

COMPANIES (APPLICATION OF LAWS) ACT 1982

No. 7 of 1982

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COMPANIES (APPLICATION OF LAWS) ACT 1982

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No. 7 of 1982
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AN ACT to make provision for the formation of companies in Tasmania, the regulation of companies formed in Tasmania, the registration in Tasmania of certain other bodies, and certain other matters, and for other purposes.

[Royal Assent 30 June 1982]

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:—

PART I

PRELIMINARY

1—This Act may be cited as the *Companies (Application of Laws) Act 1982*. Short title.

2—(1) This section and section 1 shall commence on the day on which this Act receives the royal assent. Commencement.

(2) Except as provided in subsection (1), this Act shall commence on a day to be fixed by proclamation.

Interpretation.

3—(1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“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 affected;

“ the applied provisions ” means the provisions applying by reason of sections 5 and 6;

“ Commission ” means the National Companies and Securities Commission established by the *National Companies and Securities Commission Act 1979* of the Commonwealth;

“ Commissioner for Corporate Affairs ” means the person holding office as Commissioner for Corporate Affairs under section 4 of the *Commissioner for Corporate Affairs Act 1980*, and includes any person holding that office in an acting capacity;

“ the Commonwealth Act ” means the *Companies Act 1981* of the Commonwealth;

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

(2) In this Act, a reference to a Commonwealth Act shall be construed as including a reference to that Act as amended and in force for the time being and to an Act passed in substitution for that Act.

(3) In this Act, a reference to the commencement of this Act is a reference to the day fixed under section 2 (2).

Interpretation
of *Companies*
(*Tasmania*)
Code.

4—The *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981* applies to the *Companies (Tasmania) Code*.

PART II

APPLICATION OF LAWS

Application
of Common-
wealth Act.

5—Subject to this Act, the provisions of the Commonwealth Act, other than sections 1, 2, 3, and 4, apply—

(a) as if amended as set out in Schedule 1; and

(b) subject to and in accordance with the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981*,

as laws of Tasmania.

6—Subject to this Act, the provisions of regulations in force for the time being under the Commonwealth Act, other than provisions providing for the citation or commencement of the regulations, apply—

Application
of company
regulations.

- (a) as if amended as set out in Schedule 2; and
- (b) subject to and in accordance with the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981*,

as regulations made under the provisions applying by reason of section 5.

7—(1) There shall be paid to the Commissioner for Corporate Affairs, for and on behalf of Tasmania, for or in respect of—

Fees payable.

- (a) the lodgment of documents with the Commission under the applied provisions;
- (b) the registration of documents under the applied provisions or the inspection or search of registers kept by, or documents in the custody of, the Commission under the applied provisions;
- (c) the production by the Commission, pursuant to a subpoena, of any register kept by, or documents in the custody of, the Commission under the applied provisions;
- (d) the issuing of documents or copies of documents, the granting of licences, consents, or approvals, or the doing of other acts or things by the Ministerial Council or the Commission under the applied provisions;
- (e) the making of inquiries of, or applications to, the Ministerial Council or the Commission in relation to matters arising under the applied provisions; and
- (f) the submission to the Commission of documents for examination by the Commission,

such fees (if any) as are prescribed by regulations in force for the time being under the *Companies (Fees) Act 1981* of the Commonwealth and specified in the Schedule to those regulations as if amended as set out in Schedule 3 and as if, unless the contrary intention appears, the expressions used had the same respective meanings as in the applied provisions.

(2) Where a fee is payable to the Commissioner for Corporate Affairs for and on behalf of the State under subsection (1) for or in respect of the lodgment of a document with the Commission and the document is submitted for lodgment without payment of the fee, the document shall be deemed not to have been lodged until the fee has been paid.

(3) Where a fee is payable to the Commissioner for Corporate Affairs, for and on behalf of the State under subsection (1), for or in respect of any matter involving the doing of any act or thing by the Ministerial Council or the Commission, the Ministerial Council or the Commission shall not do that act or thing until the fee has been paid.

(4) This section has effect notwithstanding anything contained in the applied provisions.

(5) Nothing in this section prevents the Commissioner for Corporate Affairs, for and on behalf of the State, from—

- (a) waiving or reducing, in a particular case or classes of cases, fees that would otherwise be payable pursuant to this section; or
- (b) refunding in whole or in part, in a particular case or classes of cases, fees paid pursuant to this section.

(6) In this section, unless the contrary intention appears, expressions used have the same respective meanings as in the applied provisions.

8—(1) Where—

- (a) under the Agreement, the Ministerial Council approves a proposed amendment of regulations in force for the time being under the Commonwealth Act or the *Companies (Fees) Act* 1981 of the Commonwealth; and
- (b) on the expiration of 6 months after the date on which the Ministerial Council so approved, the amendment has not been made or has been made and is subject to disallowance or has ceased to be in force by disallowance or for any other reason,

the Governor may make regulations in accordance with the proposed amendments approved by the Ministerial Council amending the provisions of regulations applying by reason of section 6 or the regulations referred to in section 7, as the case may be.

(2) Regulations under subsection (1) may amend Schedule 2 or 3, as the case may be, and that Schedule as so amended shall be Schedule 2 or 3, as the case may be, to this Act.

(3) In this Act—

- (a) a reference to provisions of regulations applying by reason of section 6 includes a reference to provisions as so applying as amended in accordance with this section; and
- (b) a reference to fees prescribed by regulations under the *Companies (Fees) Act 1981* of the Commonwealth includes a reference to those regulations as amended in accordance with this section.

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, and 4, amended as set out in Schedule 1 and in operation, or to come into operation, in Tasmania.

Publication
of *Companies*
(*Tasmania*)
Code.

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

- (a) shall include the headings and sections set out in Schedule 4;
- (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 publication; and
- (d) may be cited as the *Companies (Tasmania) Code*.

(3) A document that is, or purports to be, a copy of the *Companies (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 5 as in operation, or to come into operation, in Tasmania as notified in the document in accordance with subsection (2) (b).

10—(1) The Minister may from time to time authorize the publication by the Government Printer of the provisions of regulations under the Commonwealth Act, other than provisions providing for the citation or commencement of the regulations, amended as set out in Schedule 2 and in operation, or to come into operation, in Tasmania.

Publication
of *Companies*
(*Tasmania*)
Regulations.

- (2) A document published under subsection (1)—
- (a) shall include the heading and provisions set out in Schedule 5;
 - (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 (Tasmania) Regulations*.

(3) A document that is or purports to be a copy of the *Companies (Tasmania) Regulations* that has been, or purports to have been, published in accordance with this section is *prima facie* evidence of the provisions applying by reason of section 6 as in operation, or to come into operation, in Tasmania as notified in the document in accordance with subsection (2) (b).

Publication
of *Companies*
(*Fees*)
(*Tasmania*)
Regulations.

11—(1) The Minister may from time to time authorize the publication by the Government Printer of the Schedule to regulations prescribing fees under the *Companies (Fees) Act* 1981 of the Commonwealth amended as set out in Schedule 3 and in operation, or to come into operation, in Tasmania.

- (2) A document published under subsection (1)—
- (a) shall include the heading and provisions set out in Schedule 6;
 - (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 (Fees) (Tasmania) Regulations*.

(3) A document that is, or purports to be, a copy of the *Companies (Fees) (Tasmania) Regulations* that has been, or purports to have been, published in accordance with this section is *prima facie* evidence of the provisions of the Schedule to regulations referred to in section 7 as in operation, or to come into operation, in Tasmania as notified in the document in accordance with subsection (2) (b).

12—(1) The Minister may, from time to time, authorize the publication by the Government Printer of a document setting out—

Publication of provisions of amended Code or regulations.

(a) provisions that by reason of—

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

(ii) the operation of section 5 (including the operation, if applicable, of Schedule 1),

apply, or will apply, as laws of Tasmania;

(b) provisions that by reason of—

(i) regulations under the Commonwealth Act; and

(ii) the operation of section 6 (including the operation, if applicable, of Schedule 2),

apply, or will apply, as regulations made under the provisions applying by reason of section 5; or

(c) fees that by reason of—

(i) regulations under the *Companies (Fees) Act* 1981 of the Commonwealth; and

(ii) the operation of section 7 (including the operation, if applicable, of Schedule 3),

are, or will be, payable under that section.

(2) A document published under subsection (1) shall include a notification of the date or dates on which the provisions or fees 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 or fees referred to in subsection (1) set out in the document.

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

Interpretation of references to the applied provisions.

(a) a reference to the *Companies (Tasmania) Code* is a reference to the provisions of the Commonwealth Act applying by reason of section 5;

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

- (c) a reference to the *Companies (Tasmania) Regulations* is a reference to the provisions of regulations in force under the Commonwealth Act applying by reason of section 6;
- (d) a reference to a provision of those regulations is a reference to the corresponding provisions of the regulations in force under the Commonwealth Act as so applying;
- (e) a reference to the *Companies (Fees) (Tasmania) Regulations* is a reference to the Schedule to regulations prescribing fees in force under the *Companies (Fees) Act 1981* of the Commonwealth as referred to in section 7; and
- (f) a reference to a provision of that Schedule is a reference to the corresponding provision of the Schedule to regulations prescribing fees in force under that Act as referred to in section 7.

