

**COMPANIES AND SECURITIES (INTERPRETATION AND
MISCELLANEOUS PROVISIONS) (APPLICATION
OF LAWS) ACT 1981**

No. 27 of 1981

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**COMPANIES AND SECURITIES (INTERPRETATION AND
MISCELLANEOUS PROVISIONS) (APPLICATION
OF LAWS) ACT 1981**

No. 27 of 1981

AN ACT relating to the interpretation of certain provisions relating to corporations and the securities industry, and for certain other matters.

[Royal Assent 20 May 1981]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981*. Short title.

2—(1) This section and section 1 shall commence on the date of assent to this Act. Commencement.

(2) Except as provided in subsection (1), this Act shall commence on the day on which the *National Companies and Securities Commission (State Provisions) Act 1981* commences.

Interpretation.

3—In this Act, unless the contrary intention appears—

“Agreement ” means the agreement made on 22nd December 1978 between the Commonwealth and the States in relation to a proposed scheme for the co-operative regulation of companies and the securities industry or, if that agreement is or has been amended or affected by another agreement, that agreement as so amended or affected;

“ Code ” means the provisions of an Act passed by the Parliament of the Commonwealth pursuant to the Agreement as in force for the time being, being provisions applying, by reason of an Act passed by the Parliament of Tasmania pursuant to the Agreement, as laws of Tasmania;

“ Ministerial Council ” means the Ministerial Council for Companies and Securities established by the Agreement;

“ Tasmania ” means the State of Tasmania and its Dependencies;

“ the Commonwealth Act ” means the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980* of the Commonwealth as amended and in force for the time being.

Relevant Codes.

4—(1) For the purposes of this Act, each of the following Codes is a relevant Code:—

(a) the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Tasmania) Code*;

(b) the *Companies (Acquisition of Shares) (Tasmania) Code*; and

(c) any Code to which this Act applies by reason of a relevant application provision in an Act.

(2) For the purposes of subsection (1), a provision in an Act is a relevant application provision in relation to a Code if the provision states that this Act applies to the Code concerned.

**National
Companies and
Securities
Commission
(State
Provisions)
Act 1981.**

5—For the purposes of this Act, a reference to a relevant Code includes a reference to the provisions of the *National Companies and Securities Commission (State Provisions) Act 1981* other than sections 1, 2, 3, 4, 20, 21, and 22.

6—This Act binds the Crown.

Act to bind
Crown.

7—Except in relation to matters expressly provided for by this Act and subject to any express provision contained in a relevant Code, the laws in force in the Australian Capital Territory at the commencement of the Commonwealth Act that relate to the interpretation of Ordinances of the Australian Capital Territory—

Interpretation
of relevant
Codes.

- (a) apply for the purposes of the interpretation of each relevant Code as if the relevant Code were an Ordinance of the Australian Capital Territory; and
- (b) apply for the purposes of the interpretation of any instrument (including rules, regulations, or by-laws) made, granted, or issued under or, in the case of regulations, applying as regulations made under, a relevant Code as if the instrument were made, granted, or issued under such an Ordinance.

8—The provisions of the Commonwealth Act (other than sections 1, 2, 3, 4, and 5) apply—

Application of
interpretation
law.

- (a) as if amended as set out in Schedule 1; and
 - (b) subject to and in accordance with this Act,
- as laws of Tasmania.

9—(1) The Minister may from time to time authorize the publication by the Government Printer of the provisions of the Commonwealth Act (other than sections 1, 2, 3, 4, and 5), amended as set out in Schedule 1 and in operation, or to come into operation, in Tasmania.

Publication of
*Companies and
Securities
(Interpre-
tation and
Miscellaneous
Provisions)*
(Tasmania)
Code.

(2) A document published under subsection (1)—

- (a) shall include the headings and sections set out in Schedule 2;
- (b) shall include a notification of the date, or dates, on which the several provisions set out in the document came, or come, into operation in Tasmania;
- (c) shall include a statement of the date on which the Minister authorized the publication; and
- (d) may be cited as the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Tasmania) Code*.

