



ANNO TERTIO

## GEORGII VI REGIS.

A.D. 1939.

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## No. 46 of 1939.

An Act to amend the Companies Act, 1934-1935.

[Assented to 21st December, 1939.]

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

1. (1) This Act may be cited as the "Companies Act Amendment Act, 1939". Short titles.

(2) The Companies Act, 1934-1935, as amended by this Act, may be cited as the "Companies Act, 1934-1939".

(3) The Companies Act, 1934-1935, is hereinafter called "the principal Act".

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

3. Section 8 of the principal Act is amended by striking out the definition of "the court" therein and inserting in lieu thereof the following definition :— Amendment of s. 8 of the principal Act—

"the court" means the Supreme Court or a judge thereof and includes the Master when exercising, in accordance with the rules of the court, the jurisdiction of the court. Interpretation of "the court".

4. The following section is hereby enacted and inserted in the principal Act after section 27 thereof :— Enactment of s. 27a of principal Act—

27a. (1) Except with the consent of the Governor signified by a notice in the *Gazette*, no company shall be registered by a name which includes any of the following Names suggesting Royal or Government patronage.

## Companies Act Amendment Act, 1939.

words, namely, "Royal", "King", "Queen", "Crown", "Empire", "Imperial", "Commonwealth", "State", or any other word which in the opinion of the registrar suggests or is calculated to suggest the patronage of His Majesty or any member of the Royal Family or the support or patronage of the Government of the Commonwealth or a State.

(2) This section shall apply to companies which are required to register under Part XII. of this Act as well as to companies formed under this Act.

Amendment of s. 56 of principal Act—

**5.** Subsection (4) of section 56 of the principal Act is amended—

Repayment of application money when subscriptions insufficient.

(a) by striking out "three" in the second line thereof and inserting in lieu of that word, the word "four"; and

(b) by striking out the word "four" in the fifth line and eleventh lines thereof and inserting in lieu of that word, in each case, the word "five".

Amendment of s. 57 of principal Act—  
Statement in lieu of prospectus.

**6.** Subsection (2) of section 57 of the principal Act is amended by striking out the words "no-liability company" in the first line thereof.

Amendment of s. 125 of principal Act—

**7.** Section 125 of the principal Act is amended by adding at the end thereof the following subsection:—

Notice of trusts.

(5) A company shall not be bound to see to the execution of any trust whether express, implied, or constructive, to which any of the shares of the company may be subject.

Amendment of s. 129 of principal Act—  
Annual return.

**8.** Section 129 of the principal Act is amended—

(a) by striking out in paragraph XIX. of subsection (1) thereof the words "which, or a list of which, are required to be registered or filed with the registrar under this Act" and inserting in lieu thereof the words "affecting property of the company"; and

(b) by inserting at the end of subsection (5) thereof the following passage:—

"or to any public company as regards any year if the registrar had not prior to the thirtieth day of September of that year issued to that company a statement that the company was entitled to commence business".

9. Section 139 of the principal Act is amended by inserting at the end thereof the following subsection :—

Amendment of s. 139 of principal Act—

(4) Any book kept pursuant to subsection (1) of this section may be either a bound book or a loose leaf book ; but if a loose leaf book is used, the pages thereof shall be numbered consecutively with numbers printed thereon ; and the chairman of the meeting at which any minutes entered therein are signed as correct, and the secretary of the company or some person acting on his behalf, shall at that meeting sign their names and enter the date of such signature on each page on which any minutes are written.

Minute book.

10. Section 147 of the principal Act is amended by inserting after subsection (2) thereof the following subsection :—

Amendment of s. 147 of principal Act—

(2a) The provisions of subsection (1) of this section with respect to the remuneration paid to directors shall not apply in relation to a managing director of the company ; and in the case of any other director who holds any salaried employment or office in the company the accounts need not include in the total amounts paid to him any sum paid to him otherwise than as remuneration for his services as a director.

Remuneration of directors.

11. (1) Subsection (1) of section 153 of the principal Act is amended by inserting after the word “ shall ” in the first line thereof the words “ at the statutory meeting held in accordance with section 132 and ”.

