

# Companies (Transfer of Domicile) Act 1968 No 15

[1968-15]



New South Wales

## Status Information

### Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Repeal**

The Act was repealed by Sch 4 to the [Statute Law \(Miscellaneous Provisions\) Act 2008 No 62](#) with effect from 1.7.2008.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Companies (Transfer of Domicile) Act 1968 No 15



New South Wales

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.

## Part 1 Preliminary

### 1 Name of Act and commencement

- (1) This Act may be cited as the *Companies (Transfer of Domicile) Act 1968*.
- (2) Parts 2, 3 and 4 shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

### 2 (Repealed)

### 3 Construction of Act

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.

### 4 Interpretation

- (1) Subject to subsection (2), 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.
- (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 2 Registration

### 5 Powers of Commission

Subject to this Act, a corporation that applies to the Commission 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 Commission as:

- (a) a company limited by shares,
- (b) a company limited by guarantee,
- (c) a company limited both by shares and guarantee,
- (d) an unlimited company, or
- (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 Disqualifications

A corporation shall not be registered pursuant to this Act unless:

- (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 5,
  - (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 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.

## **7 Application**

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 Commission that the corporation is not disqualified under section 5 or 6 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 (2) of section 54 of that Act from lodging such particulars in relation to an allotment of shares, the full name or 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 Commission may require and specify by notice in writing to the corporation.

The Commission may, where any document referred to in this section has been lodged with the Commission under Division 3 of Part 11 of the Companies Act, dispense with the lodging thereof under this section.

## **8 Registration**

If the Commission is satisfied that an applicant corporation may lawfully be registered pursuant to this Act the Commission shall, on payment of the prescribed fees, so register the corporation by registering the application and the accompanying documents and shall certify under 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.

## **9 Change of status**

- (1) On and from the date specified in a certificate issued pursuant to section 8, 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.
- (2) Subsection (1) 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.

## **10 Memorandum and articles**

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) so much of its constitution as does not, by virtue of paragraph (a), comprise its registered memorandum of association shall be deemed to be the registered articles of association of the company,

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

## **11 Removal from register of foreign companies**

Where, immediately before its registration pursuant to this Act, a company was registered pursuant to Division 3 of Part 11 of the Companies Act, the Commission 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 the Commission thinks fit.

## **Part 3 Application of the Companies Act**

### **12 General application of certain provisions of Companies Act**

Without prejudice to section 9, 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 9.

**13 Application of Companies Act, sec 12 (Registers)**

Provisions the same as the provisions of subsections (2), (3), (4), (5) and (6) of section 12 of the Companies Act shall be deemed to have been enacted in and as part of this Act.

**14 Application of Companies Act, sec 22 (Names of companies)**

The provisions of section 22 of the Companies Act (subsection (2) excepted), and any direction given, whether before or after the commencement of this Act, pursuant to subsection (1) of that section, shall apply to and in respect of the registration of a corporation pursuant to this Act.

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

Except pursuant to a special resolution, the provisions of section 30 of the Companies Act shall not apply to or in respect of a corporation registered pursuant to this Act.

**16 Certain provisions of Companies Act not to apply**

The provisions of sections 50, 52 and 135 of the Companies Act shall not apply to or in respect of a corporation registered pursuant to this Act.

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

- (1) Subject to this section, the provisions of section 102 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 110 of the Companies Act) shall so extend in relation to property of the corporation both within the State and outside the State.
- (2) Nothing in subsection (1) shall be construed as extending the time limited by section 102 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.

**18 Application of Companies Act, sec 136 (Annual general meeting)**

The provisions of section 136 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 (1) and the words “or eighteen months” from subsection (2).

**19 Application of Companies Act, sec 161B (Financial years of grouped companies)**

The directors of a company registered pursuant to this Act shall comply with section 161B

of the Companies Act within twelve months after the registration of the company pursuant to this Act.

## **20 (Repealed)**

## **21 Application of Companies Act, sec 218 (Liability as contributories of present and past members)**

In the application of section 218 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:

- (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 (1) 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 Application of Companies Act, sec 317 (Power of Court to stay or restrain proceedings)**

The provisions of section 317 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.

## **23 Application of Companies Act, sec 381 (Proceedings how and when taken)**

The provisions of section 381 of the Companies Act shall extend to offences against this Act.

## **24 Application of Companies Act, Fourth Schedule**

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.

## **Part 4 General**

### **25 Obligatory alteration of constitution**

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

- (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 (1) 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 (1), 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 Commission so directs, the company shall, within a time specified by the Commission 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 (1).
- (4) Where application is made to it pursuant to subsection (3), 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.
- (5) Subject to subsection (6), a special resolution referred to in subsection (1), and an order of the Court made under subsection (4), 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 21 of the Companies Act applies.
- (6) Where, pursuant to section 21 of the Companies Act and subsection (5), a company would, but for this subsection, be required to lodge with the Commission a printed copy of its constitution as altered, the company may, in lieu thereof, lodge with the Commission 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 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.

- (8) If default is made in complying with the provisions of subsection (1), (2) or (3) 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 Share warrants**

- (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.
- (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 Conclusive evidence of incorporation and other matters**

A certificate given pursuant to section 8 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.

## **28 Rules**

The power to make rules conferred by section 384 of the Companies Act with respect to the matters and things mentioned in that section shall include power to make rules with respect to the like matters and things arising under this Act.

## **29 Regulations**

- (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 (1) regulations may be made for or with respect to:
- (a) the fees to be paid under this Act to the Commission,
  - (b) the conditions under and subject to which fees may be waived by the Commission 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 Commission 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) (Repealed)