(3) A document that is or purports to be a copy of the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Tasmania) Code* that has been, or purports to have been, published in accordance with this section is *prima facie* evidence of the provisions of the Commonwealth Act applying by reason of section 8 as in operation, or to come into operation, in Tasmania as notified in the document in accordance with paragraph (b) of subsection (2).

Publication of provisions of amended code.

10—(1) The Minister may from time to time authorize the publication by the Government Printer of a document setting out provisions that by reason of—

(a) the enactment of an Act of the Commonwealth amending the Commonwealth Act; and

(b) the operation of section 8 (including the operation, if applicable, of Schedule 1),

apply, or will apply, as laws of Tasmania.

(2) A document published under subsection (1) shall include a notification of the date, or dates, on which the provisions set out in the document came, or come, into operation in Tasmania.

(3) A document that has been or purports to have been published in accordance with this section is *prima facie* evidence of provisions referred to in subsection (1) set out in the document.

Interpretation of references to applied provisions.

11—(1) Unless the contrary intention appears, in this or any other Act or in a regulation or other instrument made under any other Act or in any other document made by or under the authority of, or for the purposes of, a law of Tasmania—

(a) a reference to the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Tasmania) Code* is a reference to the provisions of the Commonwealth Act applying by reason of section 8; and

(b) a reference to a provision of that Code is a reference to the corresponding provision of the Commonwealth Act as so applying.

(2) In subsection (1), “provision” includes Part, Division, section, subsection, paragraph, subparagraph, Schedule, form, regulation, subclause, or other division.

12—Where, under the Agreement, the Ministerial Council—

- (a) approves a proposed amendment of the Commonwealth Act; and
- (b) approves proposed regulations to be made under this Act in connection with the operation of the proposed amendment,

Amendment of certain provisions in accordance with approval of Ministerial Council.

the Governor may make regulations amending Schedule 1 in accordance with that approval, and that Schedule as so amended shall be Schedule 1 to this Act.

SCHEDULE 1

Section 8

APPLICATION OF PROVISIONS OF COMMONWEALTH ACT

The provisions of the Commonwealth Act apply as if—

1. Unless inconsistent with another provision of this Schedule—
 - (a) for the words “relevant Act” or “relevant Acts” in the Commonwealth Act, wherever occurring, there were substituted the words “relevant Code” or “relevant Codes” respectively;
 - (b) for the words “the Territory” in the Commonwealth Act, wherever occurring, there were substituted the word “Tasmania”; and
 - (c) for the words “law of a State or of another Territory” in the Commonwealth Act (wherever occurring) there were substituted the words “law of a State other than Tasmania or of a Territory”.

2. In section 8 of the Commonwealth Act—
 - (a) for paragraph (c) there were substituted the following paragraph:—
 - (c) an Act—
 - (i) of the Parliament of the Commonwealth may be cited by a reference to the Commonwealth; and
 - (ii) of another State or of a Territory may be cited by a reference to the State or Territory by the Parliament or legislature of which the Act was passed,

together with such mode of reference as is sufficient in Acts passed by that Parliament or legislature;
 - (b) in paragraphs (d) and (f) for the words “an Ordinance” there were substituted the words “an Ordinance of a Territory”; and
 - (c) in paragraph (e) for the words “State Act” there were substituted the words “Act of another State or of a Territory”.

3. In section 9 of the Commonwealth Act—
 - (a) in the definition of “Agreement” for the expression “Act 1979” there were substituted the expression “(State Provisions) Act 1981”;
 - (b) the definition of “another Territory” were omitted;
 - (c) after the definition of “calendar year” there were inserted the following definition:—

“Code” means the provisions of an Act passed by the Parliament of the Commonwealth pursuant to the Agreement as in force for the time being, being provisions applying, by reason of an Act passed by the Parliament of Tasmania pursuant to the Agreement, as laws of Tasmania;

