

EXPLANATORY STATEMENT

EXECUTIVE COUNCIL MINUTE NO.39 OF 1982

ATTORNEY-GENERAL

ORDINANCES REVISION (COMPANIES AMENDMENTS) ORDINANCE 1982

No.38 of 1982

INTRODUCTION

This explanatory statement contains a brief outline of the co-operative companies and securities scheme and the Companies Act 1981 and then deals with the draft Ordinances Revision (Companies Amendments) Ordinance 1982.

The Scheme

2. On 22 December 1978 the Commonwealth and the six States executed a Formal Agreement that provided the framework for a co-operative Commonwealth/State scheme for a uniform system of law and administration in relation to company law and the regulation of the securities industry in the six States and the Australian Capital Territory. Uniformity of law was to be achieved by a legislative device whereby the Commonwealth Government passed legislation applicable directly to the Australian Capital Territory. Each State was required to pass legislation that will apply the relevant Commonwealth law as the law of that jurisdiction to the exclusion of its present legislation as from the date of commencement of the Commonwealth law.

3. Uniformity of administration is to be obtained by vesting all administrative functions under all the legislation mentioned in the previous paragraph in the National Companies and Securities Commission which will delegate most of these functions to the Corporate Affairs authority in each State and the A.C.T. This delegation is intended to be subject to such directions and guidelines as are necessary to obtain substantial uniformity in administrative policies and legislative interpretation.

4. The Corporate Affairs Commission Ordinance 1980 established a Corporate Affairs Commission for the Australian Capital Territory. It is intended that the Corporate Affairs Commission will administer co-operative scheme laws (including the Companies Act 1981) under delegation from the National Companies and Securities Commission.

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9.

The Companies Act 1981

5. The Companies Act 1981 is the major Commonwealth Act forming part of the proposed new Australian companies code under the co-operative companies and securities scheme. The Companies Act 1981 (No. 89) received the Royal Assent on 18 June 1981 but has not yet come into operation. The Federal Executive Council has approved the making of a proclamation to bring the Act into operation on 1 July 1982. At that time the Companies Ordinance 1962 will be repealed (by virtue of section 4 of, and schedule 1 to, the Companies Act).

6. The Registrar of Companies was appointed under paragraph 7(1)(a) of the Companies Ordinance 1962. The functions and duties of the Registrar of Companies is to perform specific statutory duties or registration functions under the Companies Ordinance and certain other laws of the Australian Capital Territory. Upon the repeal of the Companies Ordinance the position of Registrar of Companies will be abolished and similar functions and duties under the Companies Act will be performed by the Corporate Affairs Commission of the Australian Capital Territory as a delegate of the National Companies and Securities Commission.

Ordinances Revision (Companies Amendments) Ordinance 1982

7. When the Companies Act 1981 comes into force the A.C.T. Companies Ordinance 1962 will be repealed (by virtue of section 4 of the Companies Act). The object of the Ordinance will be therefore to make a number of amendments to various Ordinances consequent upon the repeal of the Companies Ordinance and the commencement of the Companies Act 1981. The Corporate Affairs Commission will be substituted for the Registrar of Companies and other minor amendments will be made, in a number of Ordinances of the Australian Capital Territory.

Cl.1 Short title

8. The Ordinance is cited as the Ordinances Revision (Companies Amendments) Ordinances 1982 (cl.1).

Cl.2 Commencement

9. The Ordinance will come into operation on 1 July 1982 (cl.2).

PART II - AMENDMENTS OF THE ASSOCIATIONS INCORPORATION ORDINANCE 1953

10. Part II of the Ordinance contains certain consequential amendments to the Associations Incorporation Ordinance 1953 (cls.3 to 10).

11. The Registrar of Companies performs registration functions and duties under the Associations Incorporation Ordinance. The position of Registrar of Companies will be abolished by the repeal of the Companies Ordinance 1962, and these functions and duties will then be carried out by the Corporate Affairs Commission.