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

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

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

(a) approves—

- (i) a proposed amendment of the Commonwealth Act;
- (ii) regulations proposed to be made under the Commonwealth Act (whether or not amending other regulations);
- (iii) a proposed amendment of the *Companies (Fees) Act 1981* of the Commonwealth; or
- (iv) regulations proposed to be made under that Act (whether or not amending other regulations); and

(b) approves proposed regulations to be made under this Act in connection with the operation of the proposed amendment or regulations referred to in paragraph (a),

the Governor may make regulations amending Schedule 1, 2, or 3 or section 7, as the case may be, in accordance with that approval and that Schedule or section as so amended shall be Schedule 1, 2, or 3 or section 7, as the case may be, of this Act.

15—(1) Where the Ministerial Council approves the exemption of a company from complying with all or any of the provisions of Division 6 of Part IV of the *Companies (Tasmania) Code* in relation to any prescribed interest, or class of prescribed interests, specified by the Ministerial Council, the Governor may make regulations exempting that company, subject to such terms and conditions as are specified in the regulations, from so complying.

Exemptions from Division 6 of Part IV of the *Companies (Tasmania) Code*.

(2) Where the Ministerial Council approves the declaration of a right or interest, or a right or interest included in a class or kind of rights or interests, as an exempt right or interest, or a class or kind of exempt rights or interests, for the purposes of Division 6 of Part IV of the *Companies (Tasmania) Code*, the Governor may make regulations declaring that right or interest, or a right or interest included in that class or kind of rights or interests, to be, subject to such terms and conditions as are specified in the regulations, an exempt right or interest, or a class or kind of exempt rights or interests, for the purposes of that Division.

(3) Where the Ministerial Council approves—

(a) a body corporate incorporated in Tasmania, not being a company within the meaning of the *Companies (Tasmania) Code*; or

(b) an unincorporated society, association, or other body, formed or established in Tasmania, that has been admitted to the official list of a stock exchange that is a prescribed stock exchange for the purposes of that Code and has not been removed from that official list,

as a prescribed corporation for the purposes of Division 8 of Part IV of that Code, the Governor may make regulations prescribing that body corporate, unincorporated society, association, or other body as a prescribed corporation for the purposes of that Division.

(4) Regulations under this section shall be read and construed as one with the *Companies (Tasmania) Regulations*.

PART III

REPEALS AND TRANSITIONAL PROVISIONS

16—Expressions used in this Part that are defined by section 5 of the *Companies (Tasmania) Code* or in the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Tasmania) Code* have in this Part, unless the contrary intention appears, the respective meanings given to those expressions by that section or in that Code.

Interpretation: Part III.

Repeals.

17—The Acts specified in Schedule 7 are repealed.

Particular provisions.

18—Unless the contrary intention appears in this Act or in the *Companies (Tasmania) Code*, all persons, things, and circumstances appointed or created by or under the *Companies Act 1962* or existing or continuing under that Act immediately before the commencement of this Act shall, under and subject to this Act and the *Companies (Tasmania) Code*, continue to have the same status, operation, and effect as they respectively would have had if this Act had not been enacted.

General provisions.

19—Without affecting the generality of section 18, unless the contrary intention appears in this Act or in the *Companies (Tasmania) Code*, neither this Act nor the *Companies (Tasmania) Code* disturbs the continuity of status, operation, or effect of any order, rule, regulation, scale of fees, appointment, conveyance, mortgage, charge, deed, agreement, resolution, direction, approval, application, requisition, instrument, document, memorandum, articles, incorporation, nomination, affidavit, call, forfeiture, minute, assignment, register, registration, transfer, list, licence, certificate, security, notice, compromise, arrangement, right, priority, liability, duty, obligation, proceeding, matter, or thing made, done, effected, given, issued, passed, taken, validated, entered into, executed, lodged, filed, accrued, incurred, existing, pending, or acquired by or under the *Companies Act 1962* before the commencement of this Act.

Proceedings by or against Commissioner to be proceedings by or against Commission.

20—(1) Where, before the commencement of this Act, a proceeding under the *Companies Act 1962* had been commenced by or against the Commissioner for Corporate Affairs, the proceeding may be continued by or against the Commission.

(2) Where, but for the enactment of this Act, a proceeding under the *Companies Act 1962* could have been commenced by or against the Commissioner for Corporate Affairs, the proceeding may be commenced by or against the Commission.

Property vested in Commissioner vests in Commission.

21—Where, immediately before the commencement of this Act, property was vested in the Commissioner for Corporate Affairs by reason of the operation of section 310 of the *Companies Act 1962*, the property vests by force of this section in the Commission and sections 462, 463, and 464 of the *Companies (Tasmania) Code* apply in relation to the property in like manner as they would apply if the property had vested in the Commission pursuant to section 461 of that Code.

22—Any register, fund, or account kept immediately before the commencement of this Act under any provision of the *Companies Act 1962* shall be deemed to be part of a register, fund, or account kept under the corresponding provision of the *Companies (Tasmania) Code*.

Registers,
funds, and
accounts

23—(1) In this section—

“ the Act ” means the *Companies Act 1962*;

“ the Code ” means the *Companies (Tasmania) Code*;

“ the Gazette ” means the *Commonwealth of Australia Gazette*.

Acts of
Governor or
Minister under
Companies Act
1962 deemed
to be acts of
Ministerial
Council or
Commission,
&c.

(2) Where the Minister had given consent under section 22 (1) of the Act to the registration of a company or an intended company by a specified name and the company had not been registered by that name before the commencement of this Act, the consent shall be deemed to have been a consent to the reservation or registration of that name in respect of that company or intended company given by the Ministerial Council under section 38 (2) of the Code.

(3) A licence issued to a company under section 24 of the Act or the corresponding provision of a previous enactment and in force immediately before the commencement of this Act continues in force as if—

(a) the licence were a licence issued by the Commission under section 66 of the Code; and

(b) where the company was exempt from complying with provisions of the Act—the licence exempted the company from complying with the corresponding provisions of the Code,

and a reference in the Code to a licence under section 66 of the Code shall be construed as including a reference to a licence to which this subsection applies.

(4) A declaration under section 38 (7) (b) or (c) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration made by the Commission under section 97 (7) (b) or (c), as the case may be, of the Code.

(5) A notice under section 38 (8) of the Act and in force immediately before the commencement of this Act shall be deemed to be a notice by the Commission published under section 97 (9) of the Code.

(13) Where—

(a) a company had been exempted by notice under section 88 of the Act from complying, in relation to an interest or class of interests specified in the notice, with all or any of the provisions of Division V of Part IV of the Act; and

(b) that exemption was in force immediately before the commencement of this Act,

that company is, subject to such terms and conditions (if any) as were specified in that notice, deemed to have been exempted from complying, in relation to that interest or class of interests, with the provisions of Division 6 of Part IV of the Code that correspond with the provisions specified in that notice and, for the purposes of section 176 of the Code, the notice shall be deemed to have been a notice published in the *Gazette* under section 176 (1).

(14) An order under section 160 (2) of the Act and in force immediately before the commencement of this Act shall be deemed to be an order made by the Commission published under section 265 (2) of the Code requiring the company to comply with the provisions of Division 5 of Part V of the Code and of the regulations made for the purposes of that Division that correspond with the provisions of the Act specified in the order.

(15) An order under section 161A of the Act and in force immediately before the commencement of this Act shall be deemed to be an order made by the Commission under section 273 (1) of the Code relieving the directors of the company named in the order from compliance with the requirements of the Code that correspond with the requirements of the Act specified in the order and, where the order is subject to limitations, terms, or conditions, shall be deemed to be subject to those limitations, terms, or conditions.

(16) An order by the Governor under section 334 (2) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration made by the Commission by order published in the *Gazette* under section 490 (3) of the Code.

(17) An order by the Governor under section 339 (b) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration made by the Commission by order published in the *Gazette* under section 495 (2) of the Code.

(18) A declaration under section 348 (5) (b) or (c) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration made by the Commission by order published in the *Gazette* under section 516 (7) (b) or (c), as the case may be, of the Code.

(19) Where—

(a) the Minister had given consent under section 353 (1) of the Act to the registration of a foreign company by a specified name; and

(b) the foreign company had not been registered by that name before the commencement of this Act,

the consent shall be deemed to be a consent given by the Ministerial Council under section 38 (2) of the Code.

