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**ELIZABETHAE II REGINAE**

A.D. 1960

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**No. 31 of 1960****An Act to amend the Companies Act, 1934-1956.**

[Assented to 3rd November, 1960.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

**Short titles.**

**1.** (1) This Act may be cited as the "Companies Act Amendment Act, 1960".

(2) The Companies Act, 1934-1956, as amended by this Act, may be cited as the "Companies Act, 1934-1960".

(3) The Companies Act, 1934-1956, is hereinafter referred to as "the principal Act".

**Incorporation.**

**2.** This Act is incorporated with the principal Act and that Act and this Act shall be read as one Act.

**Commence-  
ment.**

**3.** This Act shall come into operation on a day to be fixed by proclamation.

**Amendment of  
principal Act,  
s. 1.**

**4.** Subsection (2) of section 1 of the principal Act is amended by inserting before "PART IV.—Management and administration (sections 115 to 174)" the following :—

PART IIIA.—Interests other than shares, debentures, etc.  
(sections 114a to 114o).

5. The following Part is enacted and inserted in the principal Act after section 114 thereof :—

Enactment of  
Part IIIa of  
principal Act.

PART IIIa.

INTERESTS OTHER THAN SHARES,  
DEBENTURES, ETC.

114a. (1) In this Part, unless inconsistent with the con- Interpretation.  
text or subject matter,

“company” means a public company, and includes a corporation that is a public company under the law of a proclaimed State and registered under Part XII and a corporation that is by proclamation declared to be a company for the purposes of this Part:

“corporation” means any incorporated body whether incorporated within or outside the State and whether or not it is registered under this Act :

“interest” means any right to participate or interest whether enforceable or not and whether actual, prospective or contingent—

(a) in any profits, assets or realization of any financial or business undertaking or scheme, whether in the State or elsewhere ;

(b) in any common enterprise whether in the State or elsewhere in which the holder of the right or interest is led to expect profits, rent or interest from the efforts of the promoter of the enterprise or a third party ; or

(c) in any investment contract ;

whether or not the right or interest is evidenced by a formal document and whether or not the right or interest relates to a physical asset, but does not include—

(i) any share in or debenture of a corporation ;

(ii) any interest in or arising out of a policy of life assurance ;

(iii) any interest in a partnership agreement ;

(iv) any right or interest entitling a person to participate at any time in any profits, assets or realization of any financial or business undertaking or scheme of a

friendly society under the Friendly Societies Act, 1919-1956, an industrial and provident society registered under the Industrial and Provident Societies Act, 1923-1958, or a building society registered under the Building Societies Act, 1881-1938 ; or

- (v) any right or interest which is declared by proclamation to be an exempted right or interest ;

“investment contract” means any contract, scheme or arrangement which, in substance and irrespective of the form thereof, involves the investment of money in or under such circumstances that the investor acquires or may acquire an interest in or right in respect of property which under or in accordance with the terms of investment will or may at the option of the investor be used or employed in common with any other interest in or right in respect of property acquired in or under like circumstances :

“marketable securities” means any debentures, funds, stocks, shares or bonds of any Government or of any local government authority or of any corporation or society, and includes any right or option in respect of shares in any corporation :

“proclaimed State” means a State or Territory of the Commonwealth declared by proclamation to be a proclaimed State or Territory for the purposes of this Part.

(2) A reference in this Part to a deed shall be read as including a reference to any instrument amending or affecting the deed.

Approved  
deeds.

114b. For the purposes of this Part, a deed is an approved deed if—

- (a) the Registrar has granted his approval under this Part to the deed ; and
- (b) the Attorney-General or the Registrar has granted his approval under this Part to the trustee or representative appointed for the purposes of the deed acting as trustee or representative and that approval has not been revoked and the trustee or representative has not ceased to hold office as such.

114c. (1) Where a deed makes provision for the appointment of a person as trustee for or representative of the holders of interests issued or proposed to be issued, the Registrar may, subject to this section, upon application by or on behalf of the company seeking his approval to the deed, grant his approval to the deed. Approval of deeds.

(2) The Registrar shall not grant his approval to a deed unless—

(a) the deed—

(i) contains the covenants referred to in section 114e ; and

(ii) provides for such other matters and things as are prescribed by regulations made under section 373 for the purposes of this subsection ; or

(b) the deed has been approved under a law of a proclaimed State corresponding with this Part.

(3) Within seven days after a deed has been approved under this section the company on whose application or on whose behalf the deed was approved shall lodge in the office of the Registrar the deed, or a copy of the deed verified by statutory declaration made by the secretary or a director of the company and the copy shall for all purposes, in the absence of proof that it is not a true copy, be regarded as an original.

