

Hon. Mr. W. C. Walker, C.M.G.

COMPANIES.

ANALYSIS.

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A BILL INTITULED

AN ACT to amend the Companies Acts.

Title.

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 Companies Act, 1901"; and it shall form part of and be read together with "The Companies Act, 1882" (hereinafter called "the principal Act").

Short Title.

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

10 "Companies Acts" means "The Companies Act, 1882," and the Acts amending the same:

"Debenture" includes debenture stock:

Interpretation.

Imperial Act, 63 & 64 Vic., c. 48, sec. 30

“ Director ” includes any person occupying the position of director, by whatever name called :

“ Prospectus ” means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company. 5

INCORPORATION AND OBJECTS.

Conclusiveness of certificate of incorporation.
Imperial Act, 63 & 64
Vic., c. 48, sec. 1

3. (1.) A certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requisitions of the Companies Acts in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under those Acts. 10

(2.) A statutory declaration by ~~a~~ the solicitor of the Supreme Court engaged in the formation of the company (*if any*), ~~or by a person named in the articles of association as a director or secretary of the company,~~ the directors (*if any*), and the subscribers of the memorandum of association, of compliance with all or any of the said requisitions shall be produced to the Registrar, who may accept this declaration as sufficient evidence of such compliance. 15 20

(3.) The incorporation of a company shall take effect from the date of incorporation mentioned in the certificate of incorporation.

(4.) This section applies to all certificates of incorporation, whether given before or after the passing of this Act.

Repeal.

(5.) Section two hundred and fifty-nine of the principal Act is hereby repealed. 25

APPOINTMENT AND QUALIFICATION OF DIRECTORS.

Restrictions on appointment or advertisement of director.
Ibid., sec 2

4. (1.) A person shall not be capable of being appointed director of a company by the articles of association, and shall not be named as a director or proposed director of a company in any prospectus issued by or on behalf of the company, unless, before the registration of the articles or the publication of the prospectus, as the case may be, he has by himself or by his agent authorised in writing— 30

(a.) Signed or filed with the Registrar a consent in writing to act as such director ; and 35

(b.) Either signed the memorandum of association for a number of shares, not less than his qualification (~~if any~~), and paid in cash the application and allotment moneys on the same, or signed and filed with the Registrar a contract in writing to take from the company and pay for his qualification shares (~~if any~~). 40

(2.) On the application for registration of the memorandum and articles of association of a company, the applicant shall deliver to the Registrar a list of the persons who have consented to be directors of the company, and if this list contains the name of any person who has not so consented the applicant shall be liable to a penalty not exceeding *fty* pounds. 45

(3.) This section shall not apply to a company registered before the commencement of this Act, or to a company which does not issue any invitation to the public to subscribe for its shares, or to a prospectus issued by or on behalf of a company after the expiration of ~~one year~~ *three years* from the date at which the company is entitled to commence business. 50

5. (1.) Without prejudice to the restrictions imposed by the *last preceding* section, it shall be the duty of every director who is by the regulations of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the regulations of the company.

Qualification of director.
63 & 64 Vic., c. 48,
sec. 3

(2.) The office of director of a company shall be vacated if the director does not within the time hereinbefore prescribed obtain his qualification, or if after the expiration of such time he ceases at any time to hold his qualification; and a person vacating office under this section shall be incapable of being reappointed director of the company until he has obtained his qualification.

(3.) If, after the expiration of the time hereinbefore prescribed, any unqualified person acts as director of a company, he shall be liable to pay to the company the sum of *five* pounds for every day during which he so acts.

ALLOTMENT.

6. (1.) No allotment shall be made of any share capital of a company offered to the public for subscription unless—

Restrictions as to allotment.
Ibid, sec. 1

(a.) The amount (if any) fixed by the memorandum or articles of association and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment; or

(b.) If no amount is so fixed and named, then the whole amount of the share capital so offered for subscription—
has been subscribed, and the sum payable on application for the amount so fixed and named, or for the whole amount offered for subscription, has been paid to and received by the company.

(2.) The amount so fixed and named, and the whole amount aforesaid, shall be reckoned exclusive of any amount payable otherwise than in cash, and is in this Act referred to as "the minimum subscription."

(3.) The amount payable on application on each share shall not be less than *five ten* per centum of the nominal amount of the share.

(4.) If the foregoing conditions have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to the applicants without interest; and if any such money is not so repaid within forty-eight days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per centum per annum from the expiration of the forty-eight days: Provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part.