- (d) for the definition of “commencement” there were substituted the following definition:—
- “commencement”, in relation to an Act or a provision of an Act, means the time when the Act (other than provisions providing for the citation or commencement of the Act), or the provision, as the case may be, commences or comes into operation;
- (e) for the definition of “committed for trial” there were substituted the following definition:—
- “committed for trial”, in relation to a person, means committed to prison to await his trial or granted bail to appear at his trial;
- (f) in the definition of “Consolidated Revenue Fund” for the words “the Commonwealth” there were substituted the word “Tasmania”;
- (g) in paragraph (b) of the definition of “constituent documents” for the expression “(other than the *Companies Ordinance* 1962 or the corresponding law of a State or another Territory or of another country)” there were substituted the expression “(other than the *Companies Act* 1962 or the corresponding law of another State or of a Territory or of another country)”;
- (b) for the definition of “Court” there were substituted the following definition:—
- “Court” means the Supreme Court of Tasmania or a judge of that Court;
- (i) for the definition of “Crown” there were substituted the following definition:—
- “Crown” means the Crown in right of Tasmania;
- (j) after the definition of “Crown” there were inserted the following definition:—
- “duly qualified legal practitioner” means a practitioner, or barrister, within the meaning of the *Legal Practitioners Act* 1959;
- (k) the definition of “Executive Council” were omitted;
- (l) for the definition of “external Territory” there were substituted the following definition:—
- “external Territory” means a Territory, not being an internal Territory, for the government of which, as such a Territory, provision is made by an Act of the Commonwealth;
- (m) after the definition of “Gazette” there were inserted the following definitions:—
- “Government Gazette” means the *Tasmanian Government Gazette*;

“ Governor ” means—

(a) the Governor of Tasmania; or

(b) the person for the time being administering the government of Tasmania,
acting with the advice of the Executive Council;

(n) the definition of “ indictment ” were omitted;

(o) for the definition of “ Jervis Bay Territory ” there were substituted the following definition:—

“ Jervis Bay Territory ” means the Territory accepted by the Commonwealth pursuant to the *Jervis Bay Territory Acceptance Act* 1915 of the Commonwealth as amended and in force for the time being and described in the Agreement set out in the Schedule to that Act;

(p) the definition of “ Judge ” were omitted;

(q) for the definition of “ law of the Territory ” or “ law of the Australian Capital Territory ” there were substituted the following definition:—

“ law of the Australian Capital Territory ” includes a law of New South Wales as applying in that Territory;

(r) for the definition of “ Minister ” there were substituted the following definition:—

“ Minister ” means a Minister of the Crown;

(s) in the definition of “ Ordinance ” before the word “ Territory ” there were inserted the words “ Australian Capital ”;

(t) for the definition of “ Parliament ” there were substituted the following definition:—

“ Parliament ” means the Parliament of Tasmania;

(u) for the definitions of “ participating State ” and “ participating Territory ” there were substituted the following definitions:—

“ participating State ” means a State other than Tasmania that is a party to the Agreement;

“ participating Territory ” means—

(a) the Australian Capital Territory;

(b) if the Northern Territory is a party to the Agreement—that Territory; and

(c) any external Territory to which the Agreement applies pursuant to clause 50 of the Agreement;

(v) for the definition of “ prescribed ” there were substituted the following definition:—

“ prescribed ” means prescribed by the relevant Code or by regulations applying under the relevant Code;

(w) for the definition of "Proclamation" there were substituted the following definition:—

"Proclamation" means a proclamation by the Governor published in the *Government Gazette*;

(x) for the definition of "regulations" there were substituted the following definitions:—

"regulations" means regulations applying under the relevant Code;

"relevant Code" means a Code that is a relevant Code within the meaning of the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981*;

(y) the definition of "State Act" were omitted;

(z) before the definition of "Territory" the following definition were inserted:—

"Tasmania" means the State of Tasmania and its Dependencies;

(za) for the definition of "the Minister" there were substituted the following definition:—

"the Minister" means the Minister for the time being administering the Act by reason of which the provisions of the relevant Code apply as laws of Tasmania or, if, for the time being, different Ministers are administering that Act in different respects, each of those Ministers to the extent that he is administering that Act in the relevant respect;

(zb) the definition "the Territory" or "the Australian Capital Territory" were omitted;

(zc) for the definition of "this Act" there were substituted the following definition:—

"this Code" includes regulations applying under the relevant Code.