114d. (1) The Attorney-General may, subject to such terms and conditions as he thinks fit, grant his approval to a person acting as trustee or representative for the purposes of a deed. Approval of trustees.

(2) Where, under a law of a proclaimed State corresponding with this section, approval has been granted to a person acting as trustee or representative for the purposes of a deed, the Registrar shall also, on application, if satisfied that such approval has been so granted and has not been revoked, grant his approval to that person acting as trustee or representative for the purposes of the deed.

(3) The Attorney-General may, at any time, by reason of a breach of a term or condition subject to which the approval was granted or for any other reason, revoke an approval granted by him or by the Registrar under this section.

Covenants to  
be included in  
deeds.

114e. (1) The covenants required by section 114c to be contained in a deed are covenants to the following effect, namely :—

- (a) a covenant binding the company that it will use its best endeavours to carry on and conduct its business in a proper and efficient manner and to ensure that any undertaking, scheme or enterprise to which the deed relates is carried on and conducted in a proper and efficient manner ;
- (b) covenants binding the trustee or representative that he will
  - (i) exercise all due diligence and vigilance in carrying out his functions and duties and in watching the rights and interests of the holders of the interests to which the deed relates ;
  - (ii) keep or cause to be kept proper books of account in relation to those interests ; and
  - (iii) post or cause to be posted each year, to each of the holders of those interests a statement of the last annual accounts in respect of the undertaking, scheme or enterprise to which the deed relates with the report thereon of a person who holds a current auditor's licence issued under this Act ;
- (c) a covenant binding the company that, to the same extent as if the trustee or representative were a director of the company, the company will—
  - (i) make available to the trustee or representative, or to any person appointed by him and holding a current auditor's licence issued under this Act, for inspection the whole of the books of the company whether kept at the company's registered office or elsewhere and
  - (ii) give to the trustee or representative or to any such person such oral or written information as he requires with respect to all matters relating to the undertaking, scheme or enterprise or any

property (whether acquired before or after the date of the deed) of the company or otherwise relating to the affairs thereof ;

- (d) a covenant binding the company that the company will make available, or ensure that there is made available, to the trustee or representative such details as he requires with respect to all matters relating to the undertaking, scheme or enterprise to which the deed relates ;
- (e) covenants binding the company and the trustee or representative, respectively, that the company or the trustee or representative, as the case may be, will not exercise the right to vote in respect of any shares relating to the interests to which the deed relates held by the company or by the trustee or representative as such at any election of directors of a corporation whose shares are so held, without the consent of the majority in number of the holders of those interests present at a meeting of those holders summoned in the manner provided for in subparagraphs (i) and (ii) of paragraph (f) of this subsection for the purpose of authorizing the exercise of the right in each case ; and
- (f) a covenant binding the company that the company will from time to time on the application, delivered to the company at its registered office, of not less than fifty, or one-tenth in number, whichever is the less, of the holders of the interests to which the deed relates—
- (i) by giving notice at least seven days before the proposed meeting by letter sent by post addressed to each of those holders at his last known address or in the case of joint holders, a notice to the joint holder whose name stands first in the company's records ; and
- (ii) by giving notice at least fourteen days before the proposed meeting by advertisement in a daily newspaper circulating generally throughout the State addressed to those holders,

summon a meeting of the holders for the purpose of laying before the meeting the accounts and balance-sheet which were laid before the last

preceding annual general meeting of the company or the last audited statement of accounts of the trustee or representative in respect of the undertaking, scheme or enterprise to which the deed relates and for the purpose of giving to the trustee or representative such directions as the meeting thinks proper.

(2) A meeting summoned pursuant to or for the purposes of a covenant contained in a deed in pursuance of subsection (1) of this section shall be held at the time and place specified in the notice and advertisement under the chairmanship of

- (a) the trustee or representative ;
- (b) in his absence, a nominee of the trustee or representative approved by the Attorney-General ; or
- (c) in the absence of the trustee or representative or a nominee so approved, such other person as is appointed in that behalf by the holders present at the meeting,

and shall be conducted in accordance with the provisions of the deed, or, in so far as the deed makes no provision, as directed by the chairman of the meeting.

Interests to be issued by companies only.

114f. No person except a company or an agent of a company authorized in that behalf under the seal of the company shall issue or offer to the public for subscription or purchase or shall invite the public to subscribe for or purchase any interest.

Statement to be issued.

