

New Zealand.



ANALYSIS.

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1904, No. 39.

AN ACT to make Better Provision for the Registration and Winding-up of Mining Companies. Title.
[4th November, 1904.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act is "The Mining Companies Act, 1904"; and it shall form part of and be read together with "The Companies Act, 1903" (hereinafter referred to as "the principal Act"). Short Title.

Interpretation.

2. In this Act, if not inconsistent with the context,—

“Mining company” means a company, partnership, or co-adventure for mining purposes :

“Mining purposes” means the purpose of obtaining any precious metal or precious stone of any kind by any method whereby the soil or earth, or any rock or stone, may be disturbed, removed, carted, carried, washed, sifted, smelted, refined, crushed, or otherwise dealt with for the purpose of obtaining such precious metal or precious stone, whether such metal or stone is the property of the Crown, or of any company, or of any person whomsoever; and also the purchase, construction, erection, and maintenance of machinery of any kind, and letting the same for hire, for all or any such purposes as aforesaid; and also the purchase, construction, erection, and maintenance of races, sluices, and watercourses, and letting or selling the water or water-power therefrom or thereof for all or any such purposes as aforesaid.

Mining companies to be registered under this Act.

3. After the commencement of this Act no company, association, or partnership consisting of more than twenty-five persons shall be formed for mining purposes unless it is registered under this Act, or is formed in pursuance of some Act of the Imperial Parliament, or of the General Assembly, or by Royal charter, or letters patent.

Liability of members of unregistered company.

4. (1.) The members of any company, association, or partnership required by this Act to be registered that is not so registered shall be jointly and severally liable for the whole debts of the company, association, or partnership; and any such member may be sued for any such debts without the joinder in the action of any other member.

(2.) Any such unregistered company, association, or partnership may be wound up under the provisions of the principal Act.

Registration of mining companies.

5. Subject to the provisions of this Act, a mining company may be registered in the same manner, and with the same consequences in all things, as a company limited by shares under the principal Act.

Principal Act to apply to mining companies.

6. Subject as aforesaid, all the provisions of the principal Act relating to companies limited by shares shall, so far as the same are applicable, *mutatis mutandis*, extend and apply to mining companies.

All mining companies deemed to be registered under this Act.

7. (1.) All mining companies registered or deemed to be registered under the principal Act, or under “The Mining Companies Act, 1894,” or under any former Act relating to mining companies, shall be deemed to be registered under this Act.

(2.) All registers of mining companies kept under “The Mining Companies Act, 1894,” and all documents filed in connection with any company registered therein, shall be transferred by the Registrar who kept the register to the Registrar or Assistant Registrar of Companies under the principal Act, to be entered and filed under that Act.

Varieties of mining companies.

8. A mining company may be registered either as—

(a.) A limited company, meaning thereby a company formed on the principle of having the liability of its members limited to the amount unpaid on their shares, in which case the word “Limited” shall form the last word of the name of the company; or

(b.) A no-liability company, meaning thereby a company formed on the principle that there is no contract between the company and its members that the members will pay or be liable in respect of their shares for any calls, or any contribution towards the debts and liabilities of the company, in which case the words "No Liability" shall form the last words of the name of the company.

9. On the issue of a certificate of incorporation of a mining company the subscribers of the memorandum of association, together with all other persons who from time to time become members of the company, shall, as from the date of incorporation mentioned in the certificate, be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands and with power also to hold mining privileges under any Act for the time being in force relating to mining, but with such liability on the part of the members (except in the case of a no-liability company) to contribute to the assets of the company in the event of its being wound up as is prescribed by the principal Act and this Act.

Effect of certificate of incorporation.

Transfer of Shares.

10. (1.) In every form of transfer there shall be written in ink the name of the transferee, whether a person or a company.

Transfers.

(2.) Transfers may be made on a separate document, instead of being indorsed on a scrip certificate.

(3.) A fee of one shilling only shall be charged in respect of the registration of the transfer of any share or shares included in one certificate.

11. (1.) No share in a mining company shall be deemed to be transferred unless and until the name of the transferee is entered as such transferee in the register of members in manner as herein mentioned.

Name of transferee to be entered on register.

(2.) The transferor of a share, or, where there are more transferors than one, then the transferor who first executes the transfer, shall, at the time of executing the transfer, attach to his signature the true date of signing the same, and such date shall be deemed to be the date of the transfer of the share to the transferee.