4. In section 11 of the Commonwealth Act—

(a) for the words "law of a State or of another Territory", where twice occurring, there were substituted the words "law of a State other than Tasmania or of a Territory";

(b) for the words "another Act" there were substituted the words "another law"; and

(c) for the words "other Act" there were substituted the words "other law".

5. For section 12 of the Commonwealth Act there were substituted the following section:—

References to
a Minister.

12. Where in any relevant Code—

- (a) a Minister is referred to, the reference shall, unless the contrary intention appears, be deemed to include a reference to any Minister for the time being acting for or on behalf of the Minister so referred to; and
- (b) a Commonwealth Minister is referred to, the reference shall, unless the contrary intention appears, be deemed to include a reference to any Commonwealth Minister or member of the Federal Executive Council for the time being acting for or on behalf of the Commonwealth Minister so referred to.

6. In section 14 of the Commonwealth Act for the words “office of the Corporate Affairs Commission for the Territory”, where 3 times occurring, there were substituted the words “Corporate Affairs Office for Tasmania”.

7. For section 17 of the Commonwealth Act there were substituted the following section:—

References
to Crown.

17. In any relevant Code, unless the contrary intention appears, a reference to the Crown shall be construed as a reference to the Sovereign for the time being.

8. For section 19 of the Commonwealth Act there were substituted the following section:—

References
to officers,
localities, &c.

19. In any relevant Code, unless the contrary intention appears—

- (a) a reference to an officer or office shall be construed as a reference to such an officer or office in and for Tasmania; and
- (b) a reference to a locality, jurisdiction, or other matter or thing shall be construed as a reference to such locality, jurisdiction or other matter or thing in and of Tasmania.

9. In section 24 (1) of the Commonwealth Act after the words “any Act”, where twice occurring, there were inserted the words “or Code”.

10. For sections 28, 29, 30, 31, and 32 of the Commonwealth Act there were substituted the following sections:—

Effect of repeal.

28. (1) The repeal of the provisions of a relevant Commonwealth Act by which the provisions of a previous relevant Commonwealth Act were repealed does not have the effect of reviving the provisions of the previous relevant Commonwealth Act without express words.

(2) In this section and in sections 29, 30, 31 and 32 a reference to provisions, or a provision, of a relevant Commonwealth Act is a reference to provisions, or a provision of—

- (a) the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980* of the Commonwealth;

(b) the *Companies (Acquisition of Shares) Act* 1980 of the Commonwealth; or

(c) any other Act of the Commonwealth,
which, by reason of—

(d) the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act* 1981;

(e) the *Companies (Acquisition of Shares) (Application of Laws) Act* 1981; or

(f) an Act containing a relevant application provision,

apply as, or applies as, a law of Tasmania, or, in the case of a repealed provision, has applied as a law of Tasmania.

(3) For the purposes of sub-section (2), a provision in an Act is a relevant application provision if the provision contains a statement to the effect that the provisions of an Act of the Commonwealth apply, whether with or without qualification, as laws of Tasmania.

29. Where a provision of a relevant Commonwealth Act repeals a provision of a former relevant Commonwealth Act, then, unless the contrary intention appears, the repeal does not—

(a) revive anything not in force or existing at the time when the repeal takes effect;

(b) affect the previous operation of the provision of the relevant Commonwealth Act so repealed, or anything duly done or suffered under the provision of the relevant Commonwealth Act so repealed;

(c) affect a right, privilege, obligation or liability acquired, accrued or incurred under the provision of the relevant Commonwealth Act so repealed, or an investigation, legal proceeding or remedy in respect of that right, privilege, obligation or liability; or

(d) affect a penalty, forfeiture or punishment incurred in respect of an offence committed against the provision of the relevant Commonwealth Act so repealed, or an investigation, legal proceeding or remedy in respect of that penalty, forfeiture or punishment,

and the investigation, legal proceeding or remedy may be instituted, continued or enforced, and a penalty, forfeiture or punishment may be imposed, as if the repealing provision of the relevant Commonwealth Act had not been enacted.

