the principal Act.

[*Act No. 31 of 1981 amended by Acts Nos. 10 of 1982 and 48 of 1988 and by regulations published in the Gazette on 25 September 1981, 4 June and 25 June 1982, 30 December 1983, 25 May 1984, 27 March and 5 September 1986 and 27 March and 26 June 1987 respectively.]

Section 4 amended: Interpretation

12. (1) Section 4 of the principal Act is amended in subsection (1) by inserting—

- (a) before the definition of “Agreement”, the following—

“ “act” includes thing; ”;

- (b) after the definition of “Agreement”, the following—

“ “chargeable matter” means a matter of a kind referred to in any of paragraphs (a) to (h), inclusive, of section 8 (1); ”;

and

(c) after the definition of “Commissioner for Corporate Affairs”, the following—

“ “fee” includes tax; ”;

“ “for”, in relation to a fee, includes in respect of; ”; and

“ “lodge” means lodge with the Commission; ”.

(2) After section 4 (1) of the principal Act the following subsections are inserted—

“ (1A) In this Act, a reference to the *Securities Industry (Fees) Act 1980* of the Commonwealth includes a reference to the *Securities Industry (Fees: Taxation Component) Act 1989* of the Commonwealth.

(1B) Subject to this section, an expression in section 8, 8A, 8B, 8C or 8D has the same meaning as in the applied provisions. ”.

Section 8 repealed and new section substituted: Fees

13. (1) Section 8 of the principal Act is repealed and the following section is substituted—

Fees payable

“ 8. (1) There shall be paid to the Commissioner for Corporate Affairs, for and on behalf of the State, for—

(a) the lodgment of documents under the applied provisions;

(b) the registration of documents under the applied provisions;

(c) the inspection or search of registers kept by, or documents in the custody of, the Commission under the applied provisions;

(d) the making available by the Commission, under the applied provisions, of information (whether in the form of a document or otherwise);

(e) the production by the Commission, under a subpoena, of such registers or documents;

- (f) the issuing of documents or copies of documents, the granting of licences, consents or approvals, or the doing of other acts, by the Ministerial Council or the Commission under the applied provisions;
- (g) the making of inquiries of, or applications to, the Ministerial Council or the Commission in relation to matters arising under the applied provisions; and
- (h) the submission to the Commission of documents for examination by the Commission,

such fees (if any) as are prescribed by regulations in force for the time being under the *Companies (Fees) Act 1981* of the Commonwealth and specified in the Schedule to those regulations as if amended as set out in Schedule 3 and as if, unless the contrary intention appears, the expressions used had the same respective meanings as in the applied provisions.

(2) Despite subsection (1), where but for this subsection the fee, or the total of the fees, payable under that subsection for a chargeable matter would exceed \$25 000, so much of that fee, or of that total, as exceeds \$25 000 is not payable.

(3) Where—

- (a) a fee is payable under subsection (1) for the lodgment of a document; and
- (b) the document is submitted for lodgment without payment of the fee,

the document shall be taken not to have been lodged until the fee is paid.

(4) Subsection (3) does not apply where, at the time when the document is submitted for lodgment, the amount of the fee cannot be ascertained, but if the Commissioner for Corporate Affairs, before or at that time, requires under subsection (8) the payment of a deposit on account of the fee, the document shall be taken not to have been lodged until the deposit or the fee has been paid.

(5) Where a fee is payable to the Commissioner for Corporate Affairs for and on behalf of the State under subsection (1) for any matter involving the doing of an act by the Ministerial Council or the Commission, the Ministerial Council or the Commission shall not do that act until the fee has been paid.

(6) Subsection (5) does not prohibit the doing of an act at a particular time if, as at that time—

- (a) the amount of the fee cannot be ascertained; and
- (b) if the Commissioner for Corporate Affairs has required under subsection (8) the payment of a deposit on account of the fee—the deposit has been paid.

(7) This section has effect notwithstanding anything contained in the applied provisions.

(8) Where the amount of a fee payable under subsection (1) for—

- (a) the lodgment of a document; or
- (b) a matter involving the doing of an act by the Ministerial Council or the Commission,

cannot be ascertained, the Commissioner for Corporate Affairs may—

- (c) before or at the time when the document is submitted for lodgment; or
- (d) before the Ministerial Council or the Commission does the act,

as the case may be, require the payment to the Commissioner for Corporate Affairs, on account of the fee, of a deposit of a specified amount that the Commissioner for Corporate Affairs considers it reasonable to expect will be the amount of the fee. ”.