(20) Where—

(a) the Minister had given consent under section 353 (2) of the Act to the registration of a change in the name of a foreign company to a specified new name; and

(b) the change of name had not been registered before the commencement of this Act,

the consent shall be deemed to be a consent to the reservation or registration of that name in respect of that foreign company given by the Ministerial Council under section 38 (2) of the Code.

(21) Where—

(a) under section 374 (2) of the Act, a corporation had been exempted from the provisions of section 374 (1) of the Act; and

(b) that exemption was in force immediately before the commencement of this Act,

that corporation shall be deemed to have been exempted by the Commission by instrument in writing published in the *Gazette* under section 552 (2) of the Code from the provisions of section 552 (1) of the Code.

Names.

24—(1) A name under which a company was registered under the *Companies Act* 1962 immediately before the commencement of this Act shall, for the purposes of Division 2 of Part III of the *Companies (Tasmania) Code*, be deemed to be registered under that Division in respect of that company unless and until the registration of the name is cancelled, or ceases to be in force, under that Division.

(2) A reference in subsection (1) to a company shall be construed as including a reference to a corporation that, immediately before the commencement of this Act, was registered under the *Companies Act 1962* as a foreign company, whether that corporation is, for the purposes of the *Companies (Tasmania) Code*, a recognized company or a foreign company.

(3) Where, within the period of 2 months immediately preceding the date of commencement of this Act—

(a) a name was reserved under section 22 (8) of the *Companies Act 1962*; or

(b) the period for which a name was reserved under that Act was extended by the Commissioner under section 22 (9) of that Act,

the name shall, for the purposes of the *Companies (Tasmania) Code*, be deemed to be reserved under Division 2 of Part III of that Code until the date on which the reservation of that name under the *Companies Act 1962* would have ceased.

25—(1) Nothing in this Act or in the *Companies (Tasmania) Code* affects the continued operation of—

Continued application of Table A and Table B in certain circumstances.

(a) Table A, or any part of Table A, of the Fourth Schedule to the *Companies Act 1962* (either as originally enacted or as amended from time to time) or the corresponding Table, or any part of the corresponding Table, in any corresponding previous law of the State (either as originally enacted or as so amended) so far as it applies to a company existing immediately before the commencement of this Act; or

(b) Table B, or any part of Table B, of the Fourth Schedule to the *Companies Act 1962* (either as originally enacted or as amended from time to time) or the corresponding Table, or any part of the corresponding Table, in any corresponding previous law of the State (either as originally enacted or as so amended) so far as it applies to a company existing immediately before the commencement of this Act.

(2) This section does not prevent the articles of a company adopting, in accordance with section 75 (1) of the *Companies (Tasmania) Code*, all or any of the regulations contained in Table A or Table B of Schedule 3 to that Code.

Existing prospectuses and section 82 statements.

26—(1) Where a prospectus was registered under the *Companies Act* 1962 within the period of 6 months before the commencement of this Act, the prospectus shall, for the purposes of the *Companies (Tasmania) Code*, until the expiration of the period of 6 months after the date on which it was registered, be deemed to be a prospectus registered under that Code.

(2) Where a statement under section 82 of the *Companies Act* 1962 was registered under that Act within the period of 6 months before the commencement of this Act, the statement shall, for the purposes of the *Companies (Tasmania) Code*, until the expiration of the period of 6 months after the date on which it was registered, be deemed to be a statement that has been registered under Division 1 of Part IV of the *Companies (Tasmania) Code* as required by section 170 (1) of that Code.

Interests in partnership agreements.

27—Section 169 of the *Companies (Tasmania) Code* does not apply to or in relation to an issue to the public of an interest, an offer to the public for purchase of an interest, or an invitation to the public to purchase an interest, that—

- (a) is an interest in a partnership agreement; and
- (b) was subscribed for or first purchased before 1st January 1963.

Registration of charges.

28—(1) Notwithstanding the repeals effected by section 17—

- (a) Division VII of Part IV of the *Companies Act* 1962; and
- (b) any other provisions of that Act that are necessary for the effectual operation of that Division,

continue in force as if the *Companies Act* 1962 had not been repealed in relation to—

- (c) any charge created by a corporation before the commencement of this Act; and
- (d) any charge to which property acquired by a corporation before the commencement of this Act was subject when the property was so acquired,

and the provisions of Division 9 of Part IV of the *Companies (Tasmania) Code* do not apply in relation to any such charge.

(2) In subsection (1), “corporation” has the meaning assigned to that expression by section 5 of the *Companies (Tasmania) Code*.

29—Where it appears from a return lodged with the Registrar of Companies or the Commissioner for Corporate Affairs pursuant to a previous law of the State with which the *Companies (Tasmania) Code* corresponds that a person was at a particular time a manager of a company, the Commission may give a certificate under section 238 (10) of that Code that the person was at that time a principal executive officer of the company.

Certificate that person is an executive officer of a company.

30—(1) The provisions of Division 2 of Part VI of the *Companies (Tasmania) Code* (other than sections 267, 268, 273, and 275) apply in relation to a company, being a company incorporated under the *Companies Act* 1962 or a corresponding previous enactment, and to the directors of such a company, in relation to a financial year or financial years of the company that ended before the commencement of this Act and so apply as if—

Application of *Companies (Tasmania) Code* to financial years ending before commencement of this Act.

- (a) a requirement in any of those provisions (other than section 274) that an act or thing be done not less than 14 days before an annual general meeting of a company or, if no annual general meeting is held within the period within which it is required by section 240 to be held, not less than 14 days before the end of that period were a requirement that that act or thing be done within the period of 5 months (or, in the case of an exempt proprietary company, the period of 6 months) after the commencement of this Act;
- (b) a reference in those provisions to the last financial year of a company were a reference to each financial year of the company that ended before the commencement of this Act;
- (c) the reference in section 274 (1) to each annual general meeting of the company were a reference to the annual general meeting at which accounts or group accounts are required by subsection (2) of this section to be laid before the company;
- (d) a reference in those provisions to accounts or group accounts required by section 275 to be laid before a company at its annual general meeting were a reference to accounts or group accounts, as the case may be, required by subsection (2) of this section to be laid before a company at an annual general meeting; and

- (e) a reference in section 276 (1) to the preceding provisions of Division 2 included a reference to the provisions of subsection (2) of this section.

(2) The directors of a company to which subsection (1) applies shall cause to be laid before the first annual general meeting of the company held after the expiration of the period of 5 months or 6 months, as the case requires, referred to in subsection (1) (a), in respect of each financial year of the company that ended before the commencement of this Act—

- (a) a copy of the profit and loss account made out in accordance with section 269 (1) of the *Companies (Tasmania) Code*;
- (b) a copy of the balance-sheet made out in accordance with section 269 (2) of that Code;
- (c) in the case of a company that, at the end of the relevant financial year, was not a holding company—a copy of the directors' report made out in accordance with section 270 (1) of that Code;
- (d) in the case of a company that, at the end of the relevant financial year, was a holding company—a copy of the group accounts made out in accordance with section 269 (3) of that Code and a copy of the directors' report made out in accordance with section 270 (2) of that Code in respect of the profit or loss and the state of affairs of the group of companies of the holding company as at the end of that financial year;
- (e) a copy of any auditor's report required by section 269 (5) of that Code to be attached to the accounts or group accounts of the company; and
- (f) a copy of the statement by the directors required by section 269 (9) or (10) of that Code to be attached to the accounts or group accounts of the company.

(3) Where, pursuant to this section, the directors of a company are required to comply with the requirements of section 269 (8) of the *Companies (Tasmania) Code* in respect of the accounts and, if applicable, the group accounts made out in respect of a financial year that ended before the commencement of this Act, the prescribed requirements for the purposes of section 269 (8) of that Code are the requirements that were set out in the Ninth Schedule to the *Companies Act 1962*, as in force immediately before that commencement.

(4) A reference in subsections (2) and (3) to a provision of the *Companies (Tasmania) Code* shall be read as a reference to that provision of that Code as it applies by virtue of subsection (1).

(5) In this section, “financial year”, in relation to a company in relation to which this section applies, has the same meaning as it has in relation to such a company under the *Companies (Tasmania) Code* by virtue of paragraph (a) of the definition of “financial year” in section 5 (1) of that Code.

31—Where, before the commencement of this Act, an annual general meeting of a company was held and at the commencement of this Act the company had not complied with section 158 or 159 of the *Companies Act 1962* in relation to that annual general meeting, that section continues to apply in relation to that company in relation to that annual general meeting as if this Act had not been enacted.

Annual general meeting held before commencement of this Act.

32—(1) Part VII of the *Companies (Tasmania) Code* applies to and in relation to an investigation to which Division IV of Part VI of the *Companies Act 1962* applied immediately before the commencement of this Act and so applies as if the inspector appointed to carry out the investigation under section 173 of the *Companies Act 1962* had been appointed, and the investigation is being carried out, pursuant to a direction given in the exercise of a power under section 291 (1) of that Code otherwise than in response to a request made by the Commission under section 291 (4) of that Code.