114g. (1) Before a company or an agent of a company issues or offers to the public for subscription or purchase or invites the public to subscribe for or purchase any interest, the company shall issue or cause to be issued a statement in writing in connection therewith which statement shall for all purposes be deemed to be a prospectus issued by a company, and, subject to subsection (2) of this section, all provisions of this Act and rules of law relating to prospectuses or to the offering or to an intended offering to the public of shares for subscription or to the issue of any form of application for shares in a company shall with such adaptations as are necessary apply and have effect accordingly as if the interest were shares offered or intended to be offered to the public for subscription and as if persons accepting any offer or invitation in respect of or applying for any such interest were subscribers for shares.

(2) In lieu of the matters and reports required to be stated as provided in Parts A and B of section 50 there shall be set out in the statement—

- (a) where the interest consists of rights or interests in or arising out of an investment in marketable securities issued by corporations other than the company issuing or causing the issue of the statement—such matters and reports as are specially prescribed by regulations made under section 373 for the purposes of this paragraph; and
- (b) where the interest consists of rights or interests other than those referred to in paragraph (a) of this subsection—such matters and reports as are so prescribed for the purposes of this paragraph,

but no statement shall be issued by a company pursuant to this section unless—

- (i) before the statement is to be issued the company lodges with the Registrar a typewritten draft of the proposed statement; and
- (ii) the Registrar has informed the company by notice in writing that the draft as so lodged, or as amended in accordance with the Registrar's directions or requirements, or both, is approved; and
- (iii) the statement is in accordance with the draft as so approved.

114h. (1) A person shall not issue or offer to the public for subscription or purchase or invite the public to subscribe for or purchase any interest unless, at the time of the issue, offer or invitation, there is in force, in relation to the interest, a deed that is an approved deed.

No issue without approved deed and approved trustee.

(2) Where a person inserts or causes to be inserted in an approved deed or a copy of an approved deed or any other document referring to an approved deed a statement that the deed has been approved by the Registrar or that the deed has been approved under this Part he shall insert or cause to be inserted immediately after the statement a further statement that the Registrar takes no responsibility as to the contents of the deed.



Interests  
issued before  
the commence-  
ment of 1960  
amendment.

114i. (1) Where—

- (a) an interest issued by a corporation before the date of commencement of the Companies Act Amendment Act, 1960, is in existence immediately before that date ;
- (b) there is not, at the expiration of three months after that date, a deed that is an approved deed in force in relation to the interest ; and
- (c) the corporation did not, within a period of one month after that date, apply for approval under this Part of a deed in relation to the interest or if it did so apply, approval was refused,

the corporation shall, if it is a company as defined by section 8 or a company incorporated outside the State and registered under Part XII, within fourteen days after the expiration of the period referred to in paragraph (b) of this subsection, give to the holder of the interest and to the Registrar notice in writing that there is not in force in relation to that interest a deed that is an approved deed and, if this subsection is not complied with, each director of the corporation shall, in addition to the corporation, be deemed to have failed to comply with this section.

(2) The Attorney-General may modify the application to a corporation of subsection (1) of this section by extending any period referred to in that subsection or may exempt any corporation from compliance with that subsection.

(3) Nothing in this section shall be construed as authorizing the Registrar to grant his approval to a deed that relates to an interest issued by a corporation that is not a company for the purposes of this Part.

Returns,  
balance-sheets,  
etc.

114j. (1) Where a deed relating to interests issued by a company is or has at any time been an approved deed, the company shall, so long as the deed or any deed in substitution in whole or in part for the deed, remains in force—

- (a) once at least in every calendar year not more than thirty days after the annual general meeting of the company—
  - (i) prepare and lodge with the Registrar a return containing a list of all persons

who on the day of the annual general meeting of that year, or on such other day as may be approved by the Registrar, were holders of the interests to which the deed relates, showing the name and address of each holder and the extent of his interest and, if his interest consists of a specific interest in any real or personal property, a description of the property and its location ; and

(ii) lodge with the Registrar a copy of the lists and statements referred to in subsection (2) of this section ; and

(b) not less than seven days before the annual general meeting of that year post or cause to be posted to any holder of an interest who has requested the company so to do, a copy of each of the following documents—

(i) the balance-sheet, profit and loss account and director's report to be laid before the company at that meeting ;

(ii) a summary of all purchases and sales of land and marketable securities by the company affecting the interests of the holders during the period to which the accounts relate ;

(iii) a statement of the total amount of brokerage affecting the interests of the holders paid or charged by the company during the period to which the accounts relate and the proportion thereof paid to any stock or share broker who, or any employee or nominee of whom, is an officer of the company and the proportion retained by the company ; and

(iv) a list of all the investments of the company affecting the interests of the holders as at the date of the balance-sheet showing the descriptions and quantities of the investments.

