

**NEW SOUTH WALES INVESTMENT CORPORATION
(SALE) ACT 1988 No. 50**

NEW SOUTH WALES



TABLE OF PROVISIONS

PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Definitions

PART 2—SALE OF CORPORATION'S BUSINESS UNDERTAKING

4. Minister may enter into agreement for sale of Corporation's business undertaking
5. Manner of conducting sale etc.
6. Sale by means of direct sale of undertaking
7. Sale by means of transfer of undertaking to subsidiary companies and sale of relevant shares
8. Vesting of undertaking etc. in connection with sale
9. Undertaking excluded from sale

PART 3—MISCELLANEOUS PROVISIONS RELATING TO SALE

10. Staff of Corporation
11. Cash payment from Corporation to Treasurer before sale
12. Corporation Fund in Special Deposits Account
13. Proceeds of sale
14. Stamp duty
15. Disclosure of information etc.
16. Regulations
17. Miscellaneous provisions relating to Corporation

PART 4—REPEALS, AMENDMENTS ETC. FOLLOWING SALE

18. Dissolution of Corporation following sale
19. Directors of Corporation to vacate office
20. Repeal of New South Wales Investment Corporation Act 1986 and amending Acts
21. Consequential amendment of Statutory and Other Offices Remuneration Act 1975 (1976 No. 4), Sch. 2
22. Consequential amendment of Public Finance and Audit Act 1983 No. 152, Sch. 2
23. Consequential amendment of Public Authorities (Financial Arrangements) Act 1987 No. 33, Sch. 1
24. Consequential amendment of Electricity Act 1945 (1946 No. 13), s. 19AA

**NEW SOUTH WALES INVESTMENT CORPORATION (SALE) ACT
1988 No. 50**

NEW SOUTH WALES



Act No. 50, 1988

An Act to provide for the sale of the business undertaking of the New South Wales Investment Corporation; to repeal the New South Wales Investment Corporation Act 1986; and for other purposes. [Assented to 30 September 1988]

The Legislature of New South Wales enacts:**PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the New South Wales Investment Corporation (Sale) Act 1988.

Commencement

2. (1) This Act (except Part 4) commences on a day or days to be appointed by proclamation.

(2) Part 4 commences on a day (being a day that is not earlier than the date on which the whole of the Corporation's business undertaking has been finally sold) to be appointed by proclamation.

Definitions

3. (1) In this Act—

“assets” means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes choses in action and documents;

“business undertaking”, in relation to the Corporation, means all assets, rights and liabilities of the Corporation, but does not include any excluded undertaking;

“Corporation” means the New South Wales Investment Corporation constituted by the Corporation Act;

“excluded undertaking” means any assets, rights and liabilities of the Corporation which the Minister has, under section 9, excluded from sale;

“instrument” means an instrument (other than this Act) which creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order and process of a court;

“liabilities” means all liabilities, debts and obligations (whether present or future and whether vested or contingent);

“Minister” means the Minister for Business and Consumer Affairs;

“rights” means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent);

“subsidiary company” means a subsidiary company referred to in section 7;

“the Corporation Act” means the New South Wales Investment Corporation Act 1986.

New South Wales Investment Corporation (Sale) 1988

(2) A reference in this Act to the Corporation's business undertaking includes a reference to the whole or any part of that undertaking that is transferred to a subsidiary company under this Act pending its sale.

(3) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

PART 2—SALE OF CORPORATION'S BUSINESS UNDERTAKING

Minister may enter into agreement for sale of Corporation's business undertaking

4. (1) The Minister may enter into an agreement in writing with any person (including a corporation) for the sale of the Corporation's business undertaking in accordance with—

- (a) section 6 (Sale by means of direct sale of undertaking); or
- (b) section 7 (Sale by means of transfer of undertaking to subsidiary companies and sale of relevant shares).

(2) The Corporation's business undertaking may be sold as a single undertaking or in 2 separate parts.

