# AUSTRALIAN CAPITAL TERRITORY

# Ordinances Revision (Companies Amendments) Ordinance 1982

### No. 38 of 1982

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# AUSTRALIAN CAPITAL TERRITORY

# Ordinances Revision (Companies Amendments) Ordinance 1982

# No. 38 of 1982

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

Dated 25 June 1982.

# ZELMAN COWEN Governor-General

By His Excellency's Command,

# P. DURACK

Attorney-General

An Ordinance to revise the Ordinances of the Territory in consequence of the repeal of the Companies Ordinance 1962

# PART I—PRELIMINARY

# Short title

1. This Ordinance may be cited as the Ordinances Revision (Companies Amendments) Ordinance 1982.<sup>1</sup>

### Commencement

2. This Ordinance shall come into operation on 1 July 1982.

# PART II—AMENDMENTS OF THE ASSOCIATIONS INCORPORATION ORDINANCE 1953

### Interpretation

3. In this Part, "Principal Ordinance" means the Associations Incorporation Ordinance 1953.<sup>2</sup>

# Interpretation

4. Section 2 of the Principal Ordinance is amended—

(a) by inserting after the definition of "association" in sub-section (1) the following definition:

"'Commission' means the Corporate Affairs Commission;";

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(b) by inserting after the definition of "committee" in sub-section (1) the following definition:

"'Companies Act' means the Companies Act 1981;"; and

- (c) by omitting from sub-section (1) the definitions of "the Companies Ordinance", "the Registrar" and "unauthorized name" and substituting the following definition:
  - " 'unauthorized name', in relation to an association means a name that is, in the opinion of the Commission, undesirable or is a name, or a name of a kind, that the National Companies and Securities Commission has been directed, under section 38 of the Companies Act, not to accept for registration.".

# **Certificates of incorporation**

5. Section 6 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) "Registrar may, if he is satisfied that it is proper for him" and substituting "Commission may, if it is satisfied that it is proper for it";
- (b) by omitting from sub-section (1A) "Registrar" and substituting "Commission";
- (c) by omitting from sub-section (2) "Registrar" and "he", and substituting "Commission" and "it" respectively; and
- (d) by omitting from sub-section (3) "Registrar" and substituting "Commission".

6. Section 17 of the Principal Ordinance is repealed and the following section substituted:

# Winding up

"17. (1) Where an incorporated association is being wound up under Division 6 of Part XII of the Companies Act the provisions of sections 18 and 19 of this Ordinance and sub-section (2) of this section apply in addition to the provisions of that Part.

"(2) Where an incorporated association is being wound up under Division 6 of Part XII of the Companies Act a reference in the Companies Act—

- (a) to the directors of a company shall be read as a reference to the members of the committee of an incorporated association;
- (b) to the secretary of a company shall be read as a reference to the public officer of an incorporated association; and
- (c) to the principal place of business of a company shall be read as a reference to the place where the public officer of an incorporated association resides.".

# **Evidentiary provisions**

- 7. Section 23 of the Principal Ordinance is amended-
- (a) by omitting from sub-section (1) "Registrar may, by writing under his hand, certify" and substituting "Commission may certify under its common seal"; and
- (b) by omitting sub-section (2).

# Schedule

8. The Schedule to the Principal Ordinance is amended by omitting from the heading "REGISTRAR" and substituting "COMMISSION".

# Other amendments

9. The provisions of the Principal Ordinance specified in an item of Schedule 1 are amended as set out in Column 2 of that Schedule opposite to that item.

# Transitional

10. (1) Notwithstanding the amendments of the Principal Ordinance made by this Part, where before the commencement of this Part the winding-up of an incorporated association was commenced, the Principal Ordinance continues to apply to and in relation to the winding-up of that association as if those amendments had not been made.

(2) Where before the commencement of this Ordinance a notice was approved by the Registrar under paragraph 3(2)(c) of the Principal Ordinance, but was not published, the notice shall be deemed to have been approved by the Commission under paragraph 3(2)(c) of the Principal Ordinance as amended by this Ordinance.

