

No. 9 of 1974

AN ORDINANCE

Relating to Companies.

I, THE GOVERNOR-GENERAL of Australia, acting with the advice of the Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910-1973*.

Dated this third day of April, 1974.

PAUL HASLUCK
Governor-General.

By His Excellency's Command,

LIONEL MURPHY
Attorney-General.

COMPANIES ORDINANCE 1974

1. (1) This Ordinance may be cited as the *Companies Ordinance 1974*.^{*} Short title and citation.

(2) The *Companies Ordinance 1962-1973*[†] is in this Ordinance referred to as the Principal Ordinance.

(3) The Principal Ordinance, as amended by this Ordinance, may be cited as the *Companies Ordinance 1962-1974*.

2. This Ordinance shall come into operation on such date as is fixed by the Minister of State for the Capital Territory by notice published in the *Gazette*. Commencement.

3. Section 12 of the Principal Ordinance is amended—

(a) by omitting from sub-section (7) the words "destroy, or"; and Registers, records, documents, returns, &c.

(b) by inserting after sub-section (7) the following sub-section:—

"(7A) Where, in pursuance of sub-section (7), documents have been given to the Chief Archivist, he may destroy them if, in his opinion, it is no longer necessary or desirable to retain them."

^{*} Notified in the *Australian Government Gazette* on 9 April 1974.

[†] Ordinance No. 7, 1962; as amended by No. 11, 1962; No. 19, 1963; Nos. 11 and 13, 1966; No. 31, 1968; Nos. 4, 10 and 28, 1969; No. 5, 1971; Nos. 16 and 19, 1972; and No. 9, 1973.

Omission of
" Limited " in name of charitable and other companies.

4. Section 24 of the Principal Ordinance is amended—

- (a) by omitting sub-section (4A);
- (b) by inserting after sub-section (4C) the following sub-section:—

“ (4D) The Attorney-General shall not, pursuant to sub-section (4C), revoke an exemption unless—

- (a) he has given the company concerned two months' notice in writing of his intention to revoke the exemption; and
- (b) having considered the matters (if any) brought to his attention by the company, he is satisfied that the exemption ought to be revoked.”; and

- (c) by omitting sub-section (5) and substituting the following sub-sections:—

“ (5) The Attorney-General may, by notice in writing served on the company, revoke a licence issued to a limited company under this section or under a corresponding previous law of the Territory, if—

- (a) the company has ceased to carry out one or more of the purposes for which it was formed, being a purpose or purposes referred to in paragraph (1)(a);
- (b) the company has applied its profits for a purpose for which it was not formed;
- (c) the company has paid a dividend to one or more of its members; or
- (d) the company has contravened, or failed to comply with, a condition on which the licence was issued.

“ (5A) The Attorney-General shall not, pursuant to sub-section (5), revoke a licence unless—

- (a) he has given the company concerned two months' notice in writing of his intention to revoke the licence; and
- (b) having considered the matters (if any) brought to his attention by the company, he is satisfied that the licence ought to be revoked.

“ (5B) Subject to sub-section (5E), the revocation of a licence under sub-section (5) takes effect on the date specified in the instrument of revocation, being a date not less than ninety days after the date of the instrument.

“ (5C) Subject to sub-section (5F), where the revocation, under sub-section (5), of a licence has taken effect, the Registrar shall—

- (a) enter the word 'Limited' at the end of the name of the company in the register;

- (b) by notice in writing given to the company, require the company, within the period specified in the notice, being a period not less than fourteen days after the date on which the notice is given, to deliver to the Registrar its certificate of incorporation; and
- (c) upon the delivery to him of the certificate of incorporation of the company, cancel that certificate and issue to the company a new certificate of incorporation.

“(5D) Where a company is dissatisfied with the revocation of a licence issued under sub-section (5), the company may, within the period of ninety days from the date of the instrument of revocation, appeal to the Court against the revocation.

“(5E) On an appeal under sub-section (5D), the court may confirm or set aside the revocation and may make such further order as to it seems proper.

“(5F) Where a company has appealed to the Court, in pursuance of sub-section (5D), the Registrar shall not act as required by sub-section (5c) until the appeal has been determined by the Court or has been abandoned or withdrawn.

“(5G) On and from the date on which the revocation of a licence takes effect, the memorandum and articles of association of the company shall be read as if the word ‘Limited’ appeared at the end of the name of the company wherever that name occurs.

“(5H) A company shall comply with a requirement of a notice referred to in paragraph (5c) (b).”.

5. Section 76 of the Principal Ordinance is amended by adding at the end of sub-section (1) the following definition:—

“‘proclaimed State’ means a State or Territory declared by proclamation to be a proclaimed State or Territory for the purposes of this Division.”.

Inter-pretation.