(3) If the undertaking is to be sold in 2 separate parts—

- (a) one part shall consist of the Corporation's old loan portfolio business, being that part of the Corporation's business undertaking nominated by the Minister by order in writing and generally including the assets, rights and liabilities transferred to the Corporation under the State Development and Industries Assistance (Amendment) Act 1986; and
- (b) the other part shall consist of the Corporation's venture capital business, being the remainder of the Corporation's business undertaking.

(4) If only one of those 2 separate parts of the undertaking is sold, the other part may then be excluded from sale under section 9 despite anything to the contrary in this Act.

Manner of conducting sale etc.

5. (1) The sale of the Corporation's business undertaking shall (subject to this Act) be conducted in such manner as the Minister thinks fit.

(2) Expressions of interest in the sale shall be called for from the public, and the sale shall be publicly advertised.

New South Wales Investment Corporation (Sale) 1988

(3) A memorandum containing information about the Corporation's business undertaking shall be given to persons who express a bona fide interest in the sale as prospective purchasers and undertake to comply in all respects with the provisions of section 15.

(4) The Treasury Corporation shall be the Minister's agent for the purposes of the sale, but the Treasury Corporation may not make an order, or enter into an agreement for sale, under this Act.

Sale by means of direct sale of undertaking

6. (1) The Minister may sell the Corporation's business undertaking by means of an agreement for the sale of the undertaking directly to a purchaser.

(2) In any such sale—

- (a) the whole undertaking may be sold to one purchaser; or
- (b) one part of the undertaking (as referred to in section 4 (3)) may be sold to one purchaser and the other part may be sold to another purchaser; or
- (c) one such part of the undertaking only may be sold to a purchaser in accordance with this section (if the other part is to be sold in accordance with section 7).

Sale by means of transfer of undertaking to subsidiary companies and sale of relevant shares

7. (1) In this section—

“subsidiary company” means a company within the meaning of the Companies (New South Wales) Code—

- (a) in which the Minister and any other person on behalf of the Crown have a controlling interest by virtue of their shareholding in the company; and
- (b) which is declared by the Minister, by order published in the Gazette, to be a subsidiary company for the purposes of this Act.

(2) The Minister may sell the Corporation's business undertaking by means of an agreement for the sale of the shares held by the Minister (and by any other person on behalf of the Crown) in a subsidiary company to which the undertaking, or a part of the undertaking, has been or is to be transferred.

(3) The Minister may, with a view to a sale in accordance with this section, direct by order in writing that—

- (a) the whole of the Corporation's business undertaking be transferred to a subsidiary company specified in the order; or

New South Wales Investment Corporation (Sale) 1988

- (b) one part of that undertaking (as referred to in section 4 (3)) be transferred to one subsidiary company so specified and the other part be transferred to another subsidiary company so specified; or
 - (c) one such part of that undertaking only be transferred to a subsidiary company so specified (if the other part is to be sold in accordance with section 6).
- (4) The Minister may, by order in writing, direct that any assets transferred to a subsidiary company under this section are to be allocated to capital (including loan capital) and reserves in such amounts and in accordance with such requirements as are specified in the order.
- (5) Any shares or debentures issued in accordance with a direction under subsection (4) shall be taken to have been issued in consideration of the vesting in the subsidiary company under section 8 of the assets allocated to capital.
- (6) Until the sale under this section of shares in a subsidiary company, the company is, for the purposes of any Act, a statutory body representing the Crown.
- (7) For the purposes of this section, the Minister or any other person may, on behalf of the Crown, acquire shares in a company or subscribe to issues of shares by a company, and may dispose or otherwise deal with those shares.