(3) Where before the commencement of this Ordinance an application was made under section 5 of the Principal Ordinance but a certificate of incorporation had not been granted or refused, the application shall be deemed to have been made under section 5 of the Principal Ordinance as amended by this Ordinance.

(4) Where before the commencement of this Ordinance a public officer had sent the Registrar a notice under section 11 of the Principal Ordinance and that notice had not been received by the Registrar immediately before the commencement of this Ordinance, the relevant notice shall be deemed to have been sent to the Commission in accordance with that section as amended by this Ordinance.

(5) Where before the commencement of this Ordinance a notice relating to the alteration of the objects or purposes of an association was filed with the Registrar under sub-section 13(1) of the Principal Ordinance, and the Registrar had not approved those alterations under sub-section 13(3) of that Ordinance, the notice shall be deemed to have been filed under section 13 of the Principal Ordinance as amended by this Ordinance.

(6) Where before the commencement of this Ordinance an application was made under section 14 of the Principal Ordinance but a certificate of incorporation had not been granted or refused, the application shall be deemed to have been made under section 14 of the Principal Ordinance as amended by this Ordinance.

# PART III—AMENDMENTS OF THE BUSINESS NAMES ORDINANCE 1963

# Interpretation

11. In this Part, "Principal Ordinance" means the Business Names Ordinance 1963.<sup>3</sup>

## Interpretation

12. Section 4 of the Principal Ordinance is amended

(a) by inserting after the definition of "christian name" in sub-section (1) the following definition:

"'Commission' means the Corporate Affairs Commission;";

- (b) by omitting "any foreign company within the meaning of the Companies Ordinance 1962" from the definition of "corporation" in sub-section (1) and substituting "any recognized company, recognized foreign company or foreign company within the meaning of section 5 of the Companies Act 1981";
- (c) by omitting from sub-section (1) the definition of "the Registrar"; and
- (d) by omitting "Division 3 of Part XI of the Companies Ordinance 1962", from the definition of "secretary" in sub-section (1) and substituting "Division 5 of Part XIII of the Companies Act 1981".

# **Registration of business names**

13. Section 7 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) "Registrar" and substituting "Commission";
- (b) by omitting from sub-section (3) "Registrar" and substituting "Commission";
- (c) by omitting sub-section (4) and substituting the following sub-section:
  "(4) The Commission shall, upon registering a business name, issue a certificate of registration in the prescribed form.";
- (d) by omitting from sub-section (5) "Registrar" and substituting "Commission";
- (e) by omitting from sub-section (6) "Registrar" and substituting "Commission"; and
- (f) by omitting from sub-section (7) "Registrar" and "he", and substituting "Commission" and "it" respectively.

# **Restriction on registration of undesirable business names**

- 14. Section 9 of the Principal Ordinance is amended-
- (a) by omitting from sub-section (1) all the words after "opinion" and substituting "of the Commission, undesirable or is a name or a name of a kind that the National Companies and Securities Commission has been directed, under section 38 of the Companies Act 1981, not to accept for registration.";

- (b) by omitting sub-section (2);
- (c) by omitting from sub-section (3) "Registrar" and substituting "Commission"; and
- (d) by omitting from sub-section (4) "Registrar" and substituting "Commission".

# Registrar may correct errors in register, &c.

15. Section 21 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) "Registrar" and substituting "Commissioner";
- (b) by omitting from sub-section (2) "Registrar" and substituting "Commissioner";
- (c) by omitting from sub-section (4) "Registrar" and substituting "Commission"; and
- (d) by adding at the end thereof the following sub-section:

"(5) In this section 'Commissioner' means the Commissioner appointed under the Corporate Affairs Commission Ordinance 1980.".

# Certificates of registration or non-registration

16. Section 23 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) "Registrar" and substituting "Commission";
- (b) by omitting from paragraph (1) (a) "his hand" and substituting "its common seal";
- (c) by omitting from paragraph (1) (b) "his hand" and substituting "its common seal"; and
- (d) by omitting from sub-section (2) "Registrar" and substituting "Commission".

# Schedule

17. The Schedule to the Principal Ordinance is amended by omitting from the heading "REGISTRAR" and substituting "COMMISSION".

