

COMPANIES (TRANSFER OF DOMICILE) ACT.

New South Wales



ANNO SEPTIMO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 15, 1968.

An Act to make provision for the transfer to the State of the domicile of a corporation incorporated outside the State; to apply the Companies Act to and in respect of such a corporation that so transfers its domicile; and for purposes connected therewith. [Assented to, 25th September, 1968.]

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BE it enacted by the Queen's Most Excellent Majesty, by **No. 15, 1968** and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.**PRELIMINARY.**

1. (1) This Act may be cited as the "Companies (Transfer of Domicile) Act, 1968". Short title and commencement.

(2) Parts II, III and IV of this Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. This Act is divided as follows:—

PART I.—PRELIMINARY—*ss.* 1–4.

PART II.—REGISTRATION—*ss.* 5–11.

PART III.—APPLICATION OF THE COMPANIES ACT—*ss.* 12–24.

PART IV.—GENERAL—*ss.* 25–29.

Division of Act.

3. This Act shall be read and construed subject to the limits of the legislative powers of the State and so as not to exceed those powers, to the intent that, where any enactment thereof would, but for this provision, be construed as being in excess of those powers, it shall nevertheless be a valid enactment to the extent to which it is not in excess of those powers. Construction of Act.

4. (1) Subject to subsection two of this section, and except in so far as the context or subject-matter otherwise indicates or requires, words and expressions used in this Act have the same meaning as those words and expressions have in the Companies Act. Interpretation.

(2)

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No. 15, 1968 (2) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“Companies Act” means the Companies Act, 1961, as from time to time amended before and after the commencement of this Act, and includes—

- (a) any Act passed in substitution for that Act, as so amended, or incorporating any of its provisions; and
- (b) regulations, general rules, proclamations and orders made under that Act, as so amended, or any Act referred to in paragraph (a) of this definition;

“company” means a corporation registered pursuant to this Act;

“constitution” in relation to a corporation means charter, statute, memorandum and articles or other instrument constituting a corporation or defining its constitution;

“corporation” means a corporation incorporated outside the State;

“prescribed” means prescribed by or under this Act;

“this Act” includes regulations and general rules made under this Act.

PART II.

REGISTRATION.

Powers of Registrar.

5. Subject to this Act, a corporation that applies to the Registrar to be registered pursuant to this Act may, unless its winding up has commenced, or a receiver of its property has been appointed, or it is under official management or the equivalent thereof, be registered by the Registrar as—

- (a) a company limited by shares;
- (b) a company limited by guarantee;
- (c) a company limited both by shares and guarantee;
- (d)

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- (d) an unlimited company; or No. 15, 1968
 (e) in the case of a mining company, a no-liability company,

whether or not the winding up of the company after its registration pursuant to this Act is proposed.

6. A corporation shall not be registered pursuant to this Act unless— Disqualifications.

- (a) in accordance with the law for the time being in force in the place of its incorporation—
- (i) the transfer of its domicile from that place is authorised;
 - (ii) the corporation is of a class the same, or substantially the same, as one of the classes of companies specified in section five of this Act;
 - (iii) the constitution of the corporation specifies the name and objects of the corporation;
 - (iv) where the liability of the members of the corporation is limited, the extent to which, and the manner in which, that liability is limited is defined in the constitution of the corporation or otherwise; and
 - (v) where the corporation has a share capital and the liability of its members is limited, its capital is of a fixed amount and is divided into shares also of a fixed amount;
- (b) it has complied with such of the requirements of that law as relate to the transfer of its domicile; and
- (c) where that law does not require the members of the corporation, or a specified proportion of those members, to consent to the transfer of its domicile, not less than three-fourths of such members of the corporation

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corporation as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, have consented to the transfer of the domicile of the corporation at a meeting of which not less than twenty-one days' notice specifying the intention of the corporation to apply for such a transfer has been given.