Vesting of undertaking etc. in connection with sale

8. (1) In this section—
- “transferee” means a purchaser to whom any part of the Corporation’s business undertaking is sold in accordance with section 6 or a subsidiary company to which any part of that undertaking is transferred in accordance with section 7.
- (2) When any part of the Corporation’s business undertaking is sold in accordance with section 6 or transferred to a subsidiary company in accordance with section 7, the following provisions have effect (subject to the agreement for sale or the order directing the transfer):
- (a) the assets of the Corporation comprised in that part of the undertaking vest in the transferee by virtue of this section and without the need for any conveyance, transfer, assignment or assurance;
 - (b) the rights and liabilities of the Corporation comprised in that part of the undertaking become by virtue of this section the rights and liabilities of the transferee;
 - (c) all proceedings relating to that part of the undertaking commenced before the sale or transfer by or against the Corporation and pending immediately before the sale or transfer shall be taken to be proceedings pending by or against the transferee;

New South Wales Investment Corporation (Sale) 1988

- (d) any act, matter or thing done or omitted to be done in relation to that part of the undertaking before the sale or transfer by, to or in respect of the Corporation shall (to the extent that that act, matter or thing has any force or effect) be taken to have been done or omitted to be done by, to or in respect of the transferee;
- (e) a reference in an instrument of any kind to the Corporation shall (to the extent that it relates to that part of the undertaking) be read as a reference to the person to whom, or company to which, that part of the undertaking is sold or transferred.

(3) Neither the operation of this section nor the sale by the Minister of shares in a subsidiary company under section 7 shall be regarded—

- (a) as a breach of contract or confidence or otherwise as a civil wrong;
or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities;
or
- (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.

(4) No attornment to the transferee by a lessee from the Corporation is required.

(5) Despite anything to the contrary in this Act or the Corporation Act, an undertaking by the Treasurer under section 24 of the Corporation Act ceases to have any force or effect on the sale of that part of the Corporation's business undertaking to which the undertaking by the Treasurer relates.

(6) A reference in this section to a part of the Corporation's business undertaking includes a reference to both parts of that undertaking if they are sold or transferred as a single undertaking.

Undertaking excluded from sale

9. (1) The Minister may direct, by order in writing, that particular assets, rights or liabilities of the Corporation be excluded from the sale of the Corporation's business undertaking.

(2) On the date specified in the order, the excluded undertaking concerned is transferred to the Ministerial Corporation for Industry or such other person on behalf of the Crown as is so specified.

(3) Section 8 applies to the transfer of any excluded undertaking to the Ministerial Corporation for Industry or other person in the same way as it applies to the transfer of the Corporation's business undertaking to a subsidiary company.

New South Wales Investment Corporation (Sale) 1988

(4) Different parts of any excluded undertaking may be so transferred to different persons.

(5) The Ministerial Corporation for Industry or other person is authorised to retain any excluded undertaking so transferred and conduct any business to which it relates.

(6) In this section, "Ministerial Corporation for Industry" means the Ministerial Corporation for Industry constituted under the State Development and Industries Assistance Act 1966.

PART 3—MISCELLANEOUS PROVISIONS RELATING TO SALE

Staff of Corporation

10. (1) The Minister may, by notice in writing, require employees of the Corporation to inform the Minister, within such time and in such manner as the Minister may specify, whether they wish to resign from their employment and take advantage of any right to re-employment conferred by clause 3 of Schedule 3 to the Corporation Act.

(2) An employee who fails to inform the Minister (within the time and in the manner specified by the Minister) of an intention to resign ceases to be entitled to that right of re-employment.

(3) A person who is employed by the Corporation immediately before the date that the Corporation's business undertaking is sold to a person or transferred to a subsidiary company (as the case requires) becomes, on that date, an employee of the person or subsidiary company.

(4) If the Corporation's business undertaking is to be sold to different persons or transferred to different subsidiary companies, the Minister shall determine before the sale or transfer, by order in writing, the allocation of employees among the different persons or companies.

(5) Service by an employee with the Corporation (including any service which is deemed to be service with the Corporation) shall be regarded as service with the person to whom or company to which the employee is transferred by this section.

