

**COMPANIES (MINING PARTNERSHIPS)
AMENDMENT ACT.**

New South Wales



ANNO SEXTO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 37, 1967.

An Act to facilitate the registration under the Companies Act, 1961, as amended by subsequent Acts, of companies registered under the Mining Partnerships Act, 1900, as amended by subsequent Acts; to provide for the dissolution of certain mining partnerships; to repeal the Mining Partnerships Act, 1900, and certain other enactments; and for purposes connected therewith. [Assented to, 25th September, 1967.]

BE

Companies (Mining Partnerships) Amendment.

BE it enacted by the Queen's Most Excellent Majesty, by No. 37, 1967
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:—

1. (1) This Act may be cited as the "Companies (Mining Partnerships) Amendment Act, 1967". Short title.

(2) This Act, section two and the Schedule hereto Commence-
excepted, shall commence upon a day to be appointed by the ment.
Governor and notified by proclamation published in the
Gazette.

(3) This Act shall not affect the winding-up of any Savings.
mining partnership where an order for the winding-up of
such partnership has been made before the date of commence-
ment of this Act and such mining partnership shall be wound
up in the same manner and with the same incidents as if this
Act had not been passed.

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to the extent therein expressed are hereby repealed.

(2) This section and the Schedule hereto shall com- Commence-
mence upon a day to be appointed by the Governor and ment.
notified by proclamation published in the Gazette which day
shall not be earlier than the day appointed under subsection
two of section one of this Act.

3. In this Act unless the contrary intention appears— Interpre-
"Companies Act" means Companies Act, 1961, and any tation.
Act amending or replacing that Act.
"Court" means the Supreme Court in its equitable
jurisdiction.

"Date

*Companies (Mining Partnerships) Amendment.*No. 37, 1967

“Date of commencement of this Act” means the date appointed under subsection two of section one of this Act.

“Manager” means the person appointed or deemed to have been appointed as such under the Mining Partnerships Act.

“Mining partnership” means a company which at the date of commencement of this Act is registered or deemed to be registered under the Mining Partnerships Act.

“Mining Partnerships Act” means Mining Partnerships Act, 1900, as amended by subsequent Acts.

“Registrar” means the Registrar of Companies within the meaning of the Companies Act.

“Special resolution” means a special resolution within the meaning of section one hundred and forty-four of the Companies Act.

No further registration.

4. After the date of commencement of this Act no company shall be registered under the Mining Partnerships Act by the registrar of a district court.

Winding-up.

5. (1) Subject to subsection three of section one of this Act no mining partnership shall, after the date of commencement of this Act, be wound up under the provisions of the Mining Partnerships Act, but a mining partnership may, upon petition as hereinafter provided made at any time within the period of twelve months after the date of such commencement, be wound up under an order of the Court.

Such petition may be made by—

- (a) the manager of the mining partnership;
- (b) a shareholder in the mining partnership; or
- (c)

Companies (Mining Partnerships) Amendment.

- (c) any creditor, including a contingent or prospective creditor, of the mining partnership. No. 37, 1967

Notice of any such petition shall, within fourteen days of the making thereof, be served on the Registrar.

(2) The Court may, upon petition made as aforesaid, order the winding-up if—

- (a) the shareholders of the mining partnership have by special resolution resolved that the mining partnership be wound up by the Court;
- (b) the mining partnership is unable to pay its debts;
- (c) the manager or the directors (if any) have acted in the affairs of the mining partnership in their own interests rather than in the interests of the shareholders as a whole, or in any other manner whatsoever which in the opinion of the Court appears to be unfair or unjust to other shareholders;
- (d) it appears to the Court that it is in the interests of the shareholders that the mining partnership should be wound up; or
- (e) the Court is of opinion that it is just and equitable that the mining partnership be wound up.