(3.) The transferee shall present the transfer for registration in the books of the company within thirty days from the date of the transfer if the same was executed in New Zealand, within sixty days if executed in the Commonwealth of Australia or in Fiji, and within one hundred and twenty days if executed in any other place.

Transfer to be registered within certain time.

(4.) On receipt of any transfer the secretary of the company shall forthwith indorse thereon the true date on which it was received.

(5.) Every transferor of a share who signs a transfer in which the true date of his signing is not inserted, and every company that registers a transfer contrary to this section, and every secretary of the company who neglects to indorse on any transfer the true date upon which the same was received for the purpose of registration, is liable to a fine of ten pounds; and if the transferee fails to cause the transfer to be registered as aforesaid he shall be liable to a fine not exceeding twenty pounds.

(6.) No transfer shall be registered by any company after the expiration of one hundred and twenty days from the execution thereof by the transferor without the authority of a Judge of the Supreme Court or of a District Court, who, upon reasonable cause being shown him why the transfer was not previously registered, may order the secretary to register such transfer upon such terms or conditions as such Judge thinks fit.

Trust on fraudulent transfer incapable of being enforced.

12. If a member of a mining company, with a view of evading the liabilities incident to his share, transfers the same upon some trust or understanding under or according to which he is to be entitled at any future time to have retransferred to him or to resume the ownership of or to have any interest in such share, he shall be disabled from enforcing in any Court any trust for him in such share.

Recovery of Calls and Forfeiture of Shares.

Proceedings for the recovery of unpaid calls.

13. (1.) The amount of any unpaid call on a share in any mining company (other than a no-liability company), together with interest thereon at the rate of six per centum per annum, may, at any time within fourteen days after the call became payable, be recovered as a debt due from the holder of the share to the company.

(2.) In any proceeding under this section it shall be sufficient to state that the defendant is indebted to the company in the sum due for the call, the day on which the call became payable, and the sum claimed for interest.

(3.) A copy of the resolution of the directors of the company declaring a call to be payable on that day, verified as being a true copy by the statutory declaration of the secretary of the company (whose signature and position as secretary it shall not be necessary to prove), shall be *prima facie* evidence that such call was duly made.

(4.) If the amount of any judgment obtained in any such proceeding is not paid within twenty-one days after the date of the judgment, the share shall at the expiration of such twenty-one days be absolutely forfeited, without any resolution of directors or other proceeding.

Forfeiture of shares for non-payment of calls.

14. Where proceedings under the last preceding section have not been taken, and the call remains unpaid at the expiration of twenty-one days after the day on which it became payable, or where a call on any share in a no-liability company remains unpaid for a like period, such share shall thereupon be absolutely forfeited, without any resolution of directors or other proceeding, whether or not proceedings for the recovery of the call have been commenced during such twenty-one days.

When holders of share subject to section 66 of the principal Act.

15. Notwithstanding the forfeiture of any share in a mining company other than a no-liability company, the holder of the share at the time of its forfeiture shall continue to be subject to the provisions of section sixty-six of the principal Act.

Notice of forfeiture to be given.

16. (1.) Not later than seven days after any share is forfeited, the secretary of the company shall send by registered letter addressed to the person registered in respect of such share, at his address appearing in the register, notice of the forfeiture, and of the time and place of the intended sale of the share under the provisions of the next succeeding section.

(2.) If such notice is not sent as aforesaid the secretary of the company shall be liable to a fine not exceeding ten pounds.

17. (1.) The directors of the company shall cause every forfeited share to be offered for sale by public auction, not earlier than twenty-eight nor more than forty-two days after the forfeiture. Forfeited shares to be sold by auction.

(2.) The date and place appointed for such auction shall be advertised not less than seven nor more than fourteen days before such date in a newspaper circulating in the neighbourhood where the registered office of the company is situate and also where its mining operations are carried on.

(3.) In the case of a forfeited share in a no-liability company, the directors may offer the same for auction on the condition that the share may be withdrawn from sale if there is no bid equal to the amount of the unpaid call thereon; but in all other cases the share shall be offered without reserve.

(4.) If any forfeited share is not offered for sale as prescribed in this section, the directors and secretary of the company shall each be liable to a fine not exceeding ten pounds in respect of each share not so offered.