(2) After section 8 as is inserted by section 5 the following sections are inserted—

Fee not ascertainable when it becomes payable

- “ 8A. (1) This section applies where the amount of a fee under section 8 (1) cannot be ascertained when the fee becomes payable, but at a later time becomes able to be ascertained.

(2) If a person has paid a deposit on account of the fee, the Commissioner for Corporate Affairs shall apply towards payment of the fee so much of the deposit as does not exceed the amount of the fee and—

- (a) if the amount of the deposit exceeds the amount of the fee—the Commissioner for Corporate Affairs shall refund to the person the amount of the excess; or
- (b) if the amount of the fee exceeds the amount of the deposit—as from the later time, so much of the fee as exceeds the amount of the deposit is a debt due to the State and payable by the person.

(3) Otherwise, the fee is, as from the later time, a debt due to the State and payable by the person whom the Commissioner for Corporate Affairs determines in writing to be the person who it is reasonable to expect would have paid the fee had the fee been able to be ascertained when it became payable.

Waiver and refund of fees

8B. Nothing in section 8 or 8A prevents the Commissioner for Corporate Affairs for and on behalf of the State from—

- (a) waiving or reducing, in a particular case or in particular classes of cases, fees that would otherwise be payable under section 8 or 8A; or
- (b) refunding in whole or in part, in a particular case or in particular classes of cases, fees paid under section 8 or 8A.

Debts due to the State

8C. The Commissioner for Corporate Affairs may recover in a court of competent jurisdiction a debt due under section 8 or 8A.

Payment of fee does not give right to inspect or search

8D. To avoid doubt, nothing in section 8 or 8A, and nothing done under section 8 or 8A—

- (a) imposes on the Commission or the Commissioner for Corporate Affairs a duty to allow the inspection or search of a register or document, or to make available information; or

(b) confers a right to inspect or search a register or document or to have information made available,

except so far as such a duty or right would exist under another provision of this Act or under some other law but for the effect of section 8 (5) and (6). ”.

Consequential amendment of sections 13 and 15

14. (1) Section 13 of the principal Act is amended, in subsection (1) (c) (ii), by inserting after “section 8” the following—

“ or 8A ”.

(2) Section 15 of the principal Act is amended by inserting after “section 8”, in each place where it occurs, the following—

“ , 8A, 8B, 8C or 8D ”.

PART 5—AMENDMENT OF *FUTURES INDUSTRY (APPLICATION OF LAWS) ACT 1986*

Principal Act

15. In this Part, the *Futures Industry (Application of Laws) Act 1986** is referred to as the principal Act.

[*Act No. 44 of 1986 amended by Act No. 48 of 1988 and by regulations published in the Gazette on 15 January 1988 and 27 January 1989 respectively.]

Section 3 amended: Interpretation

16. (1) Section 3 of the principal Act is amended in subsection (1) by inserting—

(a) before the definition of “Agreement”, the following—

“ “act” includes thing; ”;

(b) after the definition of “Agreement”, the following—

“ “chargeable matter” means a matter of a kind referred to in any of paragraphs (a) to (h), inclusive, of section 7 (1); ”;

and

(c) after the definition of “Commissioner for Corporate Affairs”, the following—

“ “fee” includes tax; ”;

“ “for”, in relation to a fee, includes in respect of; ”; and

“ “lodge” means lodge with the Commission; ”.

(2) After section 3 (1) of the principal Act the following subsections are inserted—

“ (1A) In this Act, a reference to the *Futures Industry (Fees) Act 1986* of the Commonwealth includes a reference to the *Futures Industry (Fees: Taxation Component) Act 1989* of the Commonwealth.

(1B) Subject to this section, an expression in section 7, 7A, 7B, 7C or 7D has the same meaning as in the applied provisions. ”.

**Section 7 repealed and
new section substituted: Fees**

17. (1) Section 7 of the principal Act is repealed and the following section is substituted—

Fees payable

“ 7. (1) There shall be paid to the Commissioner for Corporate Affairs, for and on behalf of the State, for—

- (a) the lodgment of documents under the applied provisions;
- (b) the registration of documents under the applied provisions;
- (c) the inspection or search of registers kept by, or documents in the custody of, the Commission under the applied provisions;
- (d) the making available by the Commission, under the applied provisions, of information (whether in the form of a document or otherwise);
- (e) the production by the Commission, under a subpoena, of such registers or documents;

- (f) the issuing of documents or copies of documents, the granting of licences, consents or approvals, or the doing of other acts, by the Ministerial Council or the Commission under the applied provisions;
- (g) the making of inquiries of, or applications to, the Ministerial Council or the Commission in relation to matters arising under the applied provisions; and
- (h) the submission to the Commission of documents for examination by the Commission,

such fees (if any) as are prescribed by regulations in force for the time being under the *Companies (Fees) Act 1981* of the Commonwealth and specified in the Schedule to those regulations as if amended as set out in Schedule 3 and as if, unless the contrary intention appears, the expressions used had the same respective meanings as in the applied provisions.