Application. 7. An application for registration pursuant to this Act shall be in the prescribed form and shall be accompanied by—

- (a) a certified copy of the certificate of incorporation or registration of the applicant corporation in the place of its incorporation or a document having the like effect;
- (b) evidence acceptable to the Registrar that the corporation is not disqualified under section five or six of this Act from registration pursuant to this Act;
- (c) a certified printed copy of the constitution of the corporation and any other instrument specifying internal regulations for the corporation and, if those documents are not written in the English language, a certified translation thereof;
- (d) in the case of a corporation applying to be registered as a company having a share capital, a statement specifying—
 - (i) the nominal share capital of the corporation and the number and classes of shares into which the share capital is divided;
 - (ii) the number of shares taken up and the amount paid on each share; and
 - (iii) except in the case of a shareholder in respect of whom the corporation would, if it had been incorporated under the Companies Act, have been exempted by the provisions of subsection two of section fifty-four of that Act from lodging such particulars in relation to an allotment of shares, the full name or
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the surname and at least one Christian or other name and other initials and the address of each of the shareholders and the number and class of shares held by the person named;

- (e) in the case of a corporation applying to be registered as a company limited by guarantee or a company limited both by shares and guarantee, a statement specifying the number of members with which it proposes to register; and
- (f) such other documents or information as the Registrar may require and specify by notice in writing to the corporation.

The Registrar may, where any document referred to in this section has been lodged with him under Division 3 of Part XI of the Companies Act, dispense with the lodging thereof under this section.

8. If the Registrar is satisfied that an applicant corporation may lawfully be registered pursuant to this Act he shall, on payment of the prescribed fees, so register the corporation by registering the application and the accompanying documents and shall certify under his hand and seal that, on and from the date specified in the certificate for the purpose, the incorporation of the corporation is changed to incorporation as a company under the Companies Act and—

- (a) that the company is—
- (i) a company limited by shares;
 - (ii) a company limited by guarantee;
 - (iii) a company limited both by shares and guarantee;
 - (iv) an unlimited company; or
 - (v) a no-liability company,
- as the case may require; and
- (b) where applicable, that the company is a proprietary company.

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No. 15, 1968 **9.** (1) On and from the date specified in a certificate issued pursuant to section eight of this Act, the corporation to which the certificate relates shall be deemed to be a company duly incorporated under the Companies Act which shall, subject to this Act, extend and apply to the corporation, as such a company, and persons and matters associated therewith, and the corporation shall be capable forthwith of exercising all the functions of such a company and of suing and being sued and having perpetual succession and a common seal with power to hold land but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is provided by the Companies Act and by this Act.

Change of
status.

(2) Subsection one of this section shall not operate—

- (a) to create a new legal entity;
- (b) to prejudice or affect the continuity of a corporation;
- (c) to affect the property of a corporation;
- (d) to render defective any legal or other proceedings instituted, or to be instituted, by or against a corporation or any other person; or
- (e) except to the extent provided by this Act, to affect any rights, powers, authorities, duties, functions, liabilities or obligations of a corporation or any other person.

Memo-
randum
and
articles.

10. Upon the registration of a corporation pursuant to this Act—

- (a) so much of its constitution as would, had the corporation been formed under the Companies Act, have been required by that Act to be included in its memorandum of association shall be deemed to be the registered memorandum of association of the company; and

(b)

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- (b) so much of its constitution as does not, by virtue of paragraph (a) of this section, comprise its registered memorandum of association shall be deemed to be the registered articles of association of the company. No. 15, 1968

and shall be binding on the company and its members accordingly.

11. Where, immediately before its registration pursuant to this Act, a company was registered pursuant to Division 3 of Part XI of the Companies Act, the Registrar shall, upon its registration pursuant to this Act, remove its name from the register kept pursuant to that Division and may retain such of the documents relating to the company and registered pursuant to that Division as he thinks fit. Removal
from
register of
foreign
companies.

PART III.

APPLICATION OF THE COMPANIES ACT.

12. Without prejudice to section nine of this Act, a provision of the Companies Act that applies, or could have applied, to or in respect of a company incorporated under the Acts repealed by the Companies Act, or persons or matters associated therewith, shall apply to and in respect of a corporation registered pursuant to this Act, and the like persons and matters associated therewith, and shall so apply as if the corporation were a company incorporated under the Acts so repealed, and as if the Companies Act had commenced on the day on which the corporation is incorporated pursuant to section nine of this Act. General
application
of certain
provisions
of Com-
panies Act.

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No. 15, 1968 **13.** Provisions the same as the provisions of subsections two, three, four, five and six of section twelve of the Companies Act shall be deemed to have been enacted in and as part of this Act.

Application of Companies Act, sec. 12. (Registers.)

Application of Companies Act, sec. 22. (Names of companies.)