Cl.3 Interpretation

12. The Associations Incorporation Ordinance 1953 is referred to as the Principal Ordinance in this Part (cl.3).

Cl.4 Interpretation

13. The definitions of "Registrar" and "Companies Ordinance" are omitted. "Companies Act" and "Commission" are defined as necessary (paras. 4(a) and (b)).

14. The present definition of "unauthorized name" (that is one that may not be used by an association except in certain circumstances) is a name that in the opinion of the Registrar of Companies is undesirable, or is a name of a kind that the Registrar has been directed by the Minister under section 22 of the Companies Ordinance not to accept as a name of a company.

15. The definition of unauthorized name is changed to:

- . a name that is considered by the Corporate Affairs Commission to be undesirable; or
- . a name of a kind that the National Companies and Securities Commission has been directed by the Ministerial Council for Companies and Securities not to accept for registration under section 38 of the Companies Act 1981 (para. 4(c)).

Cl.5 Certificates of incorporation

16. The Corporate Affairs Commission will be empowered to issue a certificate of incorporation to an association (cl.5). At present the Registrar of Companies is empowered to do this.

Cl.6 Winding up

17. At present the provisions of the Companies Ordinance relating to the winding up of unregistered companies apply to the winding up of associations, with certain modifications (sections 17, 18 and 19 of the Associations Incorporation Ordinance).

18. Upon the repeal of the Companies Ordinance, Division 6 of Part XII of the Companies Act 1981 will apply to the winding up of associations, with similar modifications set out in sections 17, 18 and 19 of the Associations Incorporation Ordinance. For this purpose a new section 17 of the Ordinance will be substituted (cl.6).

Cl.7 Evidentiary provisions

19. The Corporate Affairs Commission will be able to certify under its common seal certain evidentiary documents relating to the registration of associations. At present section 23 of the Associations Incorporation Ordinance empowers the Registrar of Companies to do this (para. 7(a)).

20. Sub-section 23(2) of the Associations Incorporation Ordinance, which provides that judicial notice will be taken of the Registrar's signature is repealed, as this evidentiary provision is now found in section 6 of the Corporate Affairs Commission Ordinance 1980 (para. 7(b)).

Cl.8 Schedule

21. "Commission" is substituted for "Registrar" (cl.8).

Cl.9 Other amendments

22. A number of provisions in the Associations Incorporation Ordinance will be amended by substituting "Commission" "Registrar", as specified in Schedule 1 (cl.9).

Cl.10 Transitional

23. Where an association is in liquidation when the Companies Ordinance 1962 is repealed, the existing liquidation provisions of that Ordinance will continue to apply to the exclusion of liquidation provisions of the Companies Act 1981 (sub-cl. 10(1)). Clause 6 of the Ordinance also refers to the winding up of Associations.

24. Certain matters and notices pending, at the time of the repeal of the Companies Ordinance, under sections 3,5,11,13 and 14 of the Associations Incorporation Ordinance is saved and not invalidated as a consequence of the repeal (sub-cl. 10(2) to 10(6)).

PART III - AMENDMENTS TO THE BUSINESS NAMES ORDINANCE 1963

25. Part III of the Ordinance contains certain consequential amendments to the Business Names Ordinance 1963 (cls.11 to 19).

26. The Registrar of Companies performs certain registration functions and duties under the Business Names Ordinance. The position of Registrar of Companies will be abolished by the repeal of the Companies Ordinance 1962, and these functions and duties will then be carried out by the Corporate Affairs Commission:

Cl.11 Interpretation

27. The Business Names Ordinance 1963 is referred to as the Principal Ordinance in this Part (cl.11).

Cl.12 Interpretation

28. "Commission" is defined, the definition of "Registrar" will be omitted, and the definition of "Secretary" will be altered as necessary (paras. 12(a), (c) and (d)).

29. The present definition of "corporation" is altered to include any recognised company (paragraph 12(b)), the concept of which was established by the Companies Act 1981. A company incorporated in a State participating in the co-operative scheme will be referred to as a recognised company.

Cl.13 Registration of business names

30. Necessary changes to section 7 of the Business Names Ordinance is made to effect the transfer of registration functions from Registrar of Companies to the Corporate Affairs Commission. "Commission" is substituted for "Registrar" and another minor consequential amendment is made (paras. 13(a) to (f)).