30. Where a provision of a relevant Commonwealth Act repeals a provision of a former relevant Commonwealth Act and substitutes a provision in lieu of the repealed provision, the repealed provision remains in force until the substituted provision comes into operation.

Repealed provisions continue in force until substituted provisions operate.

Amending
Act to be
construed with
amended Act.

31. A provision of a relevant Commonwealth Act amending a provision of another relevant Commonwealth Act shall, unless the contrary intention appears, be construed with the provisions of the relevant Commonwealth Act being amended and as part of them.

Expiration of
Acts.

32. The expiration of a provision of a relevant Commonwealth Act does not affect any civil proceedings previously commenced under the relevant Commonwealth Act and the civil proceedings may be continued, and everything in relation to the civil proceedings may be done, in all respects as if the provision of the relevant Commonwealth Act continued in force.

11. In section 33 of the Commonwealth Act—

- (a) the expression “(1)” were omitted;
- (b) for the words “another Act”, where twice occurring, there were substituted the words “an Act”;
- (c) for the words “that other Act”, where twice occurring, there were substituted the words “that Act”; and
- (d) subsection (2) were omitted.

12. In section 35 of the Commonwealth Act after sub-section (5) there were inserted the following sub-section:—

(6) Where under this section it is provided that an offence against a relevant Code is punishable summarily, proceedings for that offence shall be heard and determined in accordance with the *Justices Act 1959*, and any penalty imposed in respect of that offence may be enforced and recovered as provided by that Act.

13. In section 36 (1) of the Commonwealth Act the word “information,” were omitted.

14. For paragraph (b) of section 37 of the Commonwealth Act there were substituted the following paragraph:—

- (b) under another law of Tasmania or a law of another State or of a Territory,

15. For sub-section (3) of section 38 of the Commonwealth Act there were substituted the following subsection:—

(3) Nothing in this section shall be taken to affect the application in relation to any relevant Code of the provisions of the Criminal Code (other than section 3 (1) (b), (c), and (d) and section 299).

16. In the heading of Part IV of the Commonwealth Act for the word “ACT” there were substituted the words “(STATE PROVISIONS) ACT”.

17. In section 39 of the Commonwealth Act for the expression “Act 1979”, wherever occurring, there were substituted the expression “(State Provisions) Act 1981”.

18. In section 40 (1) of the Commonwealth Act for the words “This Act” there were substituted the words “This Code”.

SCHEDULE 2

Section 9

HEADINGS AND SECTIONS FOR INCLUSION IN
PUBLICATION OF CODE

The following headings and sections shall be included in the publication of the provisions of the Commonwealth Act under section 9:—

COMPANIES AND SECURITIES (INTERPRETATION AND
MISCELLANEOUS PROVISIONS) (TASMANIA) CODE

A Code relating to the interpretation of certain provisions relating to corporations and the securities industry, and for certain other matters.

PART I—PRELIMINARY

1. This Code may be cited as the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Tasmania) Code*. Short title.

2. This Code comes into operation on the day on which the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981* commences. Commencement.

3. For the purposes of this Code, each of the following Codes is a relevant Code:— Relevant Codes.
 - (a) this Code;
 - (b) the *Companies (Acquisition of Shares) (Tasmania) Code*; and
 - (c) any Code to which the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981* applies by reason of a relevant application provision in an Act.

4. For the purposes of paragraph 3 (c), a provision in an Act is a relevant application provision in relation to a Code if the provision states that the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981* applies to the Code concerned. Relevant application provision.

5. For the purposes of this Code, a reference to a relevant Code includes a reference to the provisions of the *National Companies and Securities Commission (State Provisions) Act 1981* other than sections 1, 2, 3, 4, 20, 21, and 22. National Companies and Securities Commission (State Provisions) Act 1981.