Cash payment from Corporation to Treasurer before sale

11. (1) The Corporation shall pay to the Treasurer for payment into the Consolidated Fund, within such time before the sale of the whole or any part of the Corporation's business undertaking as the Treasurer directs by notice in writing to the Corporation—

- (a) the amount that would (but for this Act) be payable to the Treasurer under section 15 (2) (a) of the Corporation Act in respect of the period after 30 June 1987; and

New South Wales Investment Corporation (Sale) 1988

(b) such additional amount (if any) as is specified in the notice, being the amount which the Treasurer determines is surplus to the Corporation's requirements.

(2) An amount is not payable under section 15 (2) of the Corporation Act in respect of any period after the financial year ending 30 June 1987.

Corporation Fund in Special Deposits Account

12. (1) In this section—

“Fund” means the New South Wales Investment Corporation Fund established in the Special Deposits Account in the Treasury.

(2) The Minister may, for the purposes of the sale of the Corporation's business undertaking, direct that money standing to the credit of the Corporation in the Fund be transferred to an account or accounts in the name of the Corporation or of a subsidiary company.

(3) After payments are made from the Fund in accordance with any such direction and the Fund is exhausted, the Fund is abolished.

Proceeds of sale

13. (1) The proceeds of the sale of the Corporation's business undertaking shall be paid into the Consolidated Fund.

(2) There may be deducted from the proceeds of sale before payment into the Consolidated Fund such amount, as the Treasurer approves, to meet the expenses reasonably incurred in connection with the sale.

Stamp duty

14. (1) The Minister shall not enter into an agreement for the sale of the whole or any part of the Corporation's business undertaking to a purchaser in accordance with section 6 unless satisfied that arrangements have been made for the payment to the Crown of the amount of stamp duty forgone.

(2) The amount of stamp duty forgone is the amount of stamp duty that would have been payable if the assets transferred by the sale had been transferred by instrument in writing executed by the parties to the transfer instead of by the operation of section 8.

(3) Any instrument executed only for—

(a) a purpose ancillary to or consequential on the operation of section 8; or

(b) the purpose of giving effect to that section,

is not chargeable with stamp duty.

(4) Nothing in this section affects any stamp duty payable on the sale in accordance with section 7 of shares in a subsidiary company.

New South Wales Investment Corporation (Sale) 1988

Disclosure of information etc.

15. (1) A disclosure of information made for the purposes of the sale of the Corporation's business undertaking (including a disclosure in any memorandum of information given to persons expressing an interest in the sale or a disclosure in any response to an inquiry made by a prospective purchaser) shall not be regarded—

- (a) as a breach of contract or confidence or otherwise as a civil wrong; or
- (b) as a contravention of section 25 of the Corporation Act (Disclosure of information) or of any provision of the Companies (New South Wales) Code.

(2) Subsection (1) applies to a disclosure made by the Minister or the Minister's agent (or by a person acting at the direction or with the authority of the Minister or the Minister's agent), but does not apply to a disclosure made by a prospective purchaser or other person to whom the information has been given.

(3) A disclosure of information about a body corporate made to the Corporation by a director of the body corporate who is a nominee of the Corporation under section 21 of the Corporation Act shall not be regarded—

- (a) as a breach of contract or confidence or otherwise as a civil wrong; or
- (b) as a contravention of section 25 of the Corporation Act or of any provision of the Companies (New South Wales) Code.

(4) Subsections (1) and (3) apply to a disclosure whether made before or after the commencement of this section.

(5) A person who—

- (a) is given information in connection with the sale of the Corporation's business undertaking; and
- (b) agrees in writing not to disclose the information to others,

is guilty of an offence if the person contravenes the agreement without lawful excuse.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

(6) A person does not contravene any such agreement after that part of the undertaking to which the information relates is sold under this Act to that person or an associated person.

(7) Proceedings for an offence against subsection (5) shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Regulations

16. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(3) Any such savings or transitional provision may, if the regulations so provide, take effect on the commencement of this section or a later date.

