



SANTOS LIMITED (REGULATION OF SHAREHOLDINGS) ACT, 1989

No. 58 of 1989

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ELIZABETHAE II REGINAE

A.D. 1989

No. 58 of 1989

An Act to regulate shareholdings in Santos Limited while that company, or a subsidiary of that company, engages in the recovery and production of petroleum within the State; to repeal the Santos (Regulation of Shareholdings) Act, 1979; and for other purposes.

[Assented to 26 October 1989]

The Parliament of South Australia enacts as follows:

Short title

1. This Act may be cited as the *Santos Limited (Regulation of Shareholdings) Act, 1989*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears—
 - “the Code” means the *Companies (South Australia) Code*;
 - “the Company” means Santos Limited;
 - “director” has the meaning assigned by section 5 (1) of the Code;
 - “officer”, in relation to the Company, has the meaning assigned by section 5 (1) of the Code;
 - “petroleum” has the meaning assigned by section 3 (1) of the *Petroleum Act, 1940*;
 - “relevant interest”, in relation to shares in the Company, has the same meaning as the expression has for the purposes of Division 4 of Part IV of the Code;
 - “share”, in relation to the Company, means a share in the share capital of the Company and includes stock;
 - “subsidiary”, in relation to the Company, has the same meaning as the expression has for the purposes of the Code;
 - “voting share” has the meaning assigned by section 5 (1) of the Code.
- (2) For the purposes of this Act, a person is an associate of another—
 - (a) if the person is an associate of the other for the purposes of Division 4 of Part IV of the Code;

or

(b) if the Minister—

(i) is of the opinion that the person and the other are likely to act in concert with a view to taking control of the Company or otherwise against the public interest;

and

(ii) by notice in writing served on the Company, declares that the person is an associate of the other.

(3) Where notice of a declaration under subsection (2) is served on the Company, the Minister must, at the same time or as soon as practicable thereafter, cause written notice of the declaration to be served on the persons to whom the declaration relates.

(4) For the purposes of this Act, the voting shares in the Company to which a person (being the Company or any other person) is entitled include—

(a) voting shares in which the person has a relevant interest;

and

(b) voting shares in which an associate of the person has a relevant interest.

(5) A reference in this Act to the Code is a reference to the Code as it would apply if references in the Code to a corporation or company included references to—

(a) a body corporate of any kind wherever formed or incorporated and whether formed or incorporated under the Code or any other law;

(b) any unincorporated society, association, company of proprietors or other body, wherever formed, that, under the law of its place of formation, may sue or be sued, or may hold property in the name of the secretary or some other officer of the society, association or body, or in the name of any trustee or trustees;

and

(c) any unincorporated society, association, company of proprietors or other body or undertaking to which is applied, under the laws of the place of its formation, with or without exceptions, a law in force in that place relating to companies or corporations as if it were a company or corporation within the meaning of that law.

(6) The regulations may provide that relevant interests, or particular classes of relevant interests, in shares, or in particular classes of shares, are, in such circumstances and subject to such conditions (if any) as are specified in the regulations, to be disregarded for such purposes as are specified in the regulations.

(7) If the whole or a portion of the share capital of the Company consists of stock, a reference in this Act to a number of shares in the Company as a percentage is, in relation to an amount of stock, a reference to the amount of stock that represents that number of shares.

(8) If a person has a right to have transferred to him or her shares in the Company that are held by another, the first mentioned person is to be taken, for the purposes of this Act (other than section 9 (3)), to hold the shares.

Application of Act

4. (1) This Act applies in relation to the Company only so long as the Company, or a subsidiary of the Company, engages in the recovery and production of petroleum within the State.

(2) This Act (including any provision of the Code referred to or applied for the purposes of this Act) applies in relation to any transaction, agreement, arrangement, understanding or undertaking—

- (a) whether the transaction, agreement, arrangement, understanding or undertaking is entered into, or made, in this State or elsewhere;
 - (b) whether the shares (if any) to which the transaction, agreement, arrangement, understanding or undertaking relates are registered in this State or elsewhere;
- and
- (c) whether the proper law of the transaction, agreement, arrangement, understanding or undertaking is the law of this State or not.

Prohibited shareholding interest

5. (1) A person has a prohibited shareholding interest in the Company if the person is entitled to voting shares in the Company that together constitute more than 15 per cent of the total number of voting shares in the Company.

(2) For the purposes of this Act, the Company cannot have a prohibited shareholding interest in itself.

Prohibition on having entitlement to more than 15 per cent of the voting shares in the Company

6. It is unlawful for a person to have a prohibited shareholding interest in the Company.

Power to require information relating to entitlement to shares in the Company

7. (1) The Minister, or a director or the secretary of the Company, may, by notice in writing served on a person who has, or is suspected by the Minister, director or secretary, as the case may be, of having, a relevant interest in shares in the Company, require the person to furnish information specified in the notice for the purpose of determining whether that person or any other person has, or is taking action to acquire, a prohibited shareholding interest in the Company.

