

Act No. 21, 1900.

MINING
PARTNERSHIPS.**An Act to consolidate the Statutes relating to limiting the Liability of Mining Partnerships. [22nd September, 1900.]**

BE it enacted by the Queen's Most Excellent Majesty, by 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:—

Short title.

1. This Act shall be called the "Mining Partnerships Act, 1900."

Repeal.

2. (1) The Acts mentioned in the First Schedule to this Act, to the extent therein expressed, are hereby repealed.

(2) All persons appointed under any Act hereby repealed, and holding office at the passing of this Act, shall be deemed to have been appointed hereunder.

(3) Every memorial duly lodged, every certificate duly given, every registration duly effected, and any other matter or thing duly done under or in accordance with any of the provisions of any Act hereby repealed and in force and operative at the passing of this Act shall be deemed to be and to have been duly lodged, given, effected, or done under the corresponding provisions of this Act and as if this Act had been in force when the same were lodged, given, effected, or done respectively.

Interpretation.

24 Vic. No. 21, s. 1.
40 Vic. No. 3, s. 1.

3. In this Act, unless the context or subject-matter otherwise indicates or requires,—

"Company" includes any partnership or co-adventure.

"Company registered under this Act" includes a company registered under the Act twenty-fourth Victoria number twenty-one.

"Contributing shares" means shares the whole nominal value of which is agreed to be paid in money to the company.

"Paid-up shares" means shares in any company agreed to be taken or considered as paid-up in respect of the whole nominal value of such shares.

"Partly paid-up shares" means shares agreed to be taken or considered as paid-up in respect of part of such nominal value, the balance being either paid in money or agreed to be so paid.

This

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This Act shall apply only to companies formed or to be formed for the purpose of mining or quarrying for any precious or other metal, or any coal, cannel coal, bituminous shales, or shales from which petroleum or naphtha can be extracted, or any granite, marble, or limestones for building or other purposes, or any precious stones or gems by any method whatsoever.

Application of Act.
24 Vic. No. 21, s. 1.
34 Vic. No. 16, s. 1.
40 Vic. No. 3, s. 4.

5. (1) Every company registered under this Act shall appoint a manager by and in whose name the company may sue and be sued in any Court, and no action or suit shall be brought against any member of such company for the recovery of any debts contracted for or by the company unless such member is the manager thereof.

Company to sue and be sued by and in name of manager.
24 Vic. No. 21, s. 3.

(2) Nothing herein contained shall apply to any contract which has been authorised by the person to be charged therewith.

6. All contracts made by the manager or by his authority for the purposes of any such company shall be binding upon the company and upon the assets thereof as herein provided, and such assets may be seized and sold in execution in any action against such manager for any debt incurred by him on behalf of the company.

Contracts made by the manager to be binding on the company.
Ibid. s. 4.

7. (1) The death, removal, or resignation of such manager shall not abate any such action or proceeding, but the same may be continued and prosecuted in the name of any succeeding manager.

Proceedings not to abate by death of manager.
Ibid. s. 5.

(2) If such company fails to appoint such succeeding manager, then such action or proceeding may be continued and prosecuted in the name of the company.

8. (1) Any company to be registered under the provisions of this Act shall lodge with the registrar of the District Court nearest to the place of operations or proposed operations a memorial in the form of the Second Schedule to this Act signed by some person as manager of such company, and the said memorial shall be published in the Gazette, and at least twice in one or more of the newspapers published and circulating in the district, and copies of such Gazette and newspapers shall be forwarded to the said registrar, who shall thereupon proceed to register such company.

Companies to be registered.
Ibid. s. 6.

(2) A copy of the said memorial shall, within thirty days after such advertisement, be filed in the Supreme Court, Sydney.

9. A copy of such memorial as hereinbefore mentioned purporting to be certified by the said registrar, whose handwriting it shall not be necessary to prove, and sealed with the seal of such court, shall be evidence of the due appointment of such manager, and that the company has been duly registered under the provisions of this Act.

Proof of registration and of appointment of manager.
Ibid. s. 8.

10. Notwithstanding any change in the persons who may constitute any company registered under this Act, the persons who subsequently become members of such company shall be subject to the same liability only as if they had been members of such company at the time it was registered.

Change of persons not to alter liability.
Ibid. s. 9.

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Company to add
"limited."
24 Vic. No. 21, s. 10.

11. Every company registered under this Act shall add to the style and title under which the business of such company is carried on the word "limited."

Company to have a
registered office.
34 Vic. No. 16, s. 5.

12. (1) Every company registered under this Act shall have a registered office situate in New South Wales.

(2) Service of any notice or of any writ, declaration, plaint, Judge's order, or other proceeding or process at such office shall be deemed to be service upon the company or upon the manager thereof.

(3) Any such company which carries on business without having such an office shall be liable to a penalty not exceeding five pounds for every day during which business is so carried on.

Notice of removal
or substitution to be
registered.
24 Vic. No. 21, s. 12.

