



ANNO QUINTO

ELIZABETHAE II REGINAE

A.D. 1956.

No. 55 of 1956.

An Act to amend the Companies Act, 1934-1952.

[Assented to 29th November, 1956.]

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, 1956".

(2) The Companies Act, 1934-1952, as amended by this Act, may be cited as the "Companies Act, 1934-1956".

(3) The Companies Act, 1934-1952, 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.

Amendment of principal Act, s. 37—

Meaning of "proprietary company".

3. Section 37 of the principal Act is amended—

(a) by inserting after the word "resolution" in the second line of subsection (3) the words "determine to be a proprietary company and" ;

(b) by striking out subsection (4) and inserting in its place the following subsection :—

(4) Upon—

(a) the filing of a copy of the resolution ;

(b) the registration of the alterations of the memorandum or articles ; and

(c) the filing of a statutory declaration by a director or manager of the company that the memorandum or articles restrict limit and prohibit as aforesaid,

the registrar may, subject to section 39 and this subsection, issue a certificate of incorporation altered so as to certify that the company is a proprietary company.

The registrar shall not issue the certificate until after the expiration of fourteen days from the passing of the resolution.

4. (1) Section 38 of the principal Act is amended—

(a) by striking out the words “and stating whether or not the company has invited the public to subscribe for any shares, debentures, stock, or bonds of the company and has, or has not, issued any shares, debentures, stock, or bonds pursuant to any application received on any such invitation, the registrar may” in the fifteenth to nineteenth lines of subsection (2) and inserting in their place the words “the registrar may, subject to section 39 and this subsection” ;

(b) by striking out the proviso to subsection (2) ;

(c) by adding at the end of subsection (2) the following paragraph :—

The registrar shall not issue the certificate until after the expiration of fourteen days from the passing of the resolution.

(2) The amendments made to section 38 of the principal Act by this section shall apply in every case where after the commencement of this Act a special resolution is passed pursuant to subsection (2) of that section.

5. Section 39 of the principal Act is repealed and the following section enacted and inserted in its place :—

39. (1) Where a company has after the commencement of the Companies Act Amendment Act, 1956, by special resolution determined to be a proprietary or private company, any shareholder, debentureholder, stockholder, bondholder or creditor may apply to the court to disallow the resolution.

Amendment of
principal Act,
s. 38—
Private
company.

Repeal and
re-enactment
of s. 39 of
principal Act—

Resolution to
be proprietary
or private
company to
require
confirmation
in certain
cases.

(2) The application shall be made and notice thereof filed with the registrar within fourteen days of the passing of the resolution.

(3) On the making of the application and the filing of the notice with the registrar in accordance with this section, the resolution shall not have effect unless it is confirmed by the court and a copy of the order confirming the resolution has been filed with the registrar.

(4) The court, after hearing the applicant and any other person who applies to the court to be heard and appears to the court to be interested in the application, may, if it is satisfied that, having regard to all the circumstances, the conversion of the company into a proprietary or private company would unfairly prejudice the applicant, disallow the resolution, and shall, if not so satisfied, confirm the resolution.

Amendment of
principal Act,
s. 49—
Filing of
prospectus.

6. Section 49 of the principal Act is amended by adding at the end of subsection (3) the following paragraph :—

The registrar may refuse to accept a prospectus if the prospectus appears to him on the face of it not to comply otherwise with the provisions of this Act.

Amendment of
principal Act,
s. 51—
Power to
issue abridged
advertisement.

7. Section 51 of the principal Act is amended by striking out the words “and the number of shares subscribed for by them respectively” in the eighth line thereof.

Amendment of
principal Act,
s. 83—
Nature of
shares.

8. Section 83 of the principal Act is amended by adding at the end of subsection (2) the following proviso :—

Provided that, if at any time all the issued shares in a company or all the issued shares therein of a particular class (whether issued before or after the commencement of the Companies Act Amendment Act, 1956) are fully paid up and rank *pari passu* for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up.

Amendment of
principal Act,
s. 119—
Register of
members.

9. Section 119 of the principal Act is amended by inserting after the word “number” in the second line of subparagraph (i) of paragraph (a) of subsection (1) the words “so long as the share has a number”.

10. Section 121 of the principal Act is amended by inserting after the word "number" in the second line of paragraph II of subsection (1) the words "so long as the share has a number".

Amendment of principal Act, s. 121—
Provisions as to entries in register in relation to share warrants.

11. Section 131 of the principal Act is amended by striking out the word "fifteen" in the third line of subsection (1) and inserting in its place the word "sixteen".

Amendment of principal Act, s. 131—
Annual general meeting.

12. Section 142 of the principal Act is amended by striking out the word "three" in the tenth and last lines of subsection (1) and inserting in its place in each case the word "four".

Amendment of principal Act, s. 142—
Profit and loss account and balance-sheet.

13. Section 176 of the principal Act is amended—

(a) by inserting after paragraph XIV of subsection (1) the following paragraph :—

Amendment of principal Act, s. 176—
Returns to be made by no-liability companies.