18. (1.) If such share is sold at such sale, the proceeds shall be applied in payment of any calls due or made at the date of such sale, and of the expense of the advertisement, and any other expenses necessarily incurred in respect of the forfeiture and auction sale, and, where proceedings have been taken for the recovery of any such call, of all costs and expenses incurred against the member in respect of such proceedings, and the balance (if any) shall be paid to him upon his delivering to the company the scrip representing such forfeited share. Application of proceeds.

(2.) If the share does not realise the amount of the calls, together with the costs and expenses as aforesaid, the balance shall (except in the case of shares in a no-liability company) be recoverable from the member in any competent Court as a debt due to the company, together with interest thereon calculated at the rate of six per centum per annum from the due date of the call or calls to date of payment of such balance. Recovery of balance.

19. (1.) If any forfeited share offered for sale by public auction is not sold, it shall forthwith be registered in the name of the company, and shall, until reissued, be the property of the company; but no liability shall attach to the company in respect of any such share, which shall be deemed to be held in trust for the company. Forfeited shares, how dealt with if unsold.

(2.) Before reissuing any shares held in trust for a company as aforesaid, notice in writing shall be sent to every member of the company offering the shares to the members in proportion as nearly as may be to the number of shares previously held by each member respectively, and on such terms as the directors think fit.

(3.) Such offer shall remain open for fourteen days from the date of the notice, after which the directors may offer to the public the shares offered to and not accepted by any member.

20. Notwithstanding anything hereinbefore contained, the registered holder of any forfeited share at the time of its forfeiture may, at any time up to or on the day previous to that on which it is intended to sell the share, redeem the same by payment to the com- Redemption of forfeited shares.

pany of all calls made thereon, and of all expenses incurred by the company in respect of the forfeiture, and of all costs and expenses of any such proceedings that may have been taken as aforesaid; and upon such payment the secretary shall re-enter the name of such person in the register of members, and he shall thereupon be entitled to the share as if the forfeiture had not been incurred.

Office to be open
the day before sale.

21. On the day previous to that on which a forfeited share is to be offered for sale the company's office shall be open during the hours for which it is by the regulations of the company to be kept open on days when it is by such regulations to be open.

Extraordinary
meeting to be
convened when one-
third of shares in
company forfeited.

22. (1.) Whenever shares equal to one-third in number or value of the total nominal capital of a mining company have become forfeited, and have been registered in the name of the company as hereinbefore provided, the directors shall within seven days thereafter convene an extraordinary meeting of the members of the company.

(2.) The notice convening such meeting shall specify the names of the members who have forfeited their shares, and the number and nominal value of the shares so forfeited, and shall declare the business of the meeting to be to take into consideration the position of the company, and to provide for the disposal of the forfeited shares in accordance with the provisions of this Act.

(3.) If the directors fail within the said seven days to call such meeting the same may be convened by any five or more shareholders who have not forfeited their shares.

Dividends.

No dividend payable
on shares when call
is unpaid.

23. No member of a mining company shall be entitled to a dividend on any share on which a call is due and unpaid, unless the amount of the dividend exceeds the amount of the unpaid call, in which case he shall only be entitled to the difference between such amounts.

Dividends payable
from profits only.

24. (1.) Subject to the provisions of section fifty-two of the principal Act, no dividend shall be payable to the members of any mining company except out of the profits arising from the business of such company.

Directors paying
dividends otherwise
to be personally
liable.

(2.) Every director of a mining company who permits any dividend to be paid otherwise than out of such profits is liable to a fine not exceeding five hundred pounds and not less than one hundred pounds, and in default of payment thereof to imprisonment for a period of not less than three nor exceeding twelve months, and shall also be liable to the creditors of the company for the amount of the debts due by the company to them respectively to the extent that the dividends so paid exceeded the profits, and such amount may be recovered by the creditors, or the liquidators suing on behalf of the creditors.

(3.) If the whole of any such debt is recovered from one director, he may recover contribution against any other director who also made or permitted such payment.

Directors.

Disqualification of
directors.

25. (1.) No director of a mining company shall be or continue to be a director of any company working or holding ground abutting

on or next to the company of which he was first appointed a director and engaged in litigation with that company.

(2.) No person shall be eligible for election as a director of a mining company, or shall act as such, if he—

- (a.) Holds any office or place of profit under the company ;
- (b.) Is in the pay or employment for valuable consideration of the company ;
- (c.) Is concerned in or participates in the profits of any contract with the company ;
- (d.) Is indebted to the company in any sum due in respect of any shares held by him ; or
- (e.) Is a sharebroker, and has within six months prior to his election, or at any time thereafter whilst he is a director, had any dealings, directly or indirectly, as a sharebroker in the shares of the company to which he has been elected a director.