(4) To the extent to which any such savings or transitional provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a)** to affect, in a manner prejudicial to any person (other than the State, the Corporation or any other authority of the State), the rights of that person existing before the date of its publication; or
- (b)** to impose liabilities on any person (other than the State, the Corporation or any other authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Miscellaneous provisions relating to Corporation

17. (1) For the purposes of or incidental to the sale of its business undertaking, the Corporation is, in the exercise of its functions, subject to the control and direction of the Minister.

(2) Anything done under the Corporation Act before the commencement of this section that would have been validly done if the amendments made by Schedule 1 (7) to the New South Wales Investment Corporation (Amendment) Act 1987 had been in force at the time it was done is validated.

(3) Despite anything to the contrary in section 17 of the Corporation Act, no further amount is payable to the Corporation under that section as capital of the Corporation.

(4) Payments to the Corporation by the Treasurer under section 17 of the Corporation Act shall be taken to have included—

- (a)** all amounts transferred to the Corporation from the funds and accounts referred to in clause 2 (2) of Schedule 2 to the New South Wales Investment Corporation (Amendment) Act 1987; and
- (b)** all other amounts paid to the Corporation under that section (including amounts paid as if that section had been substituted by the New South Wales Investment Corporation (Amendment) Act 1987).

*New South Wales Investment Corporation (Sale) 1988***PART 4—REPEALS, AMENDMENTS ETC. FOLLOWING SALE****Dissolution of Corporation following sale**

18. (1) On the commencement of this section, the Corporation is dissolved.

(2) The assets, rights and liabilities (if any) of the Corporation immediately before its dissolution under this section are transferred to the Crown, and section 8 applies to that transfer in the same way as it applies to the transfer of the Corporation's business undertaking to a subsidiary company.

Directors of Corporation to vacate office

19. (1) A person who, immediately before the dissolution of the Corporation, held office as managing director of the Corporation or as a part-time director of the Corporation—

- (a) ceases to hold office as such; and
- (b) except as provided by subsection (2), is not entitled to any remuneration or compensation because of the loss of that office.

(2) Part 8 of the Public Sector Management Act 1988 applies to a person who so ceases to hold office as managing director of the Corporation in the same way as it applies to a person removed from office under that Part.

Repeal of New South Wales Investment Corporation Act 1986 and amending Acts

- 20.** The following Acts are (to the extent indicated) repealed:
- New South Wales Investment Corporation Act 1986 No. 82—the whole Act.
 - State Development and Industries Assistance (Amendment) Act 1986 No. 83—section 5 and Schedule 7.
 - New South Wales Investment Corporation (Amendment) Act 1986 No. 135—the whole Act.
 - New South Wales Investment Corporation (Amendment) Act 1987 No. 129—the whole Act.

Consequential amendment of Statutory and Other Offices Remuneration Act 1975 (1976 No. 4), Sch. 2

21. The Statutory and Other Offices Remuneration Act 1975 is amended by omitting from Part 1 of Schedule 2 the words “Managing director of the New South Wales Investment Corporation.”.

Consequential amendment of Public Finance and Audit Act 1983 No. 152, Sch. 2

22. The Public Finance and Audit Act 1983 is amended by omitting from Schedule 2 the words “New South Wales Investment Corporation.”.

New South Wales Investment Corporation (Sale) 1988

Consequential amendment of Public Authorities (Financial Arrangements) Act 1987 No. 33, Sch. 1

23. The Public Authorities (Financial Arrangements) Act 1987 is amended by omitting from Schedule 1 the words “New South Wales Investment Corporation.”.

Consequential amendment of Electricity Act 1945 (1946 No. 13), s. 19AA

24. The Electricity Act 1945 is amended by omitting section 19AA (a).

*[Minister's second reading speech made in—
Legislative Assembly on 31 August 1988
Legislative Council on 20 September 1988]*