Cl.14 Restriction of registration of undesirable business names

31. Under the present sub-section 9(1) of the Business Names Ordinance, except with the consent of the Minister, a business name shall not be registered if it is:-

- . in the opinion of the Registrar of Companies, undesirable; or
- . a name of a kind that the Minister has, for the purpose of the Business Names Ordinance, directed the Registrar not to accept for registration.

32. Sub-section 9(1) is amended so that except with the consent of the Minister a business name shall not be registered if it is:-

- . in the opinion of the Corporate Affairs Commission of the Australian Capital Territory, undesirable; or

is a name of a kind that the National Companies and Securities Commission has been directed, by the Ministerial Council for Companies and Securities, not to accept for registration under the Companies Act 1981 (paragraph 14(a)).

33. Sub-section 9(2) of the Principal Ordinance provided for the publication and circulation of a direction relating to prohibited names. This sub-section will be omitted (para. 14(b)) as the necessary promulgation of the appropriate direction will be made under the Companies Act.

Cl.15 Registrar may correct errors in register, &c.

34. The power of the Registrar of Companies under section 21 of the Business Names Ordinance to correct errors in the register of business names will be transferred to the Corporate Affairs Commission or the Commissioner for Corporate Affairs. "Commission" or "Commissioner" will be substituted for "Registrar" (paras. 15(a) to (c)). "Commissioner" will be defined (para. 15(d)).

Cl.16 Certificates of registration or non-registration

35. The power of the Registrar of Companies under Section 23 of the Business Names Ordinance to issue certificates of registration or the non-registration of a business name will be transferred to the Corporate Affairs Commission. The necessary changes to effect this are made (paras 16(a) to (d)).

Cl.17 Schedule

36. "Commission" is substituted for "Registrar" (cl. 17).

Cl.18 Other amendments

37. A number of provisions in the Business Names Ordinance are amended by substituting "Commission" for "Registrar" and a number of other minor amendments will be made, as specified in Schedule 2 (cl.18).

Cl.19 Transitional

38. Certain matters pending at the time of the repeal of the Companies Ordinance under sections 7, 9, 11 and 19 of the Business Names Ordinance are saved and not invalidated as a consequence of the repeal (cl.19).

PART IV - AMENDMENTS TO THE CO-OPERATIVE SOCIETIES ORDINANCE 1939

39. Part IV of the Ordinance contains certain consequential amendments to the Co-operative Societies Ordinance 1939 (cls.20 to 26).

Cl.20 Interpretation

40. The Co-operative Societies Ordinance 1939 is referred to as the Principal Ordinance in this Part (cl.20).

Cl.21 Interpretation

41. This clause will provide the necessary changes in definitions, including the definition of "authorised bill of exchange" which will be modified as a consequence of sub-section 97(7) of the Companies Act 1981 having replaced sub-section 38(7) of the Companies Ordinance 1962 (cl.21).

Cl.22 Prohibited Names

42. Section 16AA of the Co-operative Societies Ordinance will require that except with the consent of the Ministerial Council a co-operative society may not be registered by a name that in the opinion of the Registrar of Co-operative Societies is undesirable or is a name of a kind that the National Companies and Securities Commission has been directed by the Ministerial Council not to accept for registration under the Companies Act 1981 (para 21(1)(a)). "Ministerial Council" is defined for the purpose of s.16AA (para 21(1)(b)).

43. Under the former section 16AA of the Co-operative Societies Ordinance, the Attorney-General may have consented to the use of a name that the Registrar of Co-operative Societies considered undesirable; and the prohibited names direction referred to in the section was one expressed to be given by the Attorney-General to the Registrar of Companies.

Cl.23 Liquidity

44. The definition of "institutional loan" in section 23A of the Co-operative Societies Ordinance will be modified to include a charge required to be registered under the Companies Act 1981. At present this definition is tied to the Companies Ordinance 1962 (cl.23).