(3) The provisions of Part X of the Companies Act, other than Division 3 of that Part, shall, subject to subsections one and two of this section and so far as applicable and with such adaptations as are necessary or expedient, apply to and in relation to the winding-up under this section of a mining partnership :

Provided that in a winding-up under this section of a mining partnership no person shall be subject to any liability, obligation or penalty to which he would not have been subject had the mining partnership been wound up under the Mining Partnerships Act.

Companies (Mining Partnerships) Amendment.

No. 37, 1967 **6.** (1) Any mining partnership may at any time within the period of twelve months after the date of commencement of this Act apply to be registered under the Companies Act as a company limited by shares within the meaning of that Act.

Require-
ments of
registration
under Com-
panies Act.

(2) Before any such application is made the shareholders of the mining partnership shall—

(a) by special resolution—

(i) determine under what name the mining partnership shall apply to be registered as a company, and may determine that such name shall be different from the name of the mining partnership;

(ii) adopt a memorandum of association stating the matters referred to in paragraphs (a), (b), (c) and (d) of subsection one of section eighteen of the Companies Act and, if thought necessary or desirable, also adopt articles of association within the meaning of that Act; and

(b) appoint persons who have consented to be so appointed to be directors of the company as from the date of its incorporation under the said Act.

(3) A meeting called for the purposes referred to in subsection two of this section shall be convened in the manner provided by the regulations in Table A in the Fourth Schedule to the Companies Act or as near thereto as circumstances permit and all the provisions of that Act relating to general meetings of companies shall with such adaptations as are necessary apply accordingly.

Applica-
tions for
registra-
tion under
Companies
Act.

7. (1) A mining partnership applying to be registered under the Companies Act as a company limited by shares shall lodge with the Registrar—

(a) an application for registration;

(b)

Companies (Mining Partnerships) Amendment.

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- (b) a copy of the special resolution referred to in paragraph (a) of subsection two of section six of this Act signed by the manager; No. 37, 1967
- (c) a printed copy of the memorandum of association and articles of association (if any) certified by the manager to be a true copy of the memorandum and of the articles (if any) adopted pursuant to that paragraph;
- (d) a consent in writing to act as a director signed by each person appointed pursuant to paragraph (b) of that subsection or by his agent authorised in writing for the purpose;
- (e) a list signed by the manager setting out the full name or the surname and at least one Christian or other name and other initials and the address of each person who at the date of the application is a shareholder in the mining partnership, the number and class of the shares, including preference shares (if any) under section twenty-seven of the Mining Partnerships Act, held by him and the amount paid thereon;
- (f) notice of the situation of the registered office of the mining partnership and, unless that office is open and accessible to the public for at least five hours between ten o'clock in the forenoon and four o'clock in the afternoon of each day, Saturdays, Sundays and holidays excepted, of the days and hours during which it is open and accessible to the public;
- (g) a return signed by the manager giving particulars of all mortgages and liens given by the mining partnership pursuant to the provisions of section twenty-nine of the Mining Partnerships Act, and still existing at the date of the application for registration;
- (h) subject to subsection two of this section, copies verified by statutory declaration made by the manager, of the accounts of the assets and liabilities of the mining partnership, published or required to

Companies (Mining Partnerships) Amendment.

No. 37, 1967

to be published pursuant to section sixteen of the Mining Partnerships Act for each of the three years immediately preceding the date of application for registration : Provided that if at the date of such application the mining partnership had been registered as such for less than three years, then the reference to three years shall be read as a reference to two years or to one year as the case may require.

(2) The Registrar may, upon sufficient cause being shown, vary, modify or waive the requirement specified in paragraph (h) of subsection one of this section.

(3) Upon the lodgment with the Registrar of the documents referred to in subsection one of this section and upon payment of fees in accordance with the Second Schedule to the Companies Act, the Registrar shall, subject to that Act, register the mining partnership under that Act by registering the memorandum and articles (if any).

(4) On the registration of the memorandum and the articles (if any) the Registrar shall certify under his hand and seal that the mining partnership is, on and from the date specified in the certificate, incorporated as a company limited by shares and the certificate shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with and that the company referred to therein is duly incorporated under the Companies Act.