(2) A notice under subsection (1) may require the person on whom the notice is served, or, if that person is a corporation, two directors of the corporation, to verify by statutory declaration any information furnished in compliance with the notice.

(3) If—

(a) a person on whom a notice under subsection (1) has been served fails to furnish, within the time allowed in the notice, the information required by the notice, verified as required by the notice;

or

(b) information furnished by the person in response to the notice is, in the opinion of the Minister, by reason of anything included in it or omitted from it, false or misleading in a material particular,

the Minister may, by reason only of that fact, by notice in writing served on the Company, do one or more of the following:

- (c) declare that the person is an associate of another, or that another is an associate of that person;
- (d) declare that the person, or another to whom a declaration under paragraph (c) relates, has a relevant interest in specified shares in the Company;
- (e) declare that the voting rights attaching to the shares to which a declaration under paragraph (d) relates are suspended;
- (f) declare that the person, or another to whom a declaration under paragraph (c) relates, has a prohibited shareholding interest in the Company.

(4) Where notice of a declaration under subsection (3) is served on the Company, the Minister must, at the same time or as soon as practicable thereafter, cause written notice of the declaration to be served—

(a) on the person to whom the declaration relates;

and

(b) in the case of a declaration under paragraph (e) of that subsection—on the holder of the shares to which the declaration relates.

Disposal, forfeiture, etc., of shares where prohibited shareholding interest

8. (1) Where the Minister—

(a) makes a declaration under section 7 (3);

or

(b) forms the opinion and, by notice in writing served on the Company, declares under this subsection,

that a person (in this section referred to as “the offender”) has a prohibited shareholding interest in the Company, the Minister may, by notice in writing served—

(c) if the offender holds voting shares in the Company to which the offender is entitled—on the offender;

or

(d) on any other person who holds voting shares in the Company to which the offender is entitled,

declare that the offender or that other person must dispose of the relevant number of those shares, or a specified number of those shares not exceeding the relevant number, otherwise than to an associate of the offender within a period specified in the notice, being not less than three months after service of the notice.

(2) For the purposes of subsection (1), the relevant number of shares that a person may be required by a notice under that subsection to dispose of otherwise than to an associate of the offender is—

(a) subject to paragraph (b), the number of shares held by the person that would need to be so disposed of in order to cause the offender to cease to have a prohibited shareholding interest in the Company;

or

(b) if, after all the shares in the Company held by the person to which the offender is entitled were so disposed of, the offender would continue to have a prohibited shareholding interest in the Company—the total number of those shares.

(3) For the purposes of this section, a person is not to be taken to have disposed of shares in the Company to which an offender is entitled unless and until the person ceases to hold the shares and the offender ceases to be entitled to the shares.

(4) If a person served with notice of a declaration under subsection (1) requiring the person to dispose of shares in the Company fails to comply with the notice within the period specified in the notice, the shares to which the notice relates are, by force of this subsection, forfeited to the Crown.

(5) If a transaction is entered into with respect to any shares in the Company and—

(a) a person who did not, before the transaction occurred, have a prohibited shareholding interest in the Company would, but for this subsection, have such an interest after the transaction;

or

(b) a person who, before the transaction occurred, had a prohibited shareholding interest in the Company would, but for this subsection, be entitled after the transaction

to a greater number of voting shares in the Company than the person was entitled to immediately before the transaction,

the transaction is illegal and void.

(6) If voting shares in the Company have been transferred as a result of a transaction that is illegal and void by virtue of subsection (5), the Minister may, by notice in writing served on the transferee, declare that the shares are forfeited to the Crown.

(7) The Minister must cause written notice of—

(a) a declaration under subsection (1) requiring a person to dispose of shares in the Company;

or

(b) a declaration under subsection (6) that shares in the Company are forfeited to the Crown,

to be served on the Company.

(8) A director or secretary of the Company may, before a transfer of shares in the Company is registered, require the transferee, or, if the transferee is a corporation, two directors of the transferee corporation, to make a statutory declaration to the effect that the transaction to which the transfer relates was not a transaction to which subsection (5) applies.

(9) If a requirement under subsection (8) is not complied with, the Company may refuse to register the transfer in relation to which the requirement was made.

Voting rights in respect of certain shares

9. (1) This section applies to all voting shares in the Company to which any person who has a prohibited shareholding interest in the Company is entitled.

(2) The aggregate voting rights to be attached to the shares to which this section applies are, in lieu of the voting rights that would, but for this subsection, be so attached, the voting rights (in this section referred to as “the relevant voting rights”) that would be so attached if those shares constituted 15 per cent of the total number of voting shares in the Company.

(3) Each person who holds any of the shares to which this section applies is entitled to such proportion of the relevant voting rights as the number of those shares held by the person bears to the total number of those shares.

(4) Where written notice is served on the Company of a declaration of the Minister under this Act—

(a) that a person is an associate of another;

or

(b) that a person has a prohibited shareholding interest in shares in the Company,

the declaration is binding and has effect for the purposes of the application of this section in relation to any general meeting of the Company held after receipt by the Company of the notice.