# Other amendments

18. The provisions of the Principal Ordinance specified in an item of Schedule 2 are amended as set out in Column 2 of that Schedule opposite to that item.

# Transitional

19. (1) Where, before the commencement of this Ordinance-

- (a) an application for the registration of a business name was lodged under section 7 of the Principal Ordinance;
- (b) an application for the consent of the Minister was lodged under sub-section 9 (3) of the Principal Ordinance; or

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(c) an application for the renewal of registration was lodged under sub-section 11 (1) of the Principal Ordinance,

and the application had not been granted or refused, the application shall be deemed to have been made under section 7, sub-section 9 (3) or 11 (1) (as the case requires) of the Principal Ordinance as amended by this Ordinance.

(2) Where, before the commencement of this Ordinance a ground of cancellation of the registration of a business name specified in sub-section 19 (1) of the Principal Ordinance was established but the Registrar had not cancelled the registration of that business name under that sub-section, the Commission may cancel the registration of that business name.

# PART IV—AMENDMENTS OF THE CO-OPERATIVE SOCIETIES ORDINANCE 1939

# Interpretation

20. In this Part, "Principal Ordinance" means the Co-operative Societies Ordinance 1939.<sup>4</sup>

# Interpretation

21. Section 4 of the Principal Ordinance is amended —

- (a) by omitting "38 (7) of the Companies Ordinance 1962-1974, been declared by the Attorney-General" from sub-paragraph (d) (i) of the definition of "authorized bill of exchange" in sub-section (1) and substituting "97 (7) of the Companies Act, been declared by the National Companies and Securities Commission";
- (b) by inserting after the definition of "building society" in sub-section (1) the following definitions:
  - "'Commission' means the Corporate Affairs Commission;

'Companies Act' means the Companies Act 1981;"; and

(c) by omitting from sub-section (1) the definition of "the Companies Ordinance".

### **Prohibited names**

22. Section 16AA of the Principal Ordinance is amended—

- (a) by omitting "Attorney-General" and "Attorney-General has, under section twenty-two of the Companies Ordinance, directed the Registrar of Companies", and substituting "Ministerial Council" and "Ministerial Council has, under section 38 of the Companies Act, directed the National Companies and Securities Commission" respectively; and
- (b) by adding at the end thereof the following sub-section:

"(2) In this section 'Ministerial Council' has the same meaning as in the Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980.".

# Liquidity

**23.** Section 23A of the Principal Ordinance is amended by omitting "*Companies Ordinance* 1962-1974" from paragraph (a) of the definition of "institutional loan" in sub-section (2) and substituting "Companies Act".

# Application of Companies Act in a winding-up

24. Section 60 of the Principal Ordinance is amended—

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

"(1) In the case of a winding-up of a society, the provisions of Part XII of the Companies Act with respect to the winding-up of a company incorporated under that Act, including the provisions as to dissolution contained in Sub-division F of Division 4 of that Part, shall, subject to this Part, apply to and in relation to the winding-up of the society.";

- (b) by omitting from sub-section (2) "Part X of the Companies Ordinance" and substituting "Part XII of the Companies Act";
- (c) by omitting from paragraph (2) (e) "(d) and (e) of sub-section (1) of section two hundred and eighteen of the Companies Ordinance" and substituting "360 (1) (e) and (f) of the Companies Act";
- (d) by omitting from paragraph (2) (f) "two hundred and twenty-one or two hundred and twenty-two of the Companies Ordinance" and substituting "364 of the Companies Act"; and
- (e) by omitting from paragraph (2) (g) "two hundred and seventy, two hundred and seventy-one and two hundred and seventy-two of the Companies Ordinance" and "that Ordinance" and substituting "409, 410 and 411 of the Companies Act" and "that Act" respectively.

### Other amendments

25. The provisions of the Principal Ordinance specified in an item of Schedule 3 are amended as set out in Column 2 of that Schedule opposite to that item.

# Transitional

26. Notwithstanding the amendments of section 60 of the Principal Ordinance made by this Part, the provisions of that section of the Principal Ordinance continue to apply, to and in relation to the winding-up of a society that had not been completed before the commencement of this Ordinance as if those amendments had not been made.