(2) Despite subsection (1), where but for this subsection the fee, or the total of the fees, payable under that subsection for a chargeable matter would exceed \$25 000, so much of that fee, or of that total, as exceeds \$25 000 is not payable.

(3) Where—

- (a) a fee is payable under subsection (1) for the lodgment of a document; and
- (b) the document is submitted for lodgment without payment of the fee,

the document shall be taken not to have been lodged until the fee is paid.

(4) Subsection (3) does not apply where, at the time when the document is submitted for lodgment, the amount of the fee cannot be ascertained, but if the Commissioner for Corporate Affairs, before or at that time, requires under subsection (8) the payment of a deposit on account of the fee, the document shall be taken not to have been lodged until a the deposit or the fee has been paid.

(5) Where a fee is payable to the Commissioner for Corporate Affairs for and on behalf of the State under subsection (1) for any matter involving the doing of an act by the Ministerial Council or the Commission, the Ministerial Council or the Commission shall not do that act until the fee has been paid.

(6) Subsection (5) does not prohibit the doing of an act at a particular time if, as at that time—

- (a) the amount of the fee cannot be ascertained; and
- (b) if the Commissioner for Corporate Affairs has required under subsection (8) the payment of a deposit on account of the fee—the deposit has been paid.

(7) This section has effect notwithstanding anything contained in the applied provisions.

(8) Where the amount of a fee payable under subsection (1) for—

- (a) the lodgment of a document; or
- (b) a matter involving the doing of an act by the Ministerial Council or the Commission,

cannot be ascertained, the Commissioner for Corporate Affairs may—

- (c) before or at the time when the document is submitted for lodgment; or
- (d) before the Ministerial Council or the Commission does the act,

as the case may be, require the payment to the Commissioner for Corporate Affairs, on account of the fee, of a deposit of a specified amount that the Commissioner for Corporate Affairs considers it reasonable to expect will be the amount of the fee. ”.

(2) After section 7 as is inserted by section 5 the following sections are inserted—

Fee not ascertainable when it becomes payable

- “ 7A. (1) This section applies where the amount of a fee under section 7 (1) cannot be ascertained when the fee becomes payable, but at a later time becomes able to be ascertained.

(2) If a person has paid a deposit on account of the fee, the Commissioner for Corporate Affairs shall apply towards payment of the fee so much of the deposit as does not exceed the amount of the fee and—

- (a) if the amount of the deposit exceeds the amount of the fee—the Commissioner for Corporate Affairs shall refund to the person the amount of the excess; or
- (b) if the amount of the fee exceeds the amount of the deposit—as from the later time, so much of the fee as exceeds the amount of the deposit is a debt due to the State and payable by the person.

(3) Otherwise, the fee is, as from the later time, a debt due to the State and payable by the person whom the Commissioner for Corporate Affairs determines in writing to be the person who it is reasonable to expect would have paid the fee had the fee been able to be ascertained when it became payable.

Waiver and refund of fees

7B. Nothing in section 7 or 7A prevents the Commissioner for Corporate Affairs for and on behalf of the State from—

- (a) waiving or reducing, in a particular case or in particular classes of cases, fees that would otherwise be payable under section 7 or 7A; or
- (b) refunding in whole or in part, in a particular case or in particular classes of cases, fees paid under section 7 or 7A.

Debts due to the State

7C. The Commissioner for Corporate Affairs may recover in a court of competent jurisdiction a debt due under section 7 or 7A.

Payment of fee does not give right to inspect or search

7D. To avoid doubt, nothing in section 7 or 7A, and nothing done under section 7 or 7A—

- (a) imposes on the Commission or the Commissioner for Corporate Affairs a duty to allow the inspection or search of a register or document, or to make available information; or

- (b) confers a right to inspect or search a register or document or to have information made available,

except so far as such a duty or right would exist under another provision of this Act or under some other law but for the effect of section 7 (5) and (6). ”.

Consequential amendment of sections 12 and 14

18. (1) Section 12 of the principal Act is amended, in subsection (1) (c) (ii), by inserting after “section 7” the following—

“ or 7A ”.

(2) Section 14 of the principal Act is amended by inserting after “section 7”, in each place where it occurs, the following—

“ , 7A, 7B, 7C or 7D ”.