Special investigations.

(2) Where, before the commencement of this Act, an act, matter, or thing had been done or had arisen in the course of an investigation to which Part VI of the *Companies Act 1962* applied immediately before that commencement, that act, matter, or thing shall have the same status, operation, and effect in relation to the investigation after that commencement as if that act, matter, or thing had been done or had arisen after that commencement.

(3) In particular and without affecting the generality of subsection (2), an order, application, examination, deposition, writ, summons, proceeding, record, note, or report made, effected, issued, or given in relation to an investigation to which Part VI of the *Companies Act* 1962 applied immediately before the commencement of this Act shall have the same status, operation, and effect in relation to the investigation after that commencement as if the order, application, examination, deposition, writ, summons, proceeding, record, note, or report had been made, effected, issued, or given after that commencement.

33—Where—

(a) section 330 of the *Companies (Tasmania) Code* applies, by virtue of section 315 (11) of that Code, in relation to a person or persons appointed to administer a compromise or arrangement; and

(b) that person or those persons was or were so appointed before the commencement of this Act,

references in section 330 of that Code to the date of appointment of that person or of those persons shall be deemed to be references to the date of commencement of this Act.

Winding up.

34—(1) The provisions of the *Companies (Tasmania) Code* with respect to winding up, other than the provisions of Subdivision F of Division 4 of Part XII, do not apply to any company the winding up of which was commenced before the commencement of this Act, and any such company shall be wound up in the same manner and with the same incidents as if this Act had not been enacted and, for the purposes of the winding up, the provisions of the *Companies Act* 1962 shall apply.

(2) In this section, “company” includes an unregistered company within the meaning of Division V of Part X of the *Companies Act* 1962.

Registered auditors and liquidators.

35—(1) For the purposes of the *Companies (Tasmania) Code*, a person who was, immediately before the date of commencement of this Act, registered as an auditor or as a liquidator or appointed as an official liquidator under the *Companies Act* 1962 shall, subject to section 27 of that Code, be deemed to be registered under Division 2 of Part II of that Code as an auditor, as a liquidator, or as an official liquidator, as the case may be, for the period of 6 months commencing on the date of commencement of this Act.

(2) Where—

- (a) a person who is deemed by reason of subsection (1) to be registered under Division 2 of Part II of the *Companies (Tasmania) Code* as an auditor or as a liquidator for the period of 6 months commencing on the date of commencement of this Act has applied to be registered under that Division as an auditor or as a liquidator, as the case may be, within that period of 6 months; and
- (b) at the expiration of that period, the person has not been notified of the results of his application,

the person shall, subject to section 27 of that Code, be deemed to be registered as an auditor or liquidator, as the case may be, for a further period commencing at the expiration of the period referred to in paragraph (a) and ending—

- (c) in the case of an application for registration as an auditor—on the day on which the application is granted or refused; and
- (d) in the case of an application for registration as a liquidator—on the day on which the person is notified of the results of his application.

(3) Where the registration as a liquidator of a person to whom subsection (2) applies comes into force under Division 2 of Part II of the *Companies (Tasmania) Code*, that person shall be deemed to have been registered as a liquidator under that Division for the period commencing at the expiration of the day referred to in subsection (2) (d) and ending at the expiration of the day before the day on which that registration comes into force.

(4) A person who is deemed to be registered as an auditor, as a liquidator, or as an official liquidator under the provision of a law of a participating State or participating Territory that corresponds with subsection (1) shall be deemed to be registered as an auditor, as a liquidator, or as an official liquidator, as the case may be, under the *Companies (Tasmania) Code*.

36—Where—

- (a) the institution of a particular proceeding under the *Companies Act 1962* was subject to the consent of the Minister; and

Power of
Minister to
consent to
institution of
proceeding.

- (a) stating whether the corporation wishes to continue to be registered as a foreign company under the *Companies (Tasmania) Code*; and
 - (b) if the corporation states that it does not wish to continue to be registered as a foreign company under that Code—specifying one State or Territory (being a State or Territory under the law of which the corporation was registered as a foreign company immediately before the commencement of this Act and which is a participating State or a participating Territory) as the State or Territory under the law of which the corporation wishes to be registered as a foreign company.
- (3) A corporation is not entitled pursuant to subsection (2)
- (b)—
 - (a) to specify a State in a notice if the corporation has specified a different State or a Territory in a notice under a corresponding provision of the law of a participating State or participating Territory; or
 - (b) to specify a Territory in a notice if the corporation has specified a State or another Territory in a notice under a corresponding provision of the law of a participating State or participating Territory.
- (4) Where a corporation to which subsection (2) applies lodges with the Commission a notice under that subsection specifying pursuant to paragraph (b) of that subsection a State or Territory as the State or Territory under the law of which the corporation wishes to be registered as a foreign company—
- (a) the corporation shall, as from the date on which the notice is so lodged, cease to be registered as a foreign company for the purposes of the *Companies (Tasmania) Code*; and
 - (b) the registered office of the corporation in the State the situation of which was specified—
 - (i) in a case to which subparagraph (ii) does not apply—in a notice lodged under section 346 (1) of the *Companies Act* 1962; or

- (ii) if a notice or notices has or have been lodged under section 347 (1) of that Act in relation to the situation of the registered office of the corporation—in that notice or in the later or latest of those notices,

shall be deemed to be the principal office within the State of the corporation for the purposes of section 507 of the *Companies (Tasmania) Code*.

(5) In this section, “ external Territory ” means a Territory of the Commonwealth, other than the Australian Capital Territory, the Jervis Bay Territory, or the Northern Territory, for the government of which as a Territory provision is made by an Act of the Commonwealth.

40—(1) Notwithstanding section 31 (10) of the *Companies (Tasmania) Code*, where a corporation that is a recognized company for the purposes of that Code was, immediately before the commencement of this Act, registered as a foreign company under the *Companies Act 1962*, the Commission may, if in the opinion of the Commission it is no longer necessary or desirable to retain them, destroy or dispose of any documents lodged by or in relation to that corporation under the *Companies Act 1962* or under any corresponding previous law.

Power of Commission to destroy or dispose of documents.

(2) Notwithstanding section 31 (10) of the *Companies (Tasmania) Code*, where a corporation that was, immediately before the commencement of this Act, a recognized company under the *Companies Act 1962* or was registered as a foreign company under that Act, the Commission may, if in the opinion of the Commission it is no longer necessary or desirable to retain them, destroy or dispose of any documents lodged by or in relation to that corporation under the *Companies Act 1962* or under any corresponding previous law.

41—(1) A sufficient instrument of transfer under the *Marketable Securities Act 1971*, in relation to a transfer of marketable securities or a transfer of rights to marketable securities, that was duly completed before the commencement of this Act has the same effect, and may be used and dealt with, as if this Act had not been enacted.

Marketable Securities Act 1971.

(2) An agreement, application, acceptance, warranty, or indemnity deemed by the *Marketable Securities Act 1971* to have been made or given by a person continues to operate and has the same force and effect as if this Act had not been enacted.

Rules of
court

42—Notwithstanding the repeals effected by section 17, rules of Court made in accordance with the *Supreme Court Civil Procedure Act 1932* for the purposes of the *Companies Act 1962* shall be deemed to be made in accordance with the *Supreme Court Civil Procedure Act 1932* for the purpose of the *Companies (Tasmania) Code* and, until rescinded, may from time to time be amended.

Power of
Court to
resolve
difficulties.

43—(1) Where any difficulty arises in the application to a particular matter of this Part or in the application of a particular matter of any of the provisions of the *Companies (Tasmania) Code*, the *Companies Act 1962*, or the *Marketable Securities Act 1971* by reason of the operation of this Part, the Court may, on the application of an interested person, make such order as it thinks proper to resolve the difficulty.

(2) An order made under subsection (1) has effect notwithstanding anything contained in this Act or in the *Companies (Tasmania) Code*, the *Companies Act 1962*, or the *Marketable Securities Act 1971*.

(3) In subsection (1), “Court” means the Supreme Court or a judge of the Supreme Court.

Regulations.

44—(1) Subject to subsection (3), the Governor may make regulations for the purposes of this Part.

(2) Regulations prescribing matters for the purposes of this Part may prescribe those matters by reference to regulations for the time being in force under the *Companies (Transitional Provisions) Act 1981* of the Commonwealth.

(3) The power of the Governor to make regulations for the purposes of this Part shall be exercised only in accordance with advice that is consistent with resolutions of the Ministerial Council.