(5.) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(6.) This section, except subsection *three*, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

7. (1.) An allotment made by a company to an applicant in breach of the foregoing provisions of this Act shall be voidable at the

Effect of irregular allotment.
Ibid, sec. 5.

instance of the applicant within one month after the holding of the statutory meeting of the company, and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2.) If any director of a company knowingly commits or permits or authorises a breach of any of the foregoing provisions of this Act relating to allotment he shall be liable to compensate the company and the allottee respectively for any damage, loss, or costs which the company or the allottee may have sustained or incurred thereby: Provided that proceedings to recover the same shall not be commenced after the expiration of two years from the date of the allotment.

Restrictions on commencement of business.
63 & 64 Vic., c. 48,
sec. 6

8. (1.) A company shall not commence any business or exercise any borrowing powers unless—

- (a.) Shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and
- (b.) Every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and
- (c.) There has been filed with the Registrar a statutory declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with.

(2.) The Registrar, on the filing of this statutory declaration, shall certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled.

(3.) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(4.) Nothing in this section shall prevent the simultaneous offer for subscription of any shares and debentures or the receipt of any application.

(5.) If a company commences business or exercises borrowing powers in breach of this section, every person who is responsible for the breach shall, without prejudice to any other liability, be liable to a penalty not exceeding *fifty* pounds for every day during which the breach continues.

(6.) This section shall not apply to a company registered before the commencement of this Act, nor to a company where there is no invitation to the public to subscribe for its shares.

Return as to allotments.
Ibid, sec. 7

9. (1.) Whenever a company limited by shares makes any allotment of its shares the company shall, within one month thereafter, file with the Registrar—

- (a.) A return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount (if any) paid or due and payable on each share; and

(b.) In the case of shares allotted in whole or in part for a consideration other than cash, a contract in writing constituting the title of the allottee to such allotment, together with any contract of sale, or for services or other consideration in respect of which such allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they were allotted.

(2.) Every director, manager, secretary, or other officer of the company who is knowingly a party to any breach of the requirements of this section is liable to a penalty not exceeding *fifty* pounds for every day during which the breach continues.

(3.) The last paragraph of section thirty-four of the principal Act, to wit, from the words "Every share in any company" to the end of the section, is hereby repealed.

Repeal.

10. (1.) Upon any offer of shares to the public for subscription it shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if the payment of the commission and the amount or rate per centum of the commission paid or agreed to be paid are respectively authorised by the articles of association and disclosed in the prospectus, and the commission paid or agreed to be paid does not exceed the amount or rate so authorised.

Commission, discounts, &c.
63 & 64 Vic., c. 48,
sec. 8

(2.) Save as aforesaid a company shall not apply any of its shares or capital money, directly or indirectly, in payment of any commission, discount, or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares of the company, whether the shares or money are so applied by being added to the purchase-money of any property acquired by the company, or to the contract price of any work to be executed for the company, or the money is paid out of the nominal purchase-money or contract price, or otherwise.

Struck out.

(3.) This section shall not affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.

PROSPECTUS.

11. (1.) Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of the prospectus.

Filing of prospectus.
Ibid, s. 9

(2.) A copy of every such prospectus shall be signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, and shall be filed with the Registrar on or before the date of its publication.

(3.) The Registrar shall not register any prospectus unless it is so dated and signed.

Requirements as to
particulars of pro-
spectus.
63 & 64 Vic., c. 48,
sec 10

(4.) No prospectus shall be issued until so filed for registration, and every prospectus shall state that it has been so filed.

12. (1.) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of a company, shall state—

- (a.) The contents of the memorandum of association, with the names, addresses, and descriptions of the signatories, and the number of shares subscribed for by them respectively; and the number of promoters' shares (if any), and the nature and extent of the interest of the holders in the property and profits of the company; and 5 10
- (b.) The number of shares (if any) fixed by the articles of association as the qualification of a director, and any provision in the articles of association as to the remuneration of the directors; and 15
- (c.) The names, addresses, and descriptions of the directors or proposed directors; and
- (d.) The minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share, and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment and the amount actually allotted, and the amount (if any) paid on such shares; and 20
- (e.) The number and amount of shares and debentures issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which such shares or debentures were issued or are proposed or intended to be issued; and 25 30
- (f.) The names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of publication of the prospectus, and the amount payable in cash, shares, or debentures to the vendor, and, where there is more than one vendor, or the company is a sub-purchaser, the amount so payable to each vendor; and 35 40
- (g.) The amount (if any) paid or payable as purchase-money in cash, shares, or debentures, for any such property as aforesaid, specifying the amount payable for good-will; and
- (h.) The amount (if any) paid or payable as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in the company, or the rate of any such commission; and 45
- (i.) The amount or estimated amount of preliminary expenses; and
- (j.) The amount paid or intended to be paid to any promoter, and the consideration for any such payment; and 50
- (k.) The dates of and parties to every material contract, and a reasonable time and place at which any such contract or