14. The provisions of section twenty-two of the Companies Act (subsection two excepted), and any direction given, whether before or after the commencement of this Act, pursuant to subsection one of that section, shall apply to and in respect of the registration of a corporation pursuant to this Act.

Application of Companies Act, sec. 30. (Adoption of Table A or B of Fourth Schedule.)

15. Except pursuant to a special resolution, the provisions of section thirty of the Companies Act shall not apply to or in respect of a corporation registered pursuant to this Act.

Certain provisions of Companies Act, not to apply.

16. The provisions of sections fifty, fifty-two and one hundred and thirty-five of the Companies Act shall not apply to or in respect of a corporation registered pursuant to this Act.

Application of Companies Act, sec. 102. (Duty of company to register charges existing on property acquired.)

17. (1) Subject to this section, the provisions of section one hundred and two of the Companies Act relating to a foreign company that becomes registered in the State shall extend to a corporation that becomes registered pursuant to this Act and (whether or not the corporation was, before its registration pursuant to this Act, such a foreign company, and notwithstanding anything contained in section one hundred and ten of the Companies Act) shall so extend in relation to property of the corporation both within the State and outside the State.

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(2) Nothing in subsection one of this section shall be construed as extending the time limited by section one hundred and two of the Companies Act for the doing of anything under that section by a foreign company, where the foreign company becomes registered pursuant to this Act before the expiration of that time. No. 15, 1968

18. The provisions of section one hundred and thirty-six of the Companies Act shall apply to and in respect of a corporation registered pursuant to this Act as if the words “, but so long as a company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year” had been omitted from subsection one and the words “or eighteen months” from subsection two. Application of Companies Act, sec. 136. (Annual general meeting.)

19. The provisions of section 161A of the Companies Act shall apply to and in respect of the directors of a corporation registered pursuant to this Act as if the reference therein to the commencement of the Companies (Amendment) Act, 1964, were a reference to the registration of the corporation pursuant to this Act. Application of Companies Act, sec. 161A. (As to accounting periods of companies with the same group.)

20. The provisions of section one hundred and sixty-two of the Companies Act shall apply to and in respect of the directors of a corporation registered pursuant to this Act as if the words “at some date not later than eighteen months after the incorporation of the company and subsequently” had been omitted from subsection one and as if the words “periods of eighteen months and” in subsection two were the words “period of”. Application of Companies Act, sec. 162. (Profit and loss account, balance-sheet and directors' report.)

21.

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No. 15, 1968 **21.** In the application of section two hundred and eighteen of the Companies Act to and in respect of a corporation registered pursuant to this Act, contributories for the purposes of that section in respect of—

Application of Companies Act, sec. 218.

(Liability as contributories of present and past members.)

- (a) the debts and liabilities of the corporation contracted before that registration;
- (b) the costs and expenses of winding up the corporation in so far as they relate to those debts and liabilities; and
- (c) the adjustment of the rights of the contributories amongst themselves, in so far as they relate to those debts and liabilities,

shall, subject to paragraph (a) of subsection one of that section, be deemed to include every person who would have been liable as a contributory had the corporation been wound up immediately before its registration pursuant to this Act.

22. The provisions of section three hundred and seventeen of the Companies Act shall apply to and in respect of a corporation registered pursuant to this Act to the same extent as they apply to and in respect of an unregistered company.

Application of Companies Act, sec. 317.

(Power of Court to stay or restrain proceedings.)

23. The provisions of section three hundred and eighty-one of the Companies Act shall extend to offences against this Act.

Application of Companies Act, sec. 381.

(Proceedings how and when taken.)

24. Where a corporation registered pursuant to this Act has adopted as articles all or any of the regulations contained in Table A or Table B of the Fourth Schedule to the Companies Act, a reference therein to "the Act" shall be deemed to include a reference to this Act.

Application of Companies Act, Fourth Schedule.

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PART IV.

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GENERAL.

25. (1) Within ninety days after its registration pursuant to this Act, a company shall, by special resolution, make such alterations to its constitution as—

Obligatory alteration of constitution.

- (a) are necessary to express in Australian currency any amounts of money specified therein;
- (b) are necessary to avoid any inconsistency with its status as a company deemed to be incorporated under the Companies Act; or
- (c) are necessary or expedient to give effect to the provisions of this Act, or are incidental thereto.