SCHEDULE 1

Section 5

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 “ law of a State or of another Territory ” and “ law of a State or another Territory ” in the Commonwealth Act, wherever occurring, there were substituted the words “ law in force in another State or in a Territory ”;
- (b) for the words “ of a State or of another Territory ” and “ of a State or another Territory ” in the Commonwealth Act, wherever occurring otherwise than immediately after the word “ law ”, there were substituted the words “ of another State or of a Territory ”;
- (c) for the words “ commencement of this Act ” in the Commonwealth Act, wherever occurring, there were substituted the expression “ commencement of the *Companies (Application of Laws) Act 1982* ”;
- (d) for the expression “ *Companies (Acquisition of Shares) Act 1980* ” in the Commonwealth Act, wherever occurring, there were substituted the expression “ *Companies (Acquisition of Shares) (Tasmania) Code* ”;
- (e) for the expression “ *Companies Ordinance 1962* ” in the Commonwealth Act, wherever occurring, there were substituted the expression “ *Companies Act 1962* ”;
- (f) for the expression “ *Securities Industry Act 1980* ” in the Commonwealth Act, wherever occurring, there were substituted the expression “ *Securities Industry (Tasmania) Code* ”;
- (g) for the words “ the Territory ” in the Commonwealth Act, wherever occurring, there were substituted the word “ Tasmania ”; and
- (h) for the words “ this Act ” in the Commonwealth Act, wherever occurring except where occurring in conjunction with the words “ commencement of ”, there were substituted the words “ this Code ”;

(2) in section 5 (1) of the Commonwealth Act—

- (a) after the definition of “ banker’s books ” there were inserted the following definition:—
 - “ *Banking Act 1959* ” means the *Banking Act 1959* of the Commonwealth, as amended and in force for the time being;
- (b) after the definition of “ banking corporation ” there were inserted the following definition:—
 - “ *Bankruptcy Act 1966* ” means the *Bankruptcy Act 1966* of the Commonwealth, as amended and in force for the time being;

(c) for the definition of “*Companies Ordinance 1962*” there were substituted the following definitions:—

“Commissioner for Corporate Affairs” means the person holding office as Commissioner for Corporate Affairs under section 4 of the *Commissioner for Corporate Affairs Act 1980*, and includes any person holding that office in an acting capacity;

“Commonwealth Minister” means the Minister of State for the Commonwealth for the time being administering the *Companies Act 1981* of the Commonwealth, as amended and in force for the time being;

“*Companies (Tasmania) Code*” or “Code” means the provisions applying by reason of section 5 of the *Companies (Application of Laws) Act 1982*;

(d) in the definition of “corporation”—

(i) for the expression “*Co-operative Societies Ordinance 1939*” in paragraph (c) there were substituted the expression “*Building Societies Act 1876*, the *Co-operative Industrial Societies Act 1928*, or the *Co-operative Housing Societies Act 1963*”;

(ii) for the expression “*Associations Incorporation Ordinance 1953*” in paragraph (d) there were substituted the expression “*Associations Incorporation Act 1964*”;

(e) after the definition of “insolvent under administration”, there were inserted the following definition:—

“*Insurance Act 1973*” means the *Insurance Act 1973* of the Commonwealth, as amended and in force for the time being;

(f) after the definition of “leave of absence”, there were inserted the following definition:—

“*Life Insurance Act 1945*” means the *Life Insurance Act 1945* of the Commonwealth, as amended and in force for the time being;

(g) in the definition of “lodged”—

(i) in paragraph (a) the word “or” were omitted;

(ii) in paragraph (b) the words “the Territory;” were omitted and the words “Tasmania; or” were substituted;

(iii) the following paragraph were inserted after paragraph (b):—

(c) in relation to the Commissioner for Corporate Affairs—lodged or filed with the Commissioner for Corporate Affairs under any corresponding previous law of Tasmania;

(b) after the definition of “ mining purposes ”, there were inserted the following definitions:—

“ Minister ” means the Minister of State for Tasmania for the time being administering the *Companies (Application of Laws) Act 1982*;

“ *National Companies and Securities Commission Act 1979* ” means the *National Companies and Securities Commission Act 1979* of the Commonwealth, as amended and in force for the time being;

(i) in paragraph (d) of the definition of “ prescribed interest ”, after “ corporation ”, there were inserted the words “ , society registered under the *Building Societies Act 1876*, the *Co-operative Industrial Societies Act 1928*, or the *Co-operative Housing Societies Act 1963*, or an association incorporated under the *Associations Incorporation Act 1964* ”;

(j) for the definition of “ Registrar of Companies ”, there were substituted the following definition:—

“ Registrar of Companies ” means a person who held office as Registrar of Companies, Deputy Registrar of Companies or Assistant Registrar of Companies under the *Companies Act 1962* or a corresponding previous enactment;

(k) after the definition of “ Registrar of Companies ”, there were inserted the following definition:—

“ the regulations ” means the provisions applying as regulations made under this Code by reason of section 6 of the *Companies (Application of Laws) Act 1982*; and

(l) for the definition of “ rules ”, there were substituted the following definition:—

“ the rules ” means the Rules of Court for the time being in force under the *Supreme Court Civil Procedure Act 1932*;

- (3) after section 5 (9) of the Commonwealth Act, there were inserted the following sub-section:—
- (10) In this Code—
- (a) a reference to a previous law, or a provision of a previous law, or previous enactment, of Tasmania or of the State corresponding to, or to a provision of, this Code includes a reference to, or to a provision of, the *Companies Act 1962*; and
- (b) a reference to a previous law, or a provision of a previous law, or previous enactment, of another State or of a Territory corresponding to, or to a provision of, this Code includes a reference to, or to a provision of, the law of that State or Territory corresponding to the *Companies Act 1962*;
- (4) for paragraphs (a) and (b) of section 12 (1) of the Commonwealth Act, there were substituted the following paragraphs:—
- (a) for the purpose of the performance of a function, or the exercise of a power, by the Commission under a Code that is a relevant Code for the purposes of the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981* or under a law of a participating State or of a participating Territory that corresponds with such a relevant Code; or
- (b) where the requirement relates to a matter that constitutes or may constitute—
- (i) a contravention of, or failure to comply with, a provision of a relevant Code or corresponding law referred to in paragraph (a);
- (ii) a contravention of, or failure to comply with, a provision of the *Companies Act 1962* as in force at any time or of a previous law of a participating State or participating Territory that corresponded with that Act; or
- (iii) an offence relating to a company that involves fraud or dishonesty or concerns the management of affairs of the company.;
- (5) in section 13 of the Commonwealth Act—
- (a) in subsection (1) for the words “on information” there were substituted the words “by complaint”;
- (b) in subsection (1), for the words “Australian Federal Police”, there were substituted the words “Tasmania Police”;
- (c) in subsection (2) for the words “An information” and “information”, there were substituted the words “A complaint” and “complaint”, respectively; and

- (d) in subsection (3) for the word “information”, twice occurring, there were substituted the word “complaint”;
- (6) in section 18 (7) (a) of the Commonwealth Act, after the words “Companies Auditors and Liquidators Disciplinary Board” there were inserted the expression “constituted under the *Companies Auditors and Liquidators Disciplinary Board Act 1982*”;
- (7) in section 19 of the Commonwealth Act, after the words “Auditor-General”, there were inserted the words “of Tasmania”;
- (8) in section 20 (8) (a) and (9) (a) of the Commonwealth Act, after the words “Companies Auditors and Liquidators Disciplinary Board” there were inserted the expression “constituted under the *Companies Auditors and Liquidators Disciplinary Board Act 1982*”;
- (9) for section 22 (4) of the Commonwealth Act, there were substituted the following subsection:—
- (4) In this section, “local authority” means the Commissioner for Corporate Affairs;
- (10) in section 27 (21), (22), and (23) of the Commonwealth Act, for the words “debt due to the Commonwealth” there were substituted the words “debt due to the Crown”;
- (11) at the end of section 27 (28) of the Commonwealth Act there were inserted the expression “constituted under the *Companies Auditors and Liquidators Disciplinary Board Act 1982*”;
- (12) in section 30 of the Commonwealth Act—
- (a) in subsection (1) the words “, in the absence of malice on his part,” were omitted;
- (b) in subsection (1) paragraph (c) were omitted and the following paragraph and words were substituted:—
- (c) the giving of any notice, or the sending of any copy of accounts, group accounts, or a report, to the Commission under sub-section 285 (9) or (10),
- if the publication of the statement or the giving of the notice or the sending of the copy of any accounts or report is made in good faith.;
- (c) in subsection (2) the words “, in the absence of malice on his part,” were omitted; and
- (d) in subsection (2) paragraph (b) were omitted and the following paragraph and words were substituted:—
- (b) in respect of the publishing of any statement made by an auditor as mentioned in sub-section (1),
- if the publication of that document or statement is made in good faith.;