Annulment of certain resolutions of the Company

10. (1) Where the Minister is of the opinion that a resolution of a general meeting of the Company has been passed as a result of the admission of votes that should not, by virtue of a declaration of the Minister under section 7 (3) or by virtue of section 9, have been admitted, the Minister may, by notice in writing served on the Company, declare the resolution to have been (at all times) null and void.

(2) Where notice of a declaration under subsection (1) is served on the Company, the Minister must, at the same time or as soon as practicable thereafter, cause written notice of

the declaration to be served on each person whose votes should not, in the opinion of the Minister, have been admitted.

(3) A notice under subsection (1) does not have any effect unless it is served on the Company within one month after the date of the resolution to which it relates.

Making, review and revocation of declarations by Minister

11. (1) A declaration may be made by the Minister under this Act on the basis of such information as the Minister considers sufficient in the circumstances.

(2) A declaration of the Minister under this Act other than—

(a) a declaration under section 8 (1) requiring a person to dispose of shares in the Company;

or

(b) a declaration under section 8 (6) that shares in the Company are forfeited to the Crown,

is effective when written notice of the declaration is served on the Company irrespective of when or whether service is effected on any other person as provided by this Act.

(3) Where the Minister makes a declaration under this Act—

(a) the Company;

or

(b) any other person on whom notice of the declaration has been served in pursuance of this Act,

may apply to the Minister for a review of the declaration.

(4) On an application under this section for review of a declaration, the Minister—

(a) must allow the applicant and, where the applicant is not the Company, the Company, a reasonable opportunity to make submissions in relation to the application;

and

(b) may, after giving due consideration to any such submissions—

(i) confirm the declaration;

or

(ii) revoke or vary the declaration either conditionally or unconditionally and with effect from the date of the declaration or some other date determined by the Minister.

(5) Notwithstanding that an application is made under this section for review of a declaration of the Minister under this Act, the declaration continues to have effect pending determination of the application except as otherwise determined by the Minister.

(6) The Minister may, of his or her own motion, by notice in writing served on the person on whom notice of the declaration was served, revoke or vary a declaration of the Minister under this Act with effect from the date of the declaration or some other date determined by the Minister.

Appeal against declarations of Minister

12. (1) The Company or any other person on whom notice of a declaration of the Minister is served under this Act may appeal to the Supreme Court against the declaration.

(2) An appeal does not lie against a declaration under section 10 annulling a resolution of the Company.

(3) An appeal under this section must be instituted within 21 days after notice of the declaration under appeal is served on the appellant and that period of limitation may not be extended.

(4) Where an appeal is instituted by a person other than the Company, the Company is to be a respondent in addition to the Minister.

(5) The Supreme Court may, on an appeal under this section, if satisfied that proper grounds for making the declaration did not exist, quash or vary the declaration, either conditionally or unconditionally and with effect from the date of the declaration or some other date, as the Court thinks fit, and make any consequential or ancillary orders that may be just.

(6) Notwithstanding an appeal under this section, a declaration other than—

(a) a declaration under section 8 (1) requiring a person to dispose of shares in the Company;

or

(b) a declaration under section 8 (6) that shares in the Company are forfeited to the Crown,

continues to have effect pending determination of the appeal.

(7) Except as provided in this Act, a declaration of the Minister under this Act may not be challenged or called into question.

Sale of forfeited shares

13. (1) The Corporate Affairs Commission is to sell any shares forfeited to the Crown under this Act.

(2) For the purposes of any such sale, the Commission is not bound by any restriction on the sale of shares contained in the memorandum or articles of association of the Company.

(3) Any money realized from the sale of forfeited shares under this section must, after deduction of the reasonable costs of the forfeiture and sale—

(a) if the shares were transferred as a result of a transaction that was illegal and void by virtue of section 8 (5) and the transferor has not received the full consideration agreed upon with the transferee—be applied in payment to the transferor of the amount or value of the consideration not received by the transferor and in payment of the balance (if any) to the transferee;

or

(b) in any other case—be paid to the person from whom the shares were forfeited.

Immunity of Minister, Commission and Company and its officers and auditors

14. No liability attaches to the Minister, the Corporate Affairs Commission or the Company or any officer or auditor of the Company for any act or omission in good faith and in the exercise or discharge, or purported exercise or discharge, of a power or duty under this Act.

Service

15. A notice required or authorized by this Act to be served on a person may—

(a) in the case of a natural person—

(i) be served personally on the person;

or

(ii) be sent by post to the person at his or her last known place of residence, business or employment;

or

(b) in the case of a company or other body—be left at, or sent by post to, its registered office or a place of business of the company or body whether within the State or elsewhere.

Regulations

16. The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

Repeal

17. The *Santos (Regulation of Shareholdings) Act, 1979*, is repealed.

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

C. L. LAUCKE, Governor's Deputy