Amendment of s. 153 of principal Act—  
Appointment of auditors at first statutory meeting.

(2) Subsection (4) and subsection (6) of section 153 of the principal Act are amended by striking out in each subsection the words “ first annual general meeting ” and inserting in lieu thereof in each case the words “ statutory meeting held in accordance with section 132 ”.

12. (1) Section 154 of the principal Act is amended by inserting before the words “ an officer ” in paragraph (b) of subsection (1) thereof the words “ a director or ”.

Amendment of s. 154 of principal Act—  
Disqualification of auditor.

(2) Section 154 of the principal Act is further amended by adding at the end thereof the following subsection :—

(3) Notwithstanding the foregoing provisions of this section a person shall not be disqualified from holding office as auditor of a private company by reason only of the fact that he is in the employment of a director of the company.

Enactment of  
s. 158a of  
principal Act—

Power of  
Governor to  
appoint  
inspector

**13.** (1) The following section is hereby enacted and inserted in the principal Act after section 158 :—

158a. (1) The Governor, on the recommendation of the Attorney-General, may appoint the Auditor-General, the registrar or any other competent person as an inspector to investigate the affairs of any company.

The Attorney-General shall not make any such recommendation unless he has first received a written report from the Commissioner of Police or the registrar and the information contained in that report is such that he has reasonable cause to suspect that —

- (a) the company is not carrying on business in good faith in the interests of shareholders ; 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 serious loss to the company or the shareholders ; or
- (c) that the company is endeavouring to raise capital from the public by unlawful or dishonest means.

(2) In relation to any investigation under this section—

- (a) the inspector so appointed shall have the same powers and duties as an inspector appointed by the court, except that instead of reporting to the court he shall report to the Governor ; and
- (b) officers and agents of the company shall have the same duties and liabilities as if the inspector had been appointed by the court.

(3) If any officer or agent of the company refuses to produce to the inspector any book or document which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the inspector with respect to the affairs of the company, he shall be liable to be proceeded against in the same manner as if the inspector had been appointed by the court.

(4) For the purposes of this section—

- (a) the expression “ officers ” includes former officers ; and
- (b) the expression “ agents ” in relation to a company shall be deemed to include the bankers of the company and any persons employed by the company as auditors, whether those persons are or are not officers of the company.

14. Section 161 of the principal Act is amended by inserting at the end of subsection (1) thereof the following passage :—

Amendment of s. 161 of principal Act—  
Restriction on appointment of director.

; or

v. (in the case of a company formed or intended to be formed by way of reconstruction of another company or group of companies), made and forwarded to the registrar a statutory declaration that he was a shareholder in such other company or in one or more of the companies of the said group, and that as such shareholder he will be entitled to receive and have registered in his name a number of shares not less than his qualification, by virtue of the terms of an agreement relating to the said reconstruction.

15. Section 165 of the principal Act is amended by adding at the end of subsection (2) thereof the following proviso :—

Amendment of s. 165 of principal Act—  
Time for notifying appointment of director resident abroad.

Provided that where the said return or notification relates to the appointment of a director (whether one of the first directors or a director appointed on a change of directors) not resident in the Commonwealth, the period within which the said return or notification is to be sent shall be three months from the appointment.

16. Section 166 of the principal Act is amended by adding at the end thereof the following subsections :—

Amendment of s. 166 of principal Act—

(5) This section shall apply to a managing director and his emoluments; and the said emoluments shall include all fees, percentages, and other payments made or consideration given directly or indirectly to the managing director as such, and the money value of any allowance or perquisites belonging to his office.

Statement as to remuneration of directors.

(6) A resolution under paragraph (a) of the proviso to subsection (1) of this section, resolving that a statement shall be not furnished, shall be of no effect unless the meeting at which the resolution was carried was called by seven days notice in writing given to each shareholder.