- (13) in section 31 (2) and (5) of the Commonwealth Act, for the words “ the Registrar of Companies ” there were substituted the words “ the Commissioner for Corporate Affairs or the Registrar of Companies ”;
- (14) in section 32 (1) of the Commonwealth Act, for the words “ the Registrar of Companies ” there were substituted the words “ the Commissioner for Corporate Affairs or the Registrar of Companies ”;
- (15) in section 33 of the Commonwealth Act—
 - (a) in paragraph (a) of sub-section (3), for the words “ under this Act or is formed pursuant to another Act ” there were substituted the words “ under this Code or is formed pursuant to an Act ”; and
 - (b) in sub-section (4), for the words “ under this Act and is not formed pursuant to another Act ” there were substituted the words “ under this Code and is not formed pursuant to an Act ”;
- (16) after section 36 (7) of the Commonwealth Act, the following sub-sections were inserted:—
 - (8) This section does not apply to or in relation to a co-operative company.
 - (9) In sub-section (8), “ co-operative company ” means a company to which Division 9 of Part III of the *Income Tax Assessment Act* 1936 of the Commonwealth, as amended and in force for the time being applies.;
- (17) in section 46 (9) of the Commonwealth Act, for the words “ in a State or another Territory ” there were substituted the words “ in another State or in a Territory ”;
- (18) in section 52 (8) of the Commonwealth Act, for the words “ in a State or another Territory ” there were substituted the words “ in another State or in a Territory ”;
- (19) in section 55 (8) of the Commonwealth Act, for the words “ in a State or another Territory ” there were substituted the words “ in another State or in a Territory ”;
- (20) in section 59 of the Commonwealth Act, for the words “ in a State or another Territory ” there were substituted the words “ in another State or in a Territory ”;
- (21) in section 65 (4) of the Commonwealth Act, for the words “ that Ordinance ” there were substituted the words “ that Act ”;
- (22) in section 77 (1) and (2) of the Commonwealth Act, for the expression “ 1 October 1954 ” there were substituted the expression “ 1 February 1921 ”;
- (23) in section 85 (6) (b) of the Commonwealth Act, for the words “ Corporate Affairs Commission for the Territory ” there were substituted the words “ Corporate Affairs Office for Tasmania ”;

- (24) in section 90 (6) of the Commonwealth Act—
- (a) for the expression “ the *Companies (Transitional Provisions) Act 1981* ” there were substituted the expression “ Part III of the *Companies (Application of Laws) Act 1982* ”; and
- (b) for the words “ as if this Act ” there were substituted the words “ as if that Act ”;
- (25) in section 99 (5) of the Commonwealth Act, for the words “ this or any other Act ” there were substituted the words “ this Code or any Act ”;
- (26) for section 115 of the Commonwealth Act, there were substituted the following section:—
115. (1) A company shall not issue any share warrant. Share warrants.
- (2) Any share warrant issued before the commencement of the *Companies Act 1959* has effect subject to section 44 of the *Companies Act 1920* as if that section were continued in force.;
- (27) in section 122 (1) (a) of the Commonwealth Act, for the words “ this or any other Act ” there were substituted the words “ this Code or of any Act ”;
- (28) (a) in section 123 (15) of the Commonwealth Act, for the expression “ *Companies (Acquisition of Shares) Act 1980* or a corresponding law of a participating State or participating Territory, or of regulations made under that Act or under such a corresponding law, ” there were substituted the words “ *Companies (Acquisition of Shares) (Tasmania) Code* or a corresponding law in force in a participating State or participating Territory, or of regulations applying under that Code or applying or made under such a corresponding law, ”; and
- (b) after section 123 (15) of the Commonwealth Act, there were inserted the following subsection:—
- (16) Where land under the *Land Titles Act 1980* is comprised in a stratum plan registered under Part XIA of the *Conveyancing and Law of Property Act 1884* and, at the time of registration of the plan, the proprietor of that land was a company which had previously granted a right of a kind referred to in sub-section (13), the transfer by the company of any flat described on the stratum plan in exchange for the surrender of that right shall not of itself constitute, and shall be deemed never to have constituted, a reduction of the share capital of the company.;
- (29) in section 129 (6) (a) of the Commonwealth Act, for the expression “ *Act 1980* ” there were substituted the words “ (*Tasmania Code*) ”;
- (30) in section 129 (17) of the Commonwealth Act, for the words “ if this Act ” there were substituted the words “ if that Act ”;

- (31) in section 152 (7) of the Commonwealth Act, for the expression "1 September 1966" there were substituted the expression "1 January 1967";
- (32) in section 154 (5) of the Commonwealth Act, for the expression "1 September 1966" there were substituted the expression "1 January 1967";
- (33) in section 164 (1) of the Commonwealth Act, for the words "the Australian Capital Territory" in paragraph (b) of the definition of "company" there were substituted the word "Tasmania";
- (34) in section 172 (5) (a) of the Commonwealth Act, for the words "Corporate Affairs Commission for the Territory" there were substituted the words "Commissioner for Corporate Affairs";
- (35) in the interpretation of "prescribed corporation" in section 189 (1) of the Commonwealth Act, for the words "that is under the regulations a prescribed corporation;" there were substituted the words "that is, by reason of section 15 (3) of the *Companies (Application of Laws) Act* 1982, a prescribed corporation;";
- (36) in section 199 (5) of the Commonwealth Act, for the words "an office of the Commission" there were substituted the words "the Corporate Affairs Office for Tasmania";
- (37) sub-section (5) of section 204 of the Commonwealth Act were omitted;
- (38) in section 209 (1) of the Commonwealth Act, for the words "Registrar of Companies" there were substituted the words "Registrar of Companies or the Commissioner for Corporate Affairs";
- (39) for section 211 of the Commonwealth Act, there were substituted the following section:—

211. (1) Where—

- (a) a company, a recognized company or a recognized foreign company transfers, assigns or gives security over a personal chattel within the meaning of the *Bills of Sale Act* 1900 or gives security over stock, or wool or a crop, in accordance with the *Stock, Wool, and Crop Mortgages Act* 1930; and
- (b) notice in respect of that transfer, assignment or giving of security is required to be lodged with the Commission under this Division or the corresponding provisions of the law of a participating State or participating Territory,

that transfer, assignment or giving of security is not required to be registered under the provisions of the *Bills of Sale Act* 1900 or, as the case may be, under the *Stock, Wool, and Crop Mortgages Act* 1930 unless the transfer or assignment is made, or the security is given, jointly with another person who is not a company, a recognized company or a recognized foreign company or with other persons one or more of whom is not a company, a recognized company or a recognized foreign company.

(2) Where—

- (a) by reason of sub-section (1), a transfer, assignment or giving of security is not required to be registered under the *Bills of Sale Act 1900* or a giving of security is not required to be registered under the *Stock, Wool, and Crop Mortgages Act 1930*; or
- (b) by reason of the provision of a law of a participating State or participating Territory that corresponds with sub-section (1) (in this paragraph referred to as the “corresponding provision”), a transfer, assignment or giving of security is not required to be registered under the law of that State or Territory specified in that corresponding provision,

then—

- (c) no provision of the *Bills of Sale Act 1900* or, as the case may be, the *Stock, Wool, and Crop Mortgages Act 1930* relating to priorities applies to or in relation to the transfer, assignment or giving of security; and
 - (d) a failure to register the giving of security under the *Bills of Sale Act 1900* or under the *Stock, Wool, and Crop Mortgages Act 1930* does not affect the validity, or limit the effect, of the transfer, assignment or giving of security.;
- (40) in section 213 of the Commonwealth Act, for the words “the Australian Capital Territory” there were substituted the word “Tasmania”;
- (41) section 215A of the Commonwealth Act were repealed;
- (42) in section 233 (7) of the Commonwealth Act—
- (a) for the expression “1 October 1954”, wherever occurring, there were substituted the expression “1 January 1963”; and
 - (b) in paragraph (b) of the definition of “exempt benefit” for the words “if this Act had not been enacted” there were substituted the words “if the *Companies (Application of Laws) Act 1982* had not been enacted”;
- (43) in section 238 (10) of the Commonwealth Act, for the words “Registrar of Companies” there were substituted the words “Registrar of Companies or the Commissioner for Corporate Affairs”;
- (44) in section 265 (1) (b) of the Commonwealth Act, for the words “office of the Corporate Affairs Commission for the Territory” there were substituted the words “Corporate Affairs Office for Tasmania”;

- (45) in section 267 (2) of the Commonwealth Act, for the words "A company shall" there were substituted the expression "Subject to Division 5A of Part III of the *Evidence Act* 1910, a company shall";
- (46) in section 277 (2) (e) of the Commonwealth Act, for the expression "*Business Names Ordinance* 1963" there were substituted the expression "*Business Names Act* 1962";
- (47) in section 285 (3) (b) of the Commonwealth Act, for the words "in a State or in another Territory" there were substituted the words "in another State or in a Territory";
- (48) in section 289 of the Commonwealth Act—
- (a) for paragraph (a) of the definition of "relevant authority" in sub-section (1) there were substituted the following paragraphs:—
 - (a) in the case of a direction given by the Commonwealth Minister other than a direction that has been approved by the Ministerial Council under sub-section 291 (6)—the Commonwealth Minister;
 - (aa) in the case of a direction given by the Minister other than a direction that has been approved by the Ministerial Council under sub-section 291 (6)—the Minister; or; and
 - (b) for sub-section (7) there were substituted the following sub-section:—