(3.) Nothing in the last preceding subsection shall apply to any remuneration the directors may be entitled to receive by resolution of the members at any special or general meeting.

Meetings.

26. (1.) Not less than seven days before the day on which any annual general meeting of a mining company is to be held, and again at the expiration of six months thereafter, the directors shall lodge at the company's registered office a full and true report, as far as may be up to the day of the framing thereof, of the state and prospects of the company, together with a statement of the receipts and expenditure of the company during the last preceding six months, and of its assets and liabilities at the date of the statement, and showing the amount (if any) in arrear on the part of each member.

Half-yearly report and statement.

(2.) Not later than three days after any such report and statement has been lodged as aforesaid a copy thereof shall be sent by post to every member, addressed to his last known place of abode.

(3.) A copy of such half-yearly report and statement shall be filed with the Registrar, accompanied by a statutory declaration verifying the same.

Accounts.

27. (1.) The books of account of a mining company, and also the reports and statements of the directors hereinbefore directed to be made, shall during office hours be open to the inspection of the shareholders and creditors of the company on payment of a fee of one shilling.

Books to be open to inspection.

(2.) A copy of any such statement or of such accounts shall, within two days after service on the company of a notice in writing by any creditor or shareholder of the company requesting the same, and on payment of such reasonable fee as may be fixed by the company, be furnished by the secretary of the company to the person so requesting.

Copy of statement and accounts to be furnished to creditors or shareholders.

(3.) The accounts a copy of which is to be furnished may be limited at the secretary's discretion to three months ending with the day of the service of the notice.

(4.) Every copy furnished under this section shall be certified by the secretary as true, and shall be signed by him.

Form of books of account.

(5.) The Colonial Treasurer from time to time may prescribe the form in which the books of account and half-yearly statement of mining companies shall be kept and made, and the directors shall keep such books and prepare such statement accordingly.

Books of company not liable to seizure.

28. No book or document belonging to a mining company shall be liable to be seized in execution for any debt, or, except as herein provided, to be taken out of the control of such company under any judgment, decree, or order of any Court.

Yearly return to be published.

29. In the month of January in each year the directors of every mining company shall cause to be made out a true statement of the affairs of the company up to the thirty-first day of December of the preceding year, in the form of the First Schedule hereto, accompanied by a statutory declaration of the secretary verifying the same; and shall also in the same month in each year cause such statement to be published in the *Gazette*, and a copy of such statement to be sent by post to every member at his last known place of abode.

Penalty in default of making half-yearly statements or returns.

30. If default is made in compliance with the provisions of either sections twenty-six or twenty-nine hereof, or both, every director and secretary of the company who makes or knowingly and wilfully authorises or permits such default is liable to a fine not exceeding five pounds for every day during which such default continues.

Foreign Mining Companies.

Provisions relating to foreign mining companies.

31. With respect to every company or corporation duly registered or incorporated elsewhere than in New Zealand, and formed for mining purposes within the meaning of this Act or "The Mining Act, 1898," or having such purposes amongst its objects, the following provisions shall apply:—

Registration of transfers of shares.

(a.) Such company, while carrying on in New Zealand any mining operations within the meaning of "The Mining Act, 1898," or any business relating to mining within the meaning of this Act, shall at all times make adequate provision for the registration in New Zealand of transfers of its shares, and for the execution and issue in New Zealand of scrip certificates or other documents of title in respect of such shares (hereinafter referred to as "scrip certificates"); and for that purpose—

New Zealand Register.

(i.) Shall duly cause to be kept at its registered office in New Zealand a branch register (to be called "the New Zealand Register"), wherein shall be entered the name, address, and, if known, the occupation of every shareholder who makes application in writing to be entered therein, as also the numbers and other necessary particulars of the shares to which his application relates; and also

Attorney.

(ii.) Shall duly appoint and empower an attorney in New Zealand to do or cause to be done all things necessary for the purpose of there registering transfers of shares entered in the New Zealand Register, and execut-

ing and issuing on behalf of the company the scrip certificates in respect of such shares ; and also

(iii.) May prescribe the mode in which a shareholder shall apply to be entered in the New Zealand Register, or to be removed from the New Zealand Register to the register (if any) kept abroad (hereinafter called "the Foreign Register"), and, generally, from one register to the other :

Entries in or transfers from registers.