17. Section 176 of the principal Act is amended by inserting after subsection (2) thereof the following subsection :—

Amendment of s. 176 of principal Act—

(2a) The registrar may, on the application of any company, fix a day other than the thirtieth day of September, as the day from which the time within which that company must lodge a return under this section is to be computed, and when a day has been so fixed this section shall be construed as regards the particular company as

Returns by no-liability companies.

though the day so fixed were substituted for the thirtieth day of September wherever that day is mentioned in this section.

Amendment of s. 179 of principal Act—  
Commencement of provision as to forfeited shares.

**18.** Section 179 of the principal Act is amended by inserting at the end thereof the following subsection, the previous part of the section being read as subsection (1) thereof :—

(2) This section shall apply in relation to all forfeited shares offered for sale after the date on which this Act received the Royal Assent, namely, the sixth day of December, nineteen hundred and thirty-four.

Amendment of s. 206 of the principal Act—

**19.** Section 206 of the principal Act is amended by adding at the end thereof the following subsection :—

Power of court as to security to be given by liquidator.

(4) The court may in its discretion require any liquidator either before appointment or at any subsequent time to give security in addition to any other security that he is required to give under this Act or any regulations thereunder, and may determine the amount, conditions and form of such security.

Amendment of s. 270 of principal Act—  
Taxation of solicitors costs incurred in liquidation.

**20.** Section 270 of the principal Act is amended by striking out in the fifth and sixth lines of subsection (2) thereof the words “ The costs of a solicitor exceeding ten pounds shall be taxed by the Master of the Court ”.

Amendment of s. 311 of principal Act—  
Auditors not to be receivers.

**21.** Section 311 of the principal Act is amended by striking out the words “ auditor or ” in the first and last lines of subsection (3) thereof.

Amendment of s. 316 of principal Act—  
Evidentiary provision.

**22.** Section 316 of the principal Act is amended by adding at the end thereof the following subsection :—

(3) Any document kept, recorded, filed, or registered pursuant to this Act at the office of the registrar or a copy or extract thereof certified as provided in subsection (2) of this section shall be *prima facie* evidence of the facts recorded or contained in such document, copy, or extract.

Amendment of s. 358 of principal Act—  
Filing of balance-sheets.

**23.** Section 358 of the principal Act is amended by striking out the words “ private or proprietary ” in the first and second lines of subsection (4) thereof.

Enactment of ss. 361a-361c of principal Act—

**24.** The following sections are enacted and inserted in the principal Act after section 361 thereof :—

Liquidation of company in country of incorporation.

361a. (1) If any company to which this Part applies goes into liquidation in the country or State in which it is incorporated, the person whose name has been filed under section 352 of this Act as agent of the company shall forthwith file with the registrar notice of the liquidation and of the appointment of the liquidator, and such

liquidator shall, until a liquidator for South Australia is appointed by the court, have the powers of a liquidator for South Australia.

(2) Any creditor or contributory of such a company going into liquidation as aforesaid may apply to the court for an order that the affairs of the company, so far as South Australian assets are concerned, be wound up in South Australia, and on such order being made, the provisions of this Part relating to the winding-up of a company incorporated in South Australia shall with such adaptations as are necessary extend and apply accordingly.

361b. If any company to which this Part applies is dissolved in the country in which it is incorporated the person whose name has been filed under section 352 of this Act as agent of the company shall forthwith file notice of the dissolution with the registrar, who shall thereupon remove the name of the company from the register.

Notice of  
dissolution of  
company.

361c. (1) Where the registrar has reasonable cause to believe that a company to which this Part applies has ceased to have a place of business or to carry on business in South Australia, he may serve on the company a written notice, inquiring whether the company has a place of business or is carrying on business in South Australia.

Provision as  
to companies  
ceasing to do  
business in  
the State.

(2) If the registrar does not receive an answer to his inquiry within one month after service of the notice, if served on the company at an address within the Commonwealth, or within three months, if served on the company at an address outside the Commonwealth, he shall, within fourteen days after the expiration of one month or three months (as the case may be) serve a further notice referring to the first notice, and stating that no answer thereto has been received and that if an answer to the second notice is not received within one month, if the notice is served on the company at an address within the Commonwealth, or within three months, if the notice is served on the company at an address outside the Commonwealth, from the service of such second notice, a notice will be published in the *Government Gazette* with a view to striking the name of the company off the register.