(7) An investigation under this Part shall, for the purposes of Division 2 of Part III of the *Evidence Act* 1910, be deemed to be a legal proceeding.;
- (49) in section 291 of the Commonwealth Act—
- (a) in sub-section (2), for the words "the Minister", where twice occurring, there were substituted the words "the Commonwealth Minister";
 - (b) in sub-section (4), for the words "the Minister", there were substituted the words "the Minister or the Commonwealth Minister"; and
 - (c) in sub-section (6), for the expression "or under sub-section (1) or (2) of this section", there were substituted the expression "or under sub-section (1) of this section or by the Commonwealth Minister under sub-section (2) of this section";
- (50) for section 295 (4) of the Commonwealth Act, there were substituted the following sub-section:—
- (4) An examination under this section shall, for the purposes of Chapter X of the *Criminal Code*, be deemed to be a judicial proceeding.;

(51) in section 306 of the Commonwealth Act—

(a) in sub-section (6) (a) the word “and”, where lastly occurring, were omitted;

(b) in sub-section (6) (b), for the word “Commonwealth” there were substituted the following words and paragraph:—

“State; and

(c) the Commonwealth Minister may cause to be printed and published the whole or any part of a report under this Part that relates to an investigation the expenses of which are, under the Agreement, to be borne by the Commonwealth.”;

(c) in sub-section (7), for the words “Ministerial Council or the Minister”, where four times occurring, there were substituted the words “Ministerial Council, the Minister or the Commonwealth Minister”; and

(d) after sub-section (13), there were inserted the following sub-section:—

(14) Nothing in this section operates to diminish the protection afforded to witnesses by the *Evidence Act 1910*;

(52) for section 314 of the Commonwealth Act, there were substituted the following section:—

314. This Part binds the Crown in right of Tasmania and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities. Crown to be bound.

(53) in section 315 of the Commonwealth Act—

(a) in subsection (3) for the words “a State or another Territory” there were substituted the words “another State or in a Territory”;

(b) in subsection (19) for the words “the Australian Capital Territory”, where twice occurring, there were substituted the word “Tasmania”; and

(c) in sub-section (20), for the words “the Australian Capital Territory” there were substituted the word “Tasmania”;

(54) in section 317 (4) of the Commonwealth Act, for the words “the Australian Capital Territory”, where twice occurring, there were substituted the word “Tasmania”;

(55) in section 318 (11), (12), (13), and (15) of the Commonwealth Act, for the expression “*Unclaimed Moneys Ordinance 1950*”, wherever occurring, there were substituted the expression “*Unclaimed Moneys Act 1918*”;

(56) in section 318 (15) of the Commonwealth Act, for the word “Commonwealth” there were substituted the word “Crown”;

- (57) for section 322 of the Commonwealth Act, there were substituted the following section:—

Crown to
be bound.

322. This Part binds the Crown in right of Tasmania and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.;

- (58) for section 334 of the Commonwealth Act, there were substituted the following section:—

Crown to
be bound.

334. This Part binds the Crown in right of Tasmania and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.;

- (59) in section 335 (9) (b) of the Commonwealth Act—

(a) for the words “in each State or other Territory” there were substituted the words “in each other State and each Territory”; and

(b) for the words “that State or other Territory” there were substituted the words “that other State or in that Territory”;

- (60) for section 358 of the Commonwealth Act, there were substituted the following section:—

Crown to
be bound.

358. This Part binds the Crown in right of Tasmania and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.;

- (61) in section 398 (2) (d) of the Commonwealth Act—

(a) for the words “in each State or other Territory” there were substituted the words “in each other State and each Territory”; and

(b) for the words “that State or other Territory” there were substituted the words “that other State or in that Territory”;

- (62) for section 419 (1) of the Commonwealth Act, there were substituted the following subsection:—

(1) A liquidator is not liable to any action for defamation at the suit of a person in respect of any statement that he makes in the course of his duties as liquidator, whether the statement is made orally or in writing, if the publication of the statement is made in good faith.;

- (63) in section 425 (2) of the Commonwealth Act, after the expression “1936” there were inserted the words “of the Commonwealth as amended and in force for the time being”;

- (64) in section 427 of the Commonwealth Act, for the word “Minister”, wherever occurring, there were substituted the word “Treasurer”;

- (65) in section 428 of the Commonwealth Act—
- (a) for sub-section (1), there were substituted the following sub-section:—
 - (1) The Companies Liquidation Account kept in accordance with the *Companies Act 1959* is continued and is the Companies Liquidation Account for the purposes of section 427 and this section;
 - (b) in sub-section (2), for the word “Minister” there were substituted the word “Treasurer”; and
 - (c) sub-section (4) were omitted;
- (66) in section 441 (b) of the Commonwealth Act—
- (a) for the words in sub-paragraph (i) “an Act or a law of the Territory” there were substituted the words “and Act of the Commonwealth or a law of the Australian Capital Territory”;
 - (b) for the words in sub-paragraphs (ii), (iii), and (v) “any State Act or law of another Territory”, there were substituted the words “an Act or Act of any other State or law of a Territory other than the Australian Capital Territory”; and
 - (c) for the words in sub-paragraph (iv) “an Act” there were substituted the words “an Act of the Commonwealth”;
- (67) in section 462 of the Commonwealth Act, for the word “Minister”, wherever occurring, there were substituted the word “Treasurer”;
- (68) in section 463 of the Commonwealth Act, for the word “Commonwealth” there were substituted the word “Crown”;
- (69) in section 493 (5) of the Commonwealth Act, for the words “State Act” there were substituted the words “Act of the Commonwealth or of another State”;
- (70) in section 495 (1) of the Commonwealth Act, for the words “State or other Territory” there were substituted the words “other State or in a Territory”;
- (71) in section 516 (7) of the Commonwealth Act—
- (a) for the words “a State, of another Territory”, where twice occurring, there were substituted the words “another State, of a Territory”;
 - (b) for the words “a State or another Territory”, where twice occurring, there were substituted the words “another State or a Territory”; and
 - (c) in paragraph (e), for the words “State or other Territory” there were substituted the words “other State or of the Territory”;

- (72) in section 534 of the Commonwealth Act—
- (a) for the expression “*Unclaimed Moneys Ordinance 1950*”, wherever occurring, there were substituted the expression “*Unclaimed Moneys Act 1918*”;
 - (b) in sub-section (5) for the words “that Ordinance” there were substituted the words “that Act”; and
 - (c) in sub-section (6) for the word “Commonwealth” there were substituted the word “Crown”;
- (73) in section 568 of the Commonwealth Act, for the words “in a State or in another Territory” there were substituted the words “in another State or in a Territory”;
- (74) in section 571 (3) of the Commonwealth Act the words “information or” were omitted;
- (75) in the heading preceding section 576 of the Commonwealth Act, the words “*and Regulations*” were omitted;
- (76) in section 576 of the Commonwealth Act—
- (a) for the expression “The power to make rules of court conferred by section 28 of the *Australian Capital Territory Supreme Court Act 1933* extends to making rules of court, not inconsistent with this Act—” there were substituted the expression “(1) Rules of Court, not inconsistent with this Code, may be made in accordance with the *Supreme Court Civil Procedure Act 1932*—”; and
 - (b) at the end of the section there were inserted the following sub-section:—
 - (2) Sub-section (1) does not limit the rule-making powers conferred by the *Supreme Court Civil Procedure Act 1932*;
- (77) section 577 of the Commonwealth Act were repealed;
- (78) in section 578 (2) (a) of the Commonwealth Act for the words “State Act or Ordinance” there were substituted the words “Act of another State or Ordinance of a Territory”;
- (79) sections 580 and 581 of the Commonwealth Act were repealed;
- (80) Schedule 1 to the Commonwealth Act were repealed; and
- (81) in Schedule 3 to the Commonwealth Act—
- (a) for the words “the Act”, wherever occurring, there were substituted the words “the Code”;

(b) in regulation 1 of Table A—

- (i) for the expression “ ‘Act’ means the *Companies Act 1981* ” there were substituted the words “ ‘Code’ means the *Companies (Tasmania) Code* ”;
- (ii) in sub-regulation (2) for the expression “ *Act 1980* ” there were substituted the words “ *(Tasmania) Code* ”; and
- (iii) in sub-regulation (2) for the expression “ *Companies Act 1981* ” there were substituted the words “ *Companies (Tasmania) Code* ”; and

(c) in regulation 1 of Table B—

- (i) for the expression “ ‘Act’ means the *Companies Act 1981* ” there were substituted the words “ ‘Code’ means the *Companies (Tasmania) Code* ”;
 - (ii) in sub-regulation (2) for the expression “ *Act 1980* ” there were substituted the words “ *(Tasmania) Code* ”; and
 - (iii) in sub-regulation (2) for the expression “ *Companies Act 1981* ” there were substituted the words “ *Companies (Tasmania) Code* ”.
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Section 6