(5) On and from the date of incorporation specified in the certificate of incorporation but subject to the Companies Act, the persons who at the date of incorporation were shareholders in the mining partnership together with such other persons as may from time to time become members of the company shall be a body corporate by the name contained in the memorandum capable forthwith of exercising all the functions of an incorporated company and of suing or 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

Companies (Mining Partnerships) Amendment.

members to contribute to the assets of the company in the event of its being wound up as is provided by the Companies Act. No. 37, 1967

(6) Upon the incorporation of the company—

- (a) the issued capital of the mining partnership shall be deemed to be the issued capital of the company and all persons who were shareholders in the mining partnership at the date of its incorporation as a company shall be deemed to become members of the company and their names shall be noted upon the register of members of the company;
- (b) subject to section eight of this Act every shareholder in the mining partnership shall be deemed to be the holder of shares in the issued capital of the company equal in number and nominal value to the shares whereof he was then registered as the holder in the register of shareholders of the mining partnership and entry shall be made in the register of members of the company accordingly and he shall thereupon be liable for the amount, if any, unpaid on his shares, of which the register of the members of the company shall be prima facie evidence; and
- (c) the mining partnership shall cease to be registered as a mining partnership under the Mining Partnerships Act.

(7) Upon the incorporation of the company all of the provisions of the Companies Act and rules of law applicable to a company limited by shares other than section fifty and subsection two of section fifty-two of that Act, shall apply to and in relation to the company accordingly.

8. Where a mining partnership has issued, whether before or after the date of commencement of this Act, any preference shares pursuant to section twenty-seven of the Mining Partnerships Act, such preference shares shall not constitute part Preference shares issued under sec. 27 of Mining Partnerships Act.

Companies (Mining Partnerships) Amendment.

No. 37, 1967 part of the issued capital for the purposes of paragraph (b) of subsection six of section seven. Every agreement or arrangement by virtue of which such preference shares were issued shall upon incorporation of the mining partnership as a company under the Companies Act cease to have any force or effect, and subject to the provisions of the Companies Act preference shares in or debentures of the company may be issued in lieu thereof upon such terms as may be agreed upon between the company and the persons who were preference shareholders in the mining partnership or as the Court on the application of either the company or such persons thinks fit to order having regard to the terms upon which such preference shares were issued by the mining partnership, the capital structure of the company on incorporation, the interests of the company, the members of the company and the persons who were preference shareholders in the mining partnership, and any other relevant circumstances. Upon the hearing of any application under this section the Court may make such order as it deems just with respect to the terms upon which preference shares in or debentures of the company may be issued and the nature and extent of the security or charge, if any, to be created over the company's assets and the costs of any party to such an application.

Vesting of property.

9. (1) All property real and personal including things in action belonging to or vested in a mining partnership at the date of its incorporation under the Companies Act shall upon incorporation be and become vested in the company as incorporated under that Act for all the estate and interest of the mining partnership therein.

(2) Any property real or personal including things in action held by any person in trust for the mining partnership shall on the date of its incorporation under the Companies Act be held by that person in trust for the company.

(3) Any instrument executed for the purposes of or pursuant to this section shall be exempt from stamp duty under the Stamp Duties Act, 1920, as amended by subsequent Acts.

10.

Companies (Mining Partnerships) Amendment.

10. (1) Nothing in this Act, section eight excepted, shall affect the validity of anything done or purported to be done to which a mining partnership was in any way a party and any rights belonging to and any liabilities existing against any such mining partnership prior to its incorporation under the Companies Act shall continue to belong to and exist against the company upon its incorporation to the exclusion of any subsisting right or liability belonging to or existing against the mining partnership and upon incorporation the company shall for all purposes be deemed to have taken the place of the mining partnership.

No. 37, 1967
Saving of
existing
rights and
liabilities.