Cl.24 Application of Companies Act in a winding up

45. Sections 59 to 62 of the Co-operative Societies Ordinance applied the winding up and dissolution provisions in Part X of the Companies Ordinance (with some modifications) to Co-operative Societies registered in the Australian Capital Territory, in liquidation.

46. Upon the repeal of the Companies Ordinance, winding up and dissolution of A.C.T. Co-operative Societies will be controlled by winding up and dissolution provisions of Part XII of the Companies Act 1981 with modifications similar to those which now apply (para. 24(a)). "Part XII of the Companies Act" is substituted for "Part X of the Companies Ordinance" and other minor consequential amendments will be made (paras. 24(b) to (e)).

Cl.25 Other amendments

47. A number of provisions in the Business Names Ordinance are amended by substituting "Companies Act" for "Companies Ordinance", and a number of other minor amendments will be made, as specified in Schedule 3 (cl.25)).

Cl.26 Transitional

48. Where an A.C.T co-operative society is in liquidation at the time the Companies Ordinance 1962 is repealed, the existing liquidation provisions in that Ordinance will continue to apply to the exclusion of liquidation provisions under the Companies Act 1981 (cl. 26). cl.24 of the proposed Ordinance refers to the application of the Companies Act in a winding up of a Co-operative Society.

PART V - AMENDMENTS OF THE MONEY LENDERS ORDINANCES 1936

49. Part V of the Ordinance contains certain consequential amendments to the Money Lenders Ordinance 1936 (cls.27 to 29).

Cl.27 Interpretation

50. The Money Lenders Ordinance 1936 is referred to as the Principal Ordinance in this Part (cl.27).

Cl.28 Interpretation

51. A number of definitions in section 4 of the Money Lenders Ordinance are inserted, substituted, or modified. In particular:

- (a) "Commission" is defined (para. 28(a)) and the definition of "Registrar of Companies" is omitted (para. 28(b)); and
- (b) the definition of "body corporate" is modified to include certain types of companies classified under the Companies Act 1981 as recognized companies, foreign companies and recognized foreign companies (para. 28(b)).

Cl.29 Other amendments

52. "Commission" is substituted for "Registrar" as set out in the table in clause 29 (cl.29).

PART IV - APPLICATION OF STATE ACT

53. Part IV of the Ordinance repeals the application in the Australian Capital Territory of a State Act.

Cl.30 State Act to cease to apply

54. The Mining Partnerships Act of N.S.W. is an Act to consolidate the statutes relating to limiting the liability of mining partnerships.

55. The New South Wales Mining Partnerships Act 1900 ceases to be in force in the Australian Capital Territory (cl.30). This Act, which provided for the incorporation of certain mining partnerships has never had any practical application in the Australian Capital Territory. The commencement of the Companies Act 1981 is considered an appropriate time to repeal the application of the Act in the Australian Capital Territory.

PART VII - AMENDMENTS OF OTHER ORDINANCES

56. Part VII of this Ordinance contains a number of miscellaneous consequential amendments.

Cl.31 Amendment of Seat of Government (Administration) Ordinance 1930

57. The Ordinances Revision (Companies Amendments) Ordinance 1982 will be administered by the Attorney-General (para. 32(a)).

58. The Companies Ordinance 1962 and Marketable Securities Ordinance 1971 will be repealed under section 4 of the Companies Act 1981. They will be removed from the administration of the Attorney-General (paras. 32(a) and (b)).

Cl.32 Amendment to Unclaimed Moneys Ordinance 1950

59. Sections 427 and 428 of the Companies Act 1981 will provide machinery for the accounting of unclaimed assets in the hands of liquidators of companies incorporated in the Australian Capital Territory. Therefore Part II (which deals with unclaimed assets in the hands of liquidators) of the Unclaimed Moneys Ordinance 1950 is expressed to be inoperative to the extent to which sections 427 and 428 of the Companies Act will apply (cl.32).

Cl.33 Amendments to Other Ordinances

60. Numerous provisions in a number of Ordinances is amended as set out in Schedule 4 (cl.33). "Companies Act" is substituted for "Companies Ordinance" and certain other minor consequential amendments are made.

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