SCHEDULE 2

APPLICATION OF REGULATIONS UNDER COMMONWEALTH ACT

The provisions of Regulations in force for the time being under the Commonwealth Act apply as if in those Regulations—

- (1) for the words “ the Act ”, wherever occurring, there were substituted the words “ the Code ”;
- (2) for the expression “ *Companies Act 1981* ”, wherever occurring, there were substituted the expression “ *Companies (Tasmania) Code* ”;
- (3) for the words “ the Territory ”, wherever occurring, there were substituted the word “ Tasmania ”;
- (4) for the words “ the Australian Capital Territory ”, wherever occurring except in regulation 17, there were substituted the word “ Tasmania ”;
- (5) for the words “ a State or another Territory ” or “ a State or of another Territory ”, wherever occurring, there were substituted the words “ another State or a Territory ”;
- (6) for the words “ any other Territory or State ”, wherever occurring, there were substituted the words “ any other State or Territory ”; and
- (7) for the expression “ *Companies Ordinance 1962* ”, wherever occurring, there were substituted the expression “ *Companies Act 1962* ”;
- (8) for the expression “ *Companies (Acquisition of Shares) Act 1980* ”, wherever occurring, there were substituted the expression “ *Companies (Acquisition of Shares) (Tasmania) Code* ”;
- (9) for the expression “ *Securities Industry Act 1980* ”, wherever occurring, there were substituted the expression “ *Securities Industry (Tasmania) Code* ”;
- (10) for the words “ Companies Regulations ”, wherever occurring, there were substituted the expression “ *Companies (Tasmania) Regulations* ”;
- (11) for the words “ office of the Corporate Affairs Commission ”, wherever occurring, there were substituted the words “ office of the Commissioner for Corporate Affairs ”;
- (12) for the expression “ *Unclaimed Moneys Ordinance 1950* ”, wherever occurring, there were substituted the words “ *Unclaimed Moneys Act 1918* ”;
- (13) for the words “ law of a State or Territory ”, wherever occurring, there were substituted the words “ law in force in a State or Territory ”;
- (14) for the words “ law, or a previous law, in Australia ”, wherever occurring, there were substituted the words “ law, or a previous law, in force in Australia ”;

- (15) after the expression “*Bankruptcy Act 1966*”, wherever occurring otherwise than in regulation 17, there were inserted the words “of the Commonwealth (as amended and in force for the time being)”;
- (16) for the words “Corporate Affairs Commission for the Territory”, wherever occurring, there were substituted the words “Commissioner for Corporate Affairs for Tasmania”;
- (17) in regulation 17 (2)—
 - (a) for the words “a State Act” there were substituted the words “an Act of the Commonwealth or a State Act”; and
 - (b) for the words “that State Act” there were substituted the words “that Act of the Commonwealth or State Act”;
- (18) in regulation 57, for the words “commencement of the Act” there were substituted the words “commencement of the *Companies (Application of Laws) Act 1982*”;
- (19) in Companies Form 8 in Schedule 2, for note (1) there were substituted the following note “(1) Insert ‘Commissioner for Corporate Affairs for Tasmania’.”;
- (20) in Companies Form 28 in Schedule 2, for the words “law of”, wherever occurring, there were substituted the words “law in force in”;
- (21) in Companies Form 31 in Schedule 2, for the words “law of” there were substituted the words “law in force in”;
- (22) in Companies Form 32 in Schedule 2, for the words “law of”, wherever occurring, there were substituted the words “law in force in”;
- (23) in Companies Form 33 in Schedule 2—
 - (a) for the words “by the law of” there were substituted the words “by the law in force in”;
 - (b) for the words “any law in the place of incorporation” there were substituted the words “any law in force in the place of incorporation”; and
 - (c) for the words “the law of the place of incorporation”, wherever occurring, there were substituted the words “the law in force in the place of incorporation”;
- (24) in Companies Form 35 in Schedule 2, for note (7) there were substituted the following note “(7) Insert ‘Commissioner for Corporate Affairs for Tasmania’.”;
- (25) in Companies Form 46 in Schedule 2, for note (4) at the end of the form there were substituted the following note “(4) Insert ‘Commissioner for Corporate Affairs for Tasmania’.”;

- (26) in Companies Form 63 in Schedule 2, for note (1) there were substituted the following note “(1) Insert ‘Commissioner for Corporate Affairs for Tasmania’.”;
- (27) in Companies Form 66 in Schedule 2—
- (a) for the words “laws of the following” there were substituted the words “laws in force in the following”;
 - (b) for the words “law of a participating” there were substituted the words “law in force in a participating”;
 - and
 - (c) for note (1) at the end of the form there were substituted the following note “(1) Insert ‘Commissioner for Corporate Affairs for Tasmania’.”;
- (28) in Companies Form 67 in Schedule 2—
- (a) for the words “laws of the following participating States” there were substituted the words “laws in force in the following participating States”;
 - (b) for the words “law of a participating” there were substituted the words “law in force in a participating”;
 - and
 - (c) for note (1) at the end of the form there were substituted the following note “(1) Insert ‘Commissioner for Corporate Affairs for Tasmania’.”;
- (29) in clause 5 of Schedule 5, for the words “law of a declared State or declared Territory, or of a” there were substituted the words “law in force in a declared State or declared Territory, or in a”;
- (30) in Schedule 7, for the expression “section 81 of the *Companies Ordinance* 1973”, wherever occurring, there were substituted the expression “the *Companies (Application of Laws) Act* 1982”; and
- (31) in clause 10 (4) of Schedule 7, for the words “law of its place”, there were substituted the words “law in force in its place”.
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Section 7

SCHEDULE 3

APPLICATION OF REGULATIONS UNDER COMPANIES (FEES) ACT 1981
OF THE COMMONWEALTH

The provisions of Regulations in force for the time being under the *Companies (Fees) Act* 1981 of the Commonwealth apply as if in those Regulations—

- (1) a reference in the Schedule to a section, sub-section or paragraph, without an enactment being cited, were to be taken as a reference to that section, sub-section or paragraph of the *Companies (Tasmania) Code*; and
 - (2) for the words “the Territory”, wherever occurring, there were substituted the word “Tasmania”.
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Section 9

SCHEDULE 4

HEADINGS AND SECTIONS FOR INCLUSION IN PUBLICATION
OF COMMONWEALTH ACT

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

COMPANIES (TASMANIA) CODE

relating to the formation of companies in Tasmania, the regulation of companies formed in Tasmania, the registration in Tasmania of certain other bodies and certain other matters.

PART I—PRELIMINARY

Short title.

1. This Code may be cited as the *Companies (Tasmania) Code*.

Commence-
ment.

2. This Code comes into operation on the day on which the *Companies (Application of Laws) Act* 1982 comes into operation.

Code to be
read and
construed
together
with agree-
ment.

3. This Code shall be read and construed together with the agreement made on 22 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 to have
effect subject
to and in
accordance with
certain Acts.

4. This Code has effect subject to and in accordance with—

(a) the *Companies (Application of Laws) Act* 1982; and

(b) the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act* 1981.

Section 11

SCHEDULE 6

HEADING AND PROVISIONS FOR INCLUSION IN PUBLICATION OF REGULATIONS
UNDER COMPANIES (FEES) ACT 1981 OF THE COMMONWEALTH

The following heading and provisions shall be included in the publication under section 11 of the provisions of Regulations in force for the time being under the *Companies (Fees) Act* 1981 of the Commonwealth:—

COMPANIES (FEES) (TASMANIA) REGULATIONS

- Short title. 1. These Regulations may be cited as the *Companies (Fees) (Tasmania) Regulations*.
- Commence-
ment. 2. These Regulations shall come into operation on the day on which the *Companies (Application of Laws) Act* 1982 comes into operation.
- Interpretation. 3. In the Schedule, a reference to a section, sub-section or paragraph, without an enactment being cited, shall be taken as a reference to that section, sub-section or paragraph of the *Companies (Tasmania) Code*.
- Fees. 4. The fees payable for the purposes of section 7 of the *Companies (Application of Laws) Act* 1982 are the fees specified in the Schedule in relation to the respective matters so specified.

SCHEDULE

FEES

Section 17

SCHEDULE 7

REPEALS

Year and number of Act	Short title of Act
No. 66 of 1962	<i>Companies Act 1962</i>
No. 32 of 1971	<i>Marketable Securities Act 1971</i>
No. 5 of 1978	<i>Companies Act 1978</i>
No. 31 of 1978	<i>Companies Act (No. 2) 1978</i>
No. 70 of 1978	<i>Companies Act (No. 3) 1978</i>
No. 65 of 1980	<i>Companies Amendment Act 1980</i>