XIVA. The date of holding the last annual meeting :

(b) by striking out the word "five" in the last line of subsection (3) and inserting in its place the word "ten".

14. The following sections are enacted and inserted in the principal Act after section 358 :—

Enactment of ss. 358a to 358m of principal Act—

358a. (1) Subject to subsections (3) and (4) of this section and this subsection, a company to which this Part applies and which has a share capital and has any member who is resident in this State, shall keep at its registered office in this State a branch register for the purpose of registering shares of members resident in this State who apply to have the shares registered therein.

Branch register.

The company shall not be required to keep a branch register pursuant to this subsection until after the expiration of the prescribed number of days from the receipt by the company of an application in writing by a member resident in this State for the registration in the branch register of the company in this State of shares held by the member.

In this subsection the prescribed number of days is fourteen days in the case of a company incorporated within the Commonwealth, and twenty-eight days in the case of any other company.

(2) If default is made in complying with subsection (1) of this section, the company, the agent and every officer of the company who is in default shall be liable

to a penalty of twenty pounds for every day during which the default continues.

(3) A company which is registered under this Part at the commencement of the Companies Act Amendment Act, 1956, shall not be required to keep a branch register by virtue of this section—

(a) where the company is incorporated outside this State, but within the Commonwealth, until after the expiration of six months from the commencement of that Act; and

(b) where the company is incorporated outside the Commonwealth, until after the expiration of twelve months from the commencement of that Act.

(4) This section shall not apply to any company which by its constitution prohibits any invitation to the public to subscribe for shares in the company.

Registration of shares in, and removal of shares from, branch register.

358b. (1) Subject to the regulations, on application in that behalf by a member resident in this State the company shall within the prescribed time (if any) register in the branch register shares held by the member which are registered in any other register kept by the company.

(2) Subject to the regulations, on application in that behalf by a member holding shares registered in the branch register, the company shall within the prescribed time (if any) remove the shares from the branch register.

Keeping of register.

358c. (1) The company shall keep the branch register in one or more books at its registered office, and enter therein the following particulars :—

(a) The name and address and occupation (if any) of every member of the company holding shares registered in the branch register;

(b) A statement—

(i) of the shares held by each such member and registered in the branch register (where the law of the State or country where the company is incorporated requires any share to be distinguished by a number, distinguishing the share by its number); and

(ii) where the share capital of the company comprises shares of different classes or kinds or having special rights or subject to special restrictions or disabilities, of the classes or kinds of shares and the respective number thereof held by each such member and registered in the branch register ; and

(iii) of the amount paid or agreed to be considered as paid on the shares held by each such member and registered in the branch register :

Provided that, where by the constitution of the company the members of the company take no liability, this subparagraph shall be deemed to have been complied with if there is entered in the branch register a statement of the amount paid up, or deemed to have been paid up, at the date of allotment on the shares held by each such member and registered in the branch register and there is entered on the first sheet of the branch register a summary of all calls made by the company showing the shares in respect of which each call was made, the number of each call, and the respective days when each call was made and was payable ;

(c) The day on which any person is entered in the branch register as a member holding shares registered therein ; and

(d) The day on which any person ceases to be entered in the branch register as a member holding shares registered therein :

Provided that where the company has converted any of its shares into stock, the branch register shall show the amount of stock held by each member and registered in the branch register instead of the amount of shares, and the particulars relating to shares specified in this subsection.

(2) A specimen copy of any type of share certificate to be issued by the company to members holding shares

registered in the branch register shall be affixed in the register before any certificate of that type is issued or delivered out by the company.

Index of
members
holding shares
registered in
branch
register.

358d. (1) If the company has more than fifty members holding shares registered in the branch register, the company shall, unless the branch register is in such a form as to constitute in itself an index, keep at the registered office of the company an index of the names of the members holding shares so registered and shall, within fourteen days after the day on which any alteration is made in the branch register, make any necessary alteration in the index.

(2) The index (which may be in the form of a card index) shall, in respect of each member, contain a sufficient indication to enable the account of the member to be readily found in the branch register.

Inspection of
branch
register.

358e. (1) Except when the branch register is closed under the provisions of this Part, the company shall keep the register open (subject to such reasonable restrictions as the company may impose, so that not less than three hours in each day be allowed for inspection) for at least three hours between the hours of eight o'clock in the morning and ten o'clock in the evening, each day for at least three days each week, to the inspection of any member *gratis*, and to the inspection of any other person on payment of one shilling or such less sum as the company may fix for each inspection :

Provided that, where the company has restricted the hours during which the register is open for inspection for any period less than the hours when the registered office of the company is open to the public, such restriction shall have no effect until notice thereof has been filed with the registrar.

(2) Any member or other person may require a copy of the register or of any part thereof on payment of sixpence or such less sum as the company may fix for every hundred words or fractional part thereof required to be copied. The company shall cause any copy so required to be despatched to that person within ten days of the day on which the requirement is received by the company.

(3) If an inspection required under this section is refused or if a copy required under this section is not despatched within the time provided by this section, the court may by order compel an immediate inspection of the register and index, or direct that the copy required shall be sent

to the person requiring it, and make any further order which to the court seems proper.