Provided that it shall not be lawful for any shareholder to be entered on both the New Zealand and the Foreign Register at the same time in respect of the same shares ; and also

(iv.) May prescribe reasonable fees (not exceeding one shilling) to be paid on each application for entry in the New Zealand Register, or removal from one register to another, and a reasonable time (not exceeding four months) to elapse between the application being made and the entry or removal being effected.

Fees.

(b.) The provisions of sections one hundred and one hundred and three to one hundred and nine of the principal Act, and of sections ten to twelve of this Act, shall apply to every New Zealand Register, and to every shareholder and share entered therein, and to every transfer of any such share.

Provisions applied.

(c.) Every such company shall, within three months after any report or balance-sheet is submitted to any meeting of its shareholders held out of New Zealand,—

Report or balance-sheet to be filed.

(i.) File in its registered office in New Zealand a true copy of such report or balance-sheet ; and

(ii.) Permit the same to be inspected at all reasonable times by any shareholder in New Zealand without fee ; and

(iii.) Publish in the *Gazette* (in the form in the Second Schedule hereto) a statement of the affairs of the company at the date to which such report or balance-sheet is prepared, together with a statutory declaration of the company's attorney verifying the same.

(d.) If default is made in complying with any of the provisions of this section, the defaulting company, and every director, attorney, secretary, and manager, or other person acting in the management thereof, shall be severally liable to a fine not exceeding five pounds for every day during which such default continues.

Penalty on default.

Miscellaneous.

32. Nothing in this Act shall be construed to alter or affect any of the provisions of the several agreements entered into between the Governor, or any other person acting on behalf of the Governor, whereby gold-mining has been authorised on any Native land, or to prejudicially affect the rights and interests of the Native owners under any such agreement.

Agreements with Natives not to be affected.

33. The Acts mentioned in the Third Schedule hereto are hereby repealed to the extent therein mentioned.

Repeals.

Schedules.

SCHEDULES.

FIRST SCHEDULE.

STATEMENT OF AFFAIRS OF A MINING COMPANY INCORPORATED IN NEW ZEALAND.

COMPANY :—

The name of the company :
 When formed, and date of registration :
 Whether in active operation or not :
 Where business is conducted, and name of secretary :

CAPITAL :—

The nominal capital :
 The amount of capital subscribed :
 The amount of capital actually paid up in cash :
 The paid-up value of scrip given to shareholders, and the amount of cash received for the same (if any) :
 The paid-up value of scrip given to shareholders on which no cash has been paid :

SHARES :—

The number of shares into which the capital is divided :
 The number of shares allotted :
 The amount paid per share :
 The amount called up per share :
 The number and amount of calls in arrears :
 The number of shares forfeited :
 The number of forfeited shares sold, and the money received for the same :
 The number of shareholders at time of registration of company :
 The present number of shareholders :

NUMBER OF MEN EMPLOYED :—

The number of men employed by the company :

PRODUCTION :—

The quantity and value of gold or silver produced since the last statement :
 The total quantity and value produced since registration :

EXPENDITURE :—

The amount expended in connection with carrying on operations since the last statement :
 The total expenditure since registration :

DIVIDENDS :—

The total amount of dividends declared :
 The total amount of dividends paid :
 The total amount of unclaimed dividends :

CASH :—

The amount of cash in bank :
 The amount of cash in hand :

DEBTS :—

The amount of debts directly due to the company :
 The amount of debts considered good :
 The amount of the contingent liabilities of the company (if any) :
 The amount of debts owing by the company :

I, A. B., of _____, the secretary of the _____ Company (Limited) [*or as the case may be*], do solemnly and sincerely declare that this is a true and complete statement of the affairs of the said company at the present date. And I make this solemn declaration conscientiously believing the same to be true, and by virtue of "The Justices of the Peace Act, 1882."

Declared at _____, this _____ day }
 of _____, 19____, before me— } A. B.

C. D., Justice of the Peace.

SECOND SCHEDULE.

STATEMENT OF AFFAIRS OF A FOREIGN MINING COMPANY.

COMPANY :—

The name of the company :
 When formed, and date of registration of office of company in New Zealand :
 Whether in active operation or not :
 Where business is conducted, and name of attorney or attorneys :
 Where the mine is situate :