# PART V—AMENDMENTS OF THE MONEY LENDERS ORDINANCE 1936

# Interpretation

27. In this Part, "Principal Ordinance" means the Money Lenders Ordinance 1936.<sup>5</sup>

### Interpretation

28. Section 4 of the Principal Ordinance is amended-

(a) by inserting before the definition of "Court" in sub-section (1) the following definition:

"'Commission' means the Corporate Affairs Commission;";

- (b) by omitting from sub-section (1) the definition of "the Registrar"; and
- (c) by omitting sub-paragraph (2) (a) (i) and substituting the following sub-paragraph:
  - "(i) a recognized company, a foreign company or a recognized foreign company as defined by section 5 of the *Companies Act* 1981;".

# Other amendments

29. The Principal Ordinance is amended as set out in the following table:

Provision amended	Amendment
Sub-section 9A (1)	Omit "Registrar", substitute "Commission".
Section 9B	Omit "Registrar", substitute "Commission".
Sub-section 9C (1)	Omit "Registrar", substitute "Commission".
Section 9D	Omit "Registrar" (wherever occurring), substitute "Commission".

# PART VI—OTHER AMENDMENTS

# State Act to cease to apply

**30.** The Mining Partnerships Act, 1900 of the State of New South Wales shall cease to be in force in the Territory.

### Amendment of Seat of Government (Administration) Ordinance

**31.** The Second Schedule to the Seat of Government (Administration) Ordinance 1930 is amended—

(a) by inserting in Part 1-

"Ordinances Revision (Companies Amendments) Ordinance 1982" after-

"Ordinances Revision (Age of Majority) Ordinance 1974"; and

(b) by omitting from Part 1—

*"Marketable Securities Ordinance* 1971".

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# Amendment of Unclaimed Moneys Ordinance

**32.** After section 5 of the Unclaimed Moneys Ordinance 1950<sup>6</sup> the following section is inserted in Part II:

"5A. In this Part, 'company' does not include a body corporate that is a company within the meaning of section 5 of the *Companies Act* 1981.".

# **Amendments of other Ordinances**

33. The Ordinances specified in Schedule 4 are amended as set out in that Schedule.

### SCHEDULE 1

Section 9

### AMENDMENTS OF ASSOCIATIONS INCORPORATION ORDINANCE 1953

	Column 1	Column 2
Item No.	Provision Amended	Amendment
1.	Sub-sections 2A (1), (2) and (3);	Omit "Registrar" (wherever occurring), substitute "Commission".
	Paragraph 3 (2) (c);	
	Sub-section 5 (1);	
	Sub-sections 11 (1) and (2);	
	Sub-section 12 (1);	
	Sub-sections 13 (1) and (3);	
	Sub-sections 14 (1), (2), (3) and (4);	
	Sub-section 22 (3);	
	Section 24;	
	Paragraphs 25 (c) and (f)	
2.	Sub-section 14 (4);	Omit "he", substitute "it".
	Section 24;	
	Schedule – Item No. 17	
3.	Schedule Item No. 7 Item No. 8 Item No. 10 Item No. 12 Item No. 13 Item No. 14 Item No. 15 Item No. 17	Omit "Registrar" (wherever occurring), substitute "Commission".
4.	Schedule-Item No. 13	Omit "his", substitute "its".

# SCHEDULE 2

Section 18

### AMENDMENTS OF BUSINESS NAMES ORDINANCE 1963

Item No.	Column 1 Provision Amended	Column 2 Amendment
1.	Sub-section 3 (4)	Omit "Registrar under this Ordinance", substitute "Commission".
2.	Sub-sections 4A (1), (2) and (3);	Omit "Registrar" (wherever occurring), substitute "Commission".
	Sub-section 6 (1);	
	Sub-section 8 (2);	
	Sub-sections 10 (1), (2), (3) and (4);	
	Sub-sections 11 (1), (3) and (4);	
	Paragraphs 11 (5) (a), (b), (c), (d) and (e);	
	Sub-sections 12 (1), (2), (3), (5), (7), (8), (9), (10), (11), (12) and (13);	
	Paragraphs 12(1)(a), (7)(a) and (8)(a);	
	Sub-sections 13 (1) and (2);	