(3) If the registrar receives an answer to either notice to the effect that the company has no place of business and is not carrying on business in South Australia, or does not receive an answer to his second notice within the time mentioned in subsection (2), he may publish in the *Government Gazette* and serve on the company a notice that at the expiration of three months from the date of that notice, the name of the

company mentioned therein will, unless cause is shown to the contrary, be struck off the register.

(4) At the expiration of the said three months the registrar may, unless cause to the contrary is shown by the company, strike its name off the register, and having done so shall publish in the *Government Gazette* a notice that the name of the company has been struck off the register; and on the publication in the *Government Gazette* of this notice the company shall cease to be registered as a company to which this Part applies :

Provided that the liability (if any) of every director managing officer and member of the company and of the person whose name has been filed under section 352 as the agent of the company shall continue and may be enforced as if the name of the company had not been struck off the register.

(5) The company, or any member or creditor thereof aggrieved by the company having been struck off the register may, within two years after the publication of the notice in the the *Gazette* under subsection (4) of this section, apply to the court for an order restoring the name of the company to the register. The court, if satisfied that the company at the time of the striking off had a place of business or was carrying on business in South Australia, or that for any other reason it is just that the name of the company be restored to the register, may order the name of the company to be restored to the register. Thereupon the company shall be deemed to have continued to be a company registered under this Part as if its name had not been struck off the register, and the court may, by the order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off the register.

(6) Any notice under this section may be served on the company in manner prescribed by section 352 of this Act, or by posting it in a prepaid registered letter addressed to the company at its head office.

Amendment of  
s. 368 of  
principal Act—  
Share hawking.

**25.** Section 368 of the principal Act is amended by inserting at the end of subsection (1) thereof the words “ or in exchange for other shares ”.

Minor  
amendments  
of principal  
Act.

**26.** The principal Act is further amended in the manner set out in the schedule to this Act.

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

C. M. BARCLAY-HARVEY, Governor.



## THE SCHEDULE.

Section of Principal Act Amended.	How amended.
1. Section 8 . . . . .	After the definition of "practitioner" insert the following definition :— "private company" means private limited company.
2. Section 35 . . . . .	After the word "powers" in the third line insert the following words :—"included in its memorandum or".
3. Section 37 . . . . .	Strike out the last three lines of subsection (3). Strike out the word "affidavit" in the second line of subsection (4) and insert the words "statutory declaration".
4. Section 64 . . . . .	At the end of the proviso to subsection (1) insert the following paragraph :— (e) the provisions of paragraphs (a) to (d) inclusive of this proviso shall not apply to a no-liability company.
5. Section 107 . . . . .	Strike out the word "on" in the fourth line of subsection (2) and insert the words "within seven days after".
6. Section 129 . . . . .	Strike out the word "twenty-one" in the second line of subsection (1) and insert in lieu thereof the word "thirty".
7. Section 130 . . . . .	Strike out the word "twenty-one" in the second line of subsection (1) and insert in lieu thereof the word "thirty".
8. Section 133 . . . . .	Strike out the words "said date" at the end of subsection (3) thereof and insert in lieu thereof the words "date of the deposit".
9. Section 149 . . . . .	Strike out the word "either" in the fourth line of subsection (2).
10. Section 176 . . . . .	Strike out the word "twenty-one" in the first line and insert in lieu thereof the word "thirty".
11. Section 194 . . . . .	After the word "proprietary" in the second line of paragraph iv. insert "or private".
12. Section 196 . . . . .	After the word "proprietary" in the fourth line of paragraph (a) of the proviso to subsection (1) insert "or private".
13. Section 293 . . . . .	Strike out the word "five" in the first line of subsection (3) and insert "seven".
14. Section 367 . . . . .	After the word "in" in the second line of subsection (1) insert "addition to".
15. Second Schedule	Strike out in the heading thereto the words "LIMITED BY SHARES".