6. (1) Section 158 of the Principal Ordinance is amended—

- (a) by omitting sub-section (1) and substituting the following sub-sections:—

“(1) A company having a share capital shall, in respect of each financial year of the company, make a return containing the particulars referred to in Part I of the Eighth Schedule and accompanied by such copies of documents as are required to be included in the return in accordance with Part II of that Schedule and such of the certificates and other particulars prescribed in that Part as are applicable to the company.

Annual return by a company having a share capital.

“ (2) A return for the purpose of sub-section (1) shall be in accordance with the form set out in Part II of the Eighth Schedule and shall be made up to the date of the annual general meeting of the company in the year to which the return relates or a date not later than the fourteenth day after the date of that meeting.”; and

- (b) by omitting sub-sections (4), (4A) and (4B) and substituting the following sub-section:—

“ (4) The annual return, signed by a director, manager or secretary of the company, shall be lodged with the Registrar within one month, or, in the case of a company keeping, pursuant to its articles, a branch register in any place outside the Commonwealth, within two months, after the annual general meeting.”.

(2) Where—

- (a) a financial year of a company ended on or after 29 June 1973 and before the date of commencement of this Ordinance; and
- (b) the company has lodged a return in respect of that year in accordance with section 158 of the Principal Ordinance as in force immediately before the date of commencement of this Ordinance,

nothing in section 158 of the Principal Ordinance as amended by this Ordinance requires the company to lodge a further return in respect of that financial year.

Relief from requirements as to form and content of accounts and reports.

7. Section 162c of the Principal Ordinance is amended—

- (a) by omitting sub-section (3) and substituting the following sub-sections:—

“ (3) The Registrar shall not make an order under sub-section (1) or (2) unless he is of the opinion that compliance with the requirements of this Ordinance would render the accounts or group accounts or report, as the case may be, misleading or inappropriate to the circumstances of the company or would impose unreasonable burdens on the company or an officer of the company.

“ (3A) The Registrar shall not make an order under sub-section (1) or (2) if he is aware of any circumstances by reason of which the making of an order would be contrary to the public interest.”; and

- (b) by omitting sub-section (5).

Failure to comply with this Division.

8. Section 163 of the Principal Ordinance is amended by omitting from sub-section (2) the words “ the last preceding section ” and substituting the word and figures “ section 162 ”.

9. Section 306 of the Principal Ordinance is amended—

(a) by inserting after sub-section (6A) the following sub-section:—

Prosecution of delinquent officers and members of company.

“(6B) A person is not excused from giving all assistance that he is reasonably able to give, as required in pursuance of sub-section (6A), on the ground that to do so might tend to incriminate him, but a statement made by him in the course of giving such assistance is not admissible in evidence against him in civil or criminal proceedings other than proceedings arising out of the falsity of that statement.”; and

(b) by omitting from sub-section (7) the words “the last preceding sub-section” and substituting the word and number “sub-section (6A)”.

10. Section 348 of the Principal Ordinance is amended by inserting in paragraph (5) (e), after the word “charity,”, the word “patriotism,”.

Balance-sheets and annual returns.

11. Section 173 of the Principal Ordinance is amended by omitting from sub-section (2) the word and figure “Division 3” and substituting the word and figure “Division 1”.

Appointment of inspectors.

12. The Second Schedule to the Principal Ordinance is amended by omitting item 16 and substituting the following item:—

Second Schedule.

“16. On late lodgment of any document under this Ordinance, except where the late lodgment results from matters beyond the control of the company or person required to lodge the document, in addition to any other fee—

- (a) if lodged within one month after the prescribed time or period \$4.00
- (b) if lodged more than one month after the prescribed time or period \$15.00

or

if the Registrar is satisfied that just cause existed for the failure to lodge the document within one month after the expiration of the prescribed time or period—such lower fee as the Registrar fixes, not being less than . . . \$4.00”.

13. (1) Sub-paragraph 7(a) of Part I of the Eighth Schedule to the Principal Ordinance is amended by omitting the word and figure “clause 5” and substituting the words and figures “clauses 5 and 6”.

Eighth Schedule.

(2) The Eighth Schedule to the Principal Ordinance is amended—

(a) by omitting the words—

“Annual return of Limited made up to the day of 19 . . . being—

- (a) in the case of a company that during the whole of the last financial year of the company was an exempt proprietary company, being a company that is not required to include accounts with its return—the date of the anniversary of the incorporation of the company that next succeeds the end of that financial year; or

(b) in any other case—the date determined by the company, being a date not earlier than the date of the annual general meeting before which the accounts of the company for the last financial year of the company were laid and not later than the fourteenth day after the date of that annual general meeting.”

and substituting the words—

“ Annual return of Limited made up to the
day of 19 [being the date of or a date
not later than the fourteenth day after the date of the annual general
meeting in 19]”;

(b) by omitting the words—

* *the date of this return*
“ being
* *the date of the annual general meeting last held before the date of this return.”;*

and

(c) by omitting the words—

““Total amount of calls received, including payments on }”
application and allotment } ;

and substituting the words and symbol—

““Total amount of calls received, including payments on } \$ ”.