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	Column 1	Column 2
Item No.	Provision Amended	Amendment
	Paragraph 13 (1) (b); Sub-sections 15 (1) and (2); Section 16; Sub-sections 18 (1) and (2); Sub-sections 18 (1) and (2); Sub-sections 19 (1), (2), (3) and (5); Paragraphs 19 (1) (a), (b)	
	and (c); Section 22; Section 25; Sub-section 31 (1); Paragraphs 33 (a) and (c)	
3.	Sub-section 6 (1); Paragraph 10 (1) (a); Section 16; Sub-sections 18 (1) and (2); Sub-sections 19 (2) and (5)	Omit "he", substitute "it".
4.	Paragraph 10 (1) (b); Sub-section 10 (2); Section 25	Omit "his", substitute "its".
5.	Sub-section 13 (1); Section 16; Paragraph 19 (1) (a); Sub-sections 19 (2) and (5)	Omit "him", substitute "it".
6.	Paragraph 19 (1) (d); Sub-section 26 (2)	Omit "Companies Ordinance 1962", substitute "Companies Act 1981".
7.	Schedule Item No. 4 Item No. 5 Item No. 7 Item No. 10 Item No. 11 Item No. 12 Item No. 13 Item No. 14 Item No. 17 Item No. 18	Omit "Registrar" (wherever occurring), substitute "Commission".
8.	Schedule Item No. 13	Omit "he", substitute "it".
9.	Schedule - Item No. 17	Omit "his", substitute "its".

# SCHEDULE 2-continued

# SCHEDULE 3

Section 25

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Item No.	Column 1 Provision Amended	Column 2 Amendment	
1.	Sub-section 35 (4); Sub-sections 38A (1), (5), (8), (10) and (17); Paragraphs 38A (2) (c) and (4) (a); Sub-paragraph 38A (8) (b) (i); Sub-section 59 (2)	Omit "Companies Ordinance" (wherever occurring), substitute "Companies Act".	
2.	Sub-sections 38A (12) and (17); Paragraph 38A (8) (b)	Omit "Registrar of Companies", substitute "Commission".	
3.	Paragraph 38A (5) (b)	Omit "Fourth Schedule to the Companies Ordinance", substitute "Third Schedule to the Companies Act",	
4.	Paragraph 60A (c)	Omit "Part X of the Companies Ordinance", substitute "Part XII of the Companies Act".	
5.	Sub-section 38A (9)	Omit "Registrar of Companies" and "his hand", substitute "Commission" and "its common seal" respectively.	