13. Notice of the removal of any such registered office or of the substitution of any other person as manager of any company registered under this Act shall be lodged with the registrar of the District Court wherein such company was originally registered, and such registrar shall thereupon proceed to record such removal or substitution.

Manager to keep a
register of
shareholders and
shares.
Ibid. s. 13.

14. (1) The manager of every company registered under this Act shall keep or cause to be kept a book containing the names in full and residence of the shareholders, an account of the number of shares held by each of the said shareholders, and of the amount paid thereon, and every transfer of a share or portion of a share, together with the name and residence of the transferee, and such book shall at all times be open free of charge for the inspection of creditors and shareholders.

(2) Any manager who neglects to keep such book, or wilfully falsifies any of the aforesaid particulars, shall be guilty of a misdemeanour.

Actions against
shareholders for calls
or other moneys due.
34 Vic. No. 16, s. 4.

15. (1) Any action or suit brought in any Court by any company registered under this Act against any of its shareholders to recover any call or other moneys due from such shareholder in his character of shareholder shall be brought in the name of the manager.

(2) It shall not be necessary in any such action or suit to set forth the special matter, but it shall be sufficient to allege that the defendant is a shareholder in the company and is indebted to the company in respect of a call made or other moneys due whereby an action or suit has accrued to the company.

(3) Such call or other moneys shall be deemed to be a debt due from such shareholder to the company, and payment thereof may be enforced by and in the name of the manager before any two justices of the peace.

Accounts to be
periodically
published.
24 Vic. No. 21, s. 15.

16. The manager of every company registered under this Act shall publish in the Gazette in January and July in each year a full and correct account of the assets and liabilities of such company, and any manager who wilfully falsifies such accounts shall be guilty of a misdemeanour.

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17. Whenever—

- (a) any execution issued on a judgment, decree, or order, in favour of any creditor in any action, suit, or other legal proceeding instituted by such creditor against any company registered under this Act is returned unsatisfied, either in whole or in part, by the person appointed to execute the same; or
- (b) any creditor to whom such company is indebted in a sum exceeding fifty pounds then due has served on the company a demand under his hand requiring the company to pay the sum so due, and the company has, for the space of three weeks succeeding the service of such demand, neglected to pay such sum or to secure or compound for the same to the satisfaction of the creditor,

Company may be wound up if unable to pay its debts.
24 Vic. No. 21, s. 16.

such company shall be deemed to be unable to pay its debts, and any such creditor may make application for winding up the company to the District Court Judge of the district wherein such company is registered.

18. Any application for the winding up of a company registered under this Act shall be by petition, and there shall be filed or lodged at the time when such petition is presented an affidavit verifying the same.

Application to be by petition.
Ibid. s. 17.

19. Upon the hearing of any such petition, the Judge may dismiss the petition with or without costs, or may make an order directing the company by a day named in such order to pay or secure payment to the petitioner of all moneys due to him, together with such costs as the Judge directs, or the Judge may, on the hearing of such petition, make an order for winding up the company forthwith, or such other order as he thinks fit.

Hearing of petition.
Ibid. s. 18.

20. If, at the expiration of the time named in such order, such payment is not made or security given, the Judge may make an order for winding up the company.

Order for winding up company.
Ibid. s. 19.

21. A majority of the shareholders, being not less than two-thirds in number and value in any such company, in general meeting assembled, and called by fourteen days' notice advertised in some newspaper published in the district, may pass special resolutions requiring the company to be wound up under this Act, and thereupon a petition signed by the shareholders concurring therein and verified by affidavit may be presented by some person appointed at such meeting to the District Court Judge of the district in which such company is registered, and the Judge may, on the hearing of such petition, make an order for winding up the company forthwith, or such other order as he thinks fit.

Company may be wound up by consent of majority of shareholders.
Ibid. s. 20.

22. The Judge shall have power to receive proof of debts and to examine witnesses, and shall follow as near as may be the procedure in a winding-up under the Companies Act, 1899.

Judge of District Court to receive proof of debts.
Ibid. s. 21.

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Official agent to be appointed.
24 Vic. No. 21, s. 22.

23. When the Judge makes any order for winding up any such company he shall appoint some person to act as official agent therein, and such official agent shall have power to collect all debts and to sell or dispose of all the assets owing and belonging to such company, and to enforce payment by the shareholders of the amounts (if any) unpaid upon the shares held by them.

Distribution of assets.
Ibid. s. 23.

24. (1) All moneys collected by such official agent shall be distributed by him amongst the creditors of the company in proportion to their several claims, and if any balance remains after all the creditors have been paid in full then such balance shall be divided amongst the shareholders of the company in proportion to their respective shares therein.

(2) Such official agent may retain in payment for his services a sum equal to five pounds per centum upon the amount so collected by him.

Limitation of liability of shareholders.
34 Vic. No. 16, s. 3.

25. (1) When a company registered under this Act is wound up every shareholder shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, and the costs, charges, and expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves.

(2) No contributions shall be required from any shareholder exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a shareholder.

Agents to publish schedule.
24 Vic. No. 21, s. 25.