(2) There shall accompany every balance-sheet posted to a holder in pursuance of subsection (1) of this section—

(a) a list of all parcels of land and marketable securities affecting such holders held by the person who is

the trustee or representative in relation to the deed, as at the date to which the accounts are made up, showing the quantities of those securities and the basis on which they have been valued ;

(b) a list of all purchases and sales of land and marketable securities affecting such holders made by the trustee or representative, or by the company on behalf of the trustee or representative during the period to which the accounts relate ;

(c) a list of all the investments affecting such holders made during the period to which the accounts relate by the trustee or representative, or by the company on behalf of the trustee or representative, showing the descriptions and quantities of those investments ; and

(d) such other statements and particulars, if any, affecting such holders as may be prescribed,

each of which shall be signed by the person who signed the balance-sheet.

(3) Notwithstanding the provisions of subsection (1) but subject to subsection (4) of this section a company—

(a) which has its registered office within three miles of the office of the Registrar ; and

(b) provides reasonable accommodation facilities and opportunity for persons to inspect and take copies without fee of the return referred to in subsection (1),

need not lodge the return with the Registrar.

(4) The Governor may by order published in the *Gazette* require any company to which subsection (3) of this section applies to lodge with the Registrar the return referred to in subsection (1) of this section.

Contravention of Part does not relieve person from liability.

114k. A person shall not be relieved from any liability to any holder of an interest by reason of any contravention of or failure to comply with a provision of this Part.

Penalty for contravention of Part, etc.

114l. A person shall not—

(a) contravene or fail to comply with a provision of this Part ;

(b) fail to comply with a covenant contained in any deed that is or at any time has been an approved deed ; or

- (c) fail to comply with an order made under subsection (4) of section 114j of this Act.

Penalty : Five hundred pounds or imprisonment for twelve months.

114m. This Part shall not apply in the case of the sale of any interest by a personal representative, liquidator, receiver or trustee in bankruptcy in the ordinary course of realization of assets.

Non-application of Part to personal representative, etc.

114n. (1) Subject to this section, any provision contained in a deed that is or at any time has been an approved deed, or in any contract with the holders of interests to which such a deed relates, shall be void in so far as it would have the effect of exempting a trustee or representative under the deed from, or indemnifying him against, liability for breach of trust where he fails to show the degree of care and diligence required of him as trustee or representative having regard to the provisions of the deed conferring on him powers, authorities or discretions.

Liability of trustees.  
[U.K. s. 88.]

(2) Subsection (1) of this section shall not invalidate—

(a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee or representative before the giving of the release ; or

(b) any provision enabling such a release to be given—

(i) on the agreement thereto of a majority of not less than three-fourths in nominal value of holders of interests present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose ; and

(ii) either with respect to specific acts or omissions or on the trustee or representative dying or ceasing to act.

(3) The Registrar may, except in the case of a deed that has been approved under a law of a proclaimed state corresponding with section 114c, refuse to grant his approval of a deed under that section if the deed contains a provision that, upon or after approval of the deed, would be void by virtue of this section.

114o. The provisions of this Part are in addition to and shall not be construed as in derogation of any other provisions of this Act.

Provisions of this Part additional to other provisions of Act.

Amendment of  
principal Act,  
s. 158a.

6. Section 158a of the principal Act is amended by inserting after subsection (1) thereof, the following subsections :—

(1a) The Governor may, on the recommendation of the Attorney-General, appoint as an inspector such person as he considers competent to investigate the affairs of any existing company or any company registered under Part II or Part XII which, whether before or after the commencement of the Companies Act Amendment Act, 1960, issued any interest or interests as defined in section 114a.

(1b) The Attorney-General shall not make any such recommendation unless he has first received from the Commissioner of Police or the Registrar a written report containing such information as gives him reasonable cause to suspect

(a) that the company is not carrying on business in good faith in the interests of the holders or any holder of any interest or interests so issued ;  
or

(b) that the directors, managers or officers of the company have been guilty of fraudulent or negligent conduct which has caused or is likely to cause loss to the company or its shareholders or to all or any of the holders of such interests ; or

(c) that the company is endeavouring to raise capital from the public by unlawful or dishonest means ;  
or

(d) that an investigation into the affairs of the company is necessary or expedient for the protection of holders or prospective holders of such interests.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

J. M. NAPIER, Lieutenant-Governor.