### AMENDMENTS OF CO-OPERATIVE SOCIETIES ORDINANCE 1939

# SCHEDULE 4

Section 34

# AMENDMENTS OF OTHER ORDINANCES

Ordinance	Provisions amended	Amendment
Betting (Totalizator Agency) Ordinance 1964	Section 33	Omit "section nine of the Companies Ordinance 1962-1963", substitute "section 18 of the Companies Act 1981".
Consumer Affairs Ordinance 1973	Sub-section 3 (1)	Omit "Companies Ordinance 1962" from the definition of "corporation", substitute "Companies Act 1981".
Door-to-Door Sales Ordinance 1969	Paragraph 4A (1) (b)	Omit "sub-section 6 (5) of the Companies Ordinance 1962-1974", substitute "sub-section 7 (5) of the Companies Act 1981".
Egg Industry Ordinance 1975	Sub-section 3 (1)	Omit "Companies Ordinance 1962" from the definition of "company", substitute "Companies Act 1981".
Gun Licence Ordinance 1937	Sub-section 3 (1)	Omit "Companies Ordinance 1962" from the definition of "company" and "corporation", substitute "Companies Act 1981".
Legal Practitioners Ordinance 1970	Paragraph 59 (1) (a)	Omit "the Companies Ordinance 1962-69", substitute "the Companies Act 1981".
	Paragraph 59 (2) (b)	Omit "the Companies Ordinance 1962", substitute "the Companies Act 1981".
	<b>Sub-section</b> 66 (2)	Omit "the Companies Ordinance 1962-69", substitute "the Companies Act 1981".
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Ordinance	Provisions amended	Amendment
	Sub-section 74A (5)	Omit "the Companies Ordinance 1962-69", substitute "the Companies Act 1981".
	Sub-section 78 (1)	Omit "the Companies Ordinance 1962-69", substitute "the Companies Act 1981".
Long Service Leave Ordinance 1976	Sub-section 2 (1)	Omit "section 6 of the Companies Ordinance 1962-1974, a subsidiary company, a holding company or a related company" from the definition of "associated company", substitute "section 7 of the Companies Act 1981, a subsidiary corporation, a holding company or a related corporation".
Poker Machine Control Ordinance 1975	Sub-section 46 (3)	Omit "Companies Ordinance 1962-1974", substitute "Companies Act 1981".
	Sub-section 48 (1)	Omit "Companies Ordinance 1962-1974", substitute "Companies Act 1981".
Pyramid Selling Ordinance 1973	Paragraph 9 (3) (b)	Omit "Companies Ordinance 1962-1973", substitute "Companies Act 1981".
Sale of Motor Vehicles Ord- inance 1977	Sub-paragraph 3 (2) (c) (ii)	Omit "Companies Ordinance 1962", sub- stitute "Companies Act 1981".
	Paragraph 42 (a)	Omit "Companies Ordinance 1962", sub- stitute "Companies Act 1981".
Trustee Companies Ord- inance 1947	Section 3	Insert "or is a recognized company or a recognized foreign company within the meaning of section 5 of the <i>Companies</i> Act 1981" after "registered in the Territory as a foreign company" in paragraph (b) of the definition of "trustee company".
Trustee Ordinance 1957	Second Schedule, Item 11, paragraph 14 (a)	Omit "paragraph 38(7)(b) of the Com- panies Ordinance 1962-1974", substitute "paragraph 97(7)(b) of the Companies Act 1981".
Unclaimed Moneys Ord- inance 1950	Section 3	Omit "or a foreign company for the pur- poses of the Companies Ordinance 1962-1973" from paragraph (a) of the definition of "company", substitute "a recognized company or a foreign company for the purposes of the Companies Act 1981".
	Sub-section 4 (2)	Omit "Registrar of Companies", substitute "Corporate Affairs Commission".
Workmen's Compensation Supplementation Fund Ordinance 1980	Section 2	Omit definition of "Companies Ordinance", substitute "Companies Act means the Companies Act 1981;".
5. a., and 1700	Sub-section 37 (2)	Omit "Companies Ordinance", substitute "Companies Act".
	Sub-sections 40 (1) and (2)	Omit "sub-section 292 (1) of the Companies Ordinance", substitute "sec tion 441 of the Companies Act".

# SCHEDULE 4-continued

### NOTES

- 1. Notified in the Commonwealth of Australia Gazette on 30 June 1982.
- No. 15, 1953 as amended by No. 14, 1954; No. 7, 1956; No. 5, 1961; No. 7, 1962; No. 19, 1966; No. 60, 1976; No. 33, 1977.
- 3. No. 12, 1963 as amended by No. 15, 1966; Nos. 51 and 60, 1976; No. 46, 1978.
- No. 9, 1939 as amended by No. 1, 1946; No. 14, 1950; No. 14, 1954; No. 10, 1956; No. 18, 1958; Nos. 3 and 7, 1962; No. 10, 1963; No. 18, 1966; No. 6, 1972; Nos. 16 and 29, 1973; Nos. 35 and 47, 1974; Nos. 13 and 15, 1975; No. 14, 1977; No. 46, 1978; No. 35, 1979.
- No. 13, 1936 as amended by Nos. 3 and 29, 1938; No. 15, 1956; No. 19, 1966; No. 36, 1967; No. 11, 1977; No. 13, 1978; No. 22, 1981.
- 6. No. 15, 1950 as amended by No. 14, 1954; No. 7, 1962; No. 19, 1966; No. 36, 1967; Nos. 18 and 57, 1974; No. 64, 1976; No. 65, 1977; No. 49, 1978.