(2) Alterations made for the purposes of paragraph (a) of subsection one of this section shall all be made on the basis of the same rate, being a rate fixed by resolution of the company before the passing of the special resolution referred to in subsection one of this section, and the resolution when passed pursuant to this subsection shall, for the purposes of the Companies Act, be deemed to be a special resolution.

(3) Where the Registrar so directs, the company shall, within a time specified by the Registrar when giving the direction, apply to the Court for an order approving its constitution as altered in accordance with the resolution referred to in subsection one of this section.

(4) Where application is made to it pursuant to subsection three of this section, the Court may, on being satisfied that the resolutions referred to in this section have been duly passed, make an order approving the constitution of the company as altered in accordance with those resolutions, with such modifications thereto as it thinks fit.

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(5) Subject to subsection six of this section, a special resolution referred to in subsection one of this section, and an order of the Court made under subsection four of this section, shall, whether or not the resolution or order affects the memorandum of a company, be deemed to be a resolution or, as the case may be, an order of the Court, to which section twenty-one of the Companies Act applies.

(6) Where, pursuant to section twenty-one of the Companies Act and subsection five of this section, a company would, but for this subsection, be required to lodge with the Registrar a printed copy of its constitution as altered, the company may, in lieu thereof, lodge with the Registrar a copy of the special resolution or, as the case may require, an office copy of the order of the Court and, if its memorandum has been altered, a printed copy of the memorandum as altered.

(7) Where alterations to the constitution of a company having a share capital are made in accordance with this section, upon the alterations taking effect—

- (a) the amount of the nominal share capital of the company and the nominal value of each share shall be as expressed in the altered constitution;
- (b) each holder of shares in the company shall hold the same number of those shares as he held immediately before the alterations took effect; and
- (c) the amount paid up on each share in the company shall be an amount in Australian currency that bears to the nominal value of the share under the altered constitution the same proportion as, immediately before the alterations took effect, the

amount

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amount paid up on the share bore to the nominal value of the share, and the amount of the share capital paid up shall be calculated accordingly. No. 15, 1968

(8) If default is made in complying with the provisions of subsection one, two or three of this section the company and every officer of the company who is in default shall be guilty of an offence against this Act.

Penalty : One thousand dollars. Default penalty.

26. (1) Where a company has, before its registration pursuant to this Act, issued any share warrant, the bearer of the share warrant shall be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members. Share warrants.

(2) A company shall be responsible for any loss incurred by any person by reason of the company entering in the register of members the name of a bearer of a share warrant issued before its registration pursuant to this Act in respect of shares therein specified without the warrant being surrendered and cancelled.

(3) Subject to this Act, the bearer of a share warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Act either to the full extent or for any purpose defined in the articles.

27. A certificate given pursuant to section eight of this Act shall be conclusive evidence that all the requirements of this Act in respect of registration and matters precedent and incidental thereto have been complied with and that the company referred to therein is, on and from the day specified in the certificate, duly incorporated as a company under the Companies Act. Conclusive evidence of incorporation and other matters.

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No. 15, 1968 **28.** The powers conferred upon the judges of the Supreme Court or any five of them in respect of matters referred to in section three hundred and eighty-four of the Companies Act shall be deemed to include power to make general rules under this Act in respect of the like matters arising under this Act.

Rules.

Regulations. **29.** (1) The Governor may make regulations not inconsistent with this Act prescribing all matters that are required or permitted to be prescribed or are necessary or convenient to be prescribed to carry this Act into effect or to give effect to any power, authority, duty or function conferred or imposed by this Act.

(2) Without limiting the generality of subsection one of this section regulations may be made for or with respect to—

- (a) the fees to be paid under this Act to the Registrar;
- (b) the conditions under and subject to which fees may be waived by the Registrar or the Minister;
- (c) the imposition of additional fees for the late lodgment of documents;
- (d) the forms to be used under this Act;
- (e) the duties of the Registrar for the purposes of this Act; and
- (f) the general conduct and regulation of registration under this Act.

(3) The regulations may prescribe penalties not exceeding forty dollars for any breach thereof.

(4) Regulations and general rules made under this Act shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication, or from a later date to be specified in the regulations or general rules; and

(c)

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- (c) be laid before both Houses of Parliament within **No. 15, 1968** fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations or general rules have been laid before the House disallowing any regulation or general rule or part thereof, the regulation or general rule or part shall thereupon cease to have effect.

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