26. At least one month before making such distribution the official agent shall publish in the Gazette, and in one or more newspapers published and circulating in the district wherein mining operations have been carried on by such company, a schedule showing the assets and liabilities of the company, the amount of moneys collected by him, and the mode of distribution thereof, and any such official agent who knowingly and wilfully falsifies such schedule shall be guilty of a misdemeanour.

Company may issue preference shares.
Ibid. s. 26.

27. (1) Any company registered under this Act may issue preference shares within the limits of the company's nominal capital for the security of and in payment of rent for any machinery or materials, or both, which are furnished by any person, whether a member of such company or otherwise, for the use and benefit of such company, and such preference shares shall be a first charge upon the profits and a first claim upon any effects of the company.

(2) Full particulars of all machinery and materials furnished as aforesaid shall be registered with the registrar of the District Court in which the company is registered as the property of the person furnishing the same, and the preference shares issued in that behalf shall take priority in the order of the date of issue.

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(3) No preference shares shall be issued without the consent in writing of a majority in number and value of the shareholders, and all such preference shares shall be subject to all debts and liabilities of the company at the date of the issuing of such preference shares as aforesaid.

28. Any machinery or materials furnished, and particulars of which have been registered as aforesaid, shall not be levied upon for any debt or liability of the company renting the same; but any machinery or materials, or both, which are upon the claim or used by a company registered under this Act, and particulars of which have not been registered as aforesaid, may be levied upon and sold as though such machinery and materials were the property of the company.

Liability of machinery or materials furnished and registered.
24 Vic. No. 21, s. 27.

29. (1) Any company registered under this Act shall have power to mortgage or give a lien upon any plant or machinery the property of such company.

Company may mortgage their own plant or machinery.
Ibid. s. 28.

(2) Every such mortgage or lien shall be subject to any and every debt and liability which has been incurred prior to and remains unpaid at the time of the company contracting such mortgage or lien, but shall take priority of all liens given and debts and liabilities contracted subsequently thereto.

(3) Full particulars of all liens given as aforesaid shall be registered by the registrar of the District Court in which the company is registered.

30. In the adjustment of the rights of contributories amongst themselves on the winding-up under the Companies' Act, 1899, of any company registered under this Act, no shareholder shall be deemed a contributory in respect of any paid-up share as herein defined held by him or be entitled to share in any surplus wholly or partially derived from calls made on the holders of partly paid-up shares and contributing shares, or any of them, except only with respect to so much of such surplus as has been derived from realised assets of the company and not from such calls.

Who to be deemed contributories (paid-up shares).
40 Vic. No. 3, ss. 2, 4.

31. In the adjustment of such rights the holders of partly paid-up shares shall be deemed contributories only in respect of calls made on their shares beyond the amount agreed to be considered paid-up, and shall, to that extent but not further, be entitled to share in any surplus derived from calls as aforesaid.

The like (partly paid-up shares).
Ibid. s. 3.

32. Nothing herein shall prevent the distribution of any such surplus in a different manner from that provided by this Act, where a different mode of distribution of a surplus derived wholly or in part from calls is in express terms provided for in the articles of association of the company, or shall prevent the holder of any share, wholly or in part actually paid in advance, from sharing in the surplus in respect of every such payment.

Certain companies and cases excepted.
Ibid. s. 4.

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As to ownership
in the land.
40 Vic. No. 3, s. 5.

33. Where any land or mine has formed the consideration or has been agreed or declared to be the equivalent or consideration for such paid-up shares, or any of them, the holders of such shares shall in the winding-up of the company and in the distribution of the assets thereof be exclusively entitled to share in the proceeds of the sale of such land or mine, if sold, and shall exclusively, as between them and the contributories, be deemed the owners of the land or mine, if not sold, whether the same has been worked for mining purposes or not.

Not to affect
Companies Act.

34. Nothing in this Act shall affect the provisions of the Companies Act, 1899, unless expressed herein so to do.

SCHEDULES.

FIRST SCHEDULE.

Date of Act.	Title of Act.	Extent of repeal.
24 Vic. No. 21 ...	Mining Partnerships Act of 1861 ...	The whole.
34 Vic. No. 16 ...	Mining Partnerships Act of 1861 Amendment Act, 1871.	The whole.
40 Vic. No. 3 ...	An Act to amend the law as to contributories in the winding-up of Mining Companies.	The whole.

SECOND SCHEDULE.

I, the undersigned [*here insert manager's name*], hereby make application to register [*here insert the name of the company*] under the provisions of the Mining Partnerships Act, 1900, and I do solemnly and sincerely declare that the following statement is, to the best of my belief and knowledge, true in every particular, namely—

1. The name and style of the company is
2. The place of operations [*or intended operations, as the case may be*] is at
3. The nominal capital of the company is pounds in shares
of each.
4. The amount already paid up is .
5. The name [*in full*] of the manager is .
6. The office of the company is at
7. The names [*in full*] and several residences of the shareholders and the number of shares held by each at this date are as follows:—

[*Here insert complete list.*]

Witness to signature—
C.D.

(Signed)

A.B.,
Manager.

Act