(2) Notwithstanding anything in subsection one of this section the rights and liabilities which arose by virtue of any agreement between a mining partnership and its manager as to management of the mining partnership shall terminate upon its incorporation under the Companies Act. This subsection shall not affect any right a manager may have to claim damages or compensation arising out of the termination of his appointment as manager.

11. Within two months after the date of registration of a mining partnership under the Companies Act the company shall complete and have ready for delivery to the persons who were shareholders in the mining partnership the certificates of the shares in the company to which they are entitled by virtue of subsection six of section seven of this Act.

Issue of
share cer-
tificates.

12. (1) Where on the expiration of twelve months after the date of commencement of this Act or where in any particular case the Court pursuant to section fourteen of this Act has extended the time for doing any act or taking any proceedings on the expiration of that time a mining partnership has not been—

Dissolu-
tion of
mining part-
nerships.

(a) ordered to be wound up on a petition presented pursuant to section five of this Act; or

(b)

*Companies (Mining Partnerships) Amendment.***No. 37, 1967**

(b) incorporated as a company limited by shares pursuant to section seven of this Act;

the mining partnership shall thereupon be dissolved.

This subsection shall not apply to a mining partnership referred to in subsection three of section one of this Act.

(2) Upon dissolution of the mining partnership pursuant to subsection one of this section the provisions of sections three hundred and nine, three hundred and ten, three hundred and eleven, three hundred and twelve and three hundred and thirteen of the Companies Act shall, with such adaptations as are necessary or expedient, apply to and in relation to the mining partnership accordingly.

(3) Upon dissolution of the mining partnership pursuant to subsection one of this section the Registrar shall publish in the Gazette and shall send by registered post, to the mining partnership at its last known address a notice that the mining partnership has been dissolved.

(4) The Registrar-General shall as soon as practicable after the date of commencement of this Act, transfer to the Registrar copies of memorials or other documents lodged or filed with him in relation to mining partnerships pursuant to the Mining Partnerships Act.

Destruction
of certain
records.

13. Where a mining partnership has been wound up under the Mining Partnerships Act or this Act or has been dissolved under section twelve of this Act or has been incorporated as a company under the Companies Act—

(a) the registrar of the district court in which the mining partnership was registered; and

(b) the Registrar,

may, subject to the Archives Act, 1960, destroy or dispose of any memorial, copy of memorial or other document lodged or filed in relation to the mining partnership pursuant to the Mining Partnerships Act.

14.

Companies (Mining Partnerships) Amendment.

14. (1) The Court may upon application by a mining partnership before the expiration of any time prescribed by this Act for the doing of any act or taking any proceedings extend the time so prescribed upon such terms (if any) as the justice of the case may require. No. 37, 1967
Court may extend time.

Where the time for doing any act or taking any proceedings has been so extended such act or proceedings may, notwithstanding anything in this Act, be done or taken within the time so extended.

(2) Within fourteen days after the making of an application or order under this section the applicant shall lodge notice of such application or an office copy of the order, as the case may be, with the Registrar.

15. (1) The Governor may make regulations for and with respect to the prescription of forms to be used for the purposes of this Act and such matters as may be necessary or convenient to be prescribed for the purposes of carrying this Act into effect. Regulations.

(2) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of such publication or from a later date to be specified in the regulations;
- (c) be laid before both Houses of Parliament within fourteen sitting days if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

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

SCHEDULE.

*Companies (Mining Partnerships) Amendment.***No. 37, 1967****SCHEDULE.**

Reference to Act.	Short title.	Extent of Repeal.
No. 21, 1900 ..	Mining Partnerships Act, 1900.	The whole.
No. 35, 1937 ..	Statute Law Revision Act, 1937.	So much of the Second Schedule as amended Act No. 21, 1900.
No. 14, 1923 ..	Transfer of Records Act, 1923.	Section 6 (4).
No. 71, 1961 ..	Companies Act, 1961	The words "or of the Mining Partnerships Act, 1900," in section 4 (8).

HUNTER