358f. The company may, on giving not less than seven clear days' notice by advertisement in some newspaper published in Adelaide or in the locality in which the registered office of the company is situate, close the branch register for any time or times not exceeding in the whole thirty days in each year.

Power to close branch register.

358g. (1) If—

(a) the name of any person is without sufficient cause entered in or omitted from the branch register; or

(b) default is made or unnecessary delay takes place in registering in or removing from the branch register any shares or in entering in the branch register the fact of any person having ceased to hold any shares registered in the branch register,

Power of court to rectify branch register

the person aggrieved or any member of the company or the company may apply to the court for rectification of the register.

(2) The court may either refuse the application or may order rectification of the register and payment by the company or any other party to the proceedings of any damages sustained by any party aggrieved.

(3) On any application under this section the court may decide any question relating to the title of any person who is a party to the proceeding to have his name entered in or omitted from, or any shares registered in or removed from, the register, whether the question arises between members or alleged members or between members or alleged members on the one hand and the company on the other hand: and generally may decide any question necessary or expedient to be decided for rectification of the register.

(4) The court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be filed with the registrar.

358h. Section 125 shall apply with the necessary modifications with respect to the branch register and shares registered therein.

Entry of trusts and trustees.

Branch register to be evidence.

358i. The branch register shall be *prima facie* evidence of any matters by this Part directed or authorized to be inserted therein.

Transfer of shares registered in branch register.

358j. A transfer of shares held by any member and registered in the branch register shall, subject to this Part, be effected in the same manner as a transfer on the principal register kept by the company.

Transfer of shares not to be registered except on production of instrument of transfer.

358k. Notwithstanding anything in the constitution of the company, it shall not be lawful for the company to register a transfer of shares in the company on the branch register unless a proper instrument of transfer has been delivered to the company :

Provided that nothing in this section shall prejudice any power of the company to register as shareholder any person to whom the right to any shares in the company has been transmitted by operation of law.

Application of provisions of Act relating to transfer.

358l. Sections 85, 86, 88 and 91, subsection (1) of section 87, and subsections (1) and (3) of section 89, shall apply with the necessary modifications with respect to the transfer of shares on the branch register.

Seal.

358m. (1) The company may keep a seal at its registered office in this State.

(2) A certificate under the seal specifying any shares held by any member and registered in the branch register shall be *prima facie* evidence of the title of the member to the shares and the registration of the shares in the branch register.

Amendment of principal Act, s. 363—
Effect of non-registration and penalties.

15. Section 363 of the principal Act is amended—

(a) by adding at the end of subsection (1) the following paragraph :—

For the purposes of this subsection, a company shall be deemed to carry on business contrary to this Part of this Act if it does not comply with section 358a.

(b) by inserting after the word “shall” in the fourth line of subsection (2), the words “except where this Part provides otherwise”.

Amendment of principal Act, s. 365—
Definitions.

16. Section 365 of the principal Act is amended by striking out the definition of “house” therein.

17. Section 366 of the principal Act is amended by inserting at the end of subsection (1) the following paragraph :—

The registrar may refuse to accept the prospectus if the prospectus appears to him on the face of it not to comply with the provisions of this Part of this Act.

Amendment of principal Act, s. 366—
Provisions with respect to prospectuses of foreign companies inviting subscriptions for shares or offering shares for sale.

18. Section 368 of the principal Act is amended—

(a) by striking out subsection (1) and inserting in its place the following subsection :—

(1) A person shall not go from place to place offering to any member of the public any interest for subscription or purchase or in exchange for any other interest.

Amendment of principal Act, s. 368—
Restrictions on offering of shares for subscription or sale.

In this subsection—

“interest” means—

- (i) any shares ; or
- (ii) any right or interest, or purported right or interest, entitling or purporting to entitle a person to participate at any time, and whether conditionally or unconditionally, in any profits, assets or realization of any financial or business undertaking or scheme, other than the undertaking or scheme of a friendly society under the Friendly Societies Act, 1919-1954, an industrial and provident society registered under the Industrial and Provident Societies Act, 1923-1954, or a building society registered under The Building Societies Act, 1881-1938,

but does not include any such right or interest under a contract of insurance ;
and

“place” includes a house, but does not include an office used for business purposes.

(b) by striking out the word “shares” in the third line of subsection (8) and inserting in its place the words “an interest within the meaning of subsection (1)” ;

(c) by striking out the word "shares" in the tenth line of subsection (8) and inserting in its place the words "interest within the meaning of subsection (1)".

Amendment of
principal Act,
s. 386—

Mortgaging of
shares by
deposit.

19. Section 386 of the principal Act is amended by inserting after the word "thereof" in the sixth line thereof the words "(if any)".

Amendment of
principal Act,
s. 400—

Powers of
certain foreign
corporations.

20. Section 400 of the principal Act is amended by striking out the word "company" in the second, fourth and fifth lines thereof and inserting in its place in each case the word "corporation".

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

R. A. GEORGE, Governor.