a copy thereof may be inspected: Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into more than three years before the date of publication of the prospectus; and

(l.) The names and addresses of the auditors (if any) of the company; and

(m.) Full particulars of the nature and extent of the interest (if any) of every director in the promotion of or in the property proposed to be acquired by the company, with a statement of all sums paid or agreed to be paid to him in cash or shares by any person, either to qualify him as a director, or otherwise for services rendered by him in connection with the formation of the company.

(2.) For the purposes of this section every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company in any case where—

(n.) The purchase-money is not fully paid at the date of publication of the prospectus; or

(o.) The purchase-money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or

(p.) The contract depends for its validity or fulfilment on the result of such issue.

(3.) Where any of the property to be acquired by the company is to be taken on lease, this section shall apply as if the expression "the vendor" included the lessor, and "purchase-money" included the consideration for the lease, and "sub-purchaser" included a sub-lessee.

(4.) This section shall not apply to a circular or notice inviting existing members or debenture-holders of a company to subscribe for further shares or debentures; but, subject as aforesaid, this subsection shall apply to any prospectus, whether issued on, or with reference to the formation of a company or subsequently:

Provided that in the case of a prospectus published more than ~~one year~~ *three years* after the date at which the company is entitled to commence business,—

(q.) The requirements as to the memorandum of association, and the qualification, remuneration, and interest of directors, the names, addresses, and descriptions of directors or proposed directors, and the amount or estimated amount of preliminary expenses, shall not apply; and

(r.) The obligation to disclose all material contracts shall be limited to a period of two years immediately preceding the publication of the prospectus.

(5.) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(6.) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary to specify the contents of the memorandum of association or the signatories thereto, or the number of shares subscribed for by them.

(7.) In the event of non-compliance with any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance if he proves that,—

(s.) As regards any matter not disclosed, he was not cognisant thereof; or

(t.) The non-compliance arose from an honest mistake of fact on his part:

Provided that, in the event of non-compliance with the requirements of paragraph (m) of subsection *one* of this section, a director or other person shall not incur any liability in respect of such non-compliance unless it is proved that he had knowledge of the matters not disclosed.

(8.) This section shall not limit or diminish any liability incurred by any person under the general law apart from this section.

(9.) Section twenty-three of the principal Act is hereby repealed.

Repeal.

Restriction on alteration of terms of prospectus.

63 & 64 Vic., c. 48, sec. 11

13. A company shall not, prior to the statutory meeting, vary the terms of a contract referred to in the prospectus, except subject to the approval of the statutory meeting.

New clause.

PAYMENT OF CALLS.

Directors to pay calls on shares held by them.

13A. (1.) Whenever a call on any shares is made payable, it shall be obligatory on the directors of the company to pay the amount of such call on all shares held by them respectively on or before the day on which such calls are made payable by shareholders.

(2.) Every director who fails to comply with this section is liable to a penalty not exceeding *fifty* pounds, and not less than *five* pounds, in addition to his liability for payment of the amount of the call.

(3.) Notwithstanding anything to the contrary in "The Mining Companies Act, 1894," no shares (except those held by the directors of the company) shall be liable to forfeiture under that Act for non-payment of calls, unless and until the provisions of subsection *one* of this section are duly complied with.

(4.) In any proceedings against a shareholder for payment of calls, it shall be a condition precedent to judgment being given against the defendant that the directors of the company have duly complied with the provisions of subsection *one* of this section.

MEETINGS.

First statutory meeting of company.
Ibid, sec. 12

14. (1.) Every company limited by shares and registered after the commencement of this Act shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called the statutory meeting.

(2.) The directors shall, at least seven days before the day on which the meeting is held, forward to every member of the company a report certified by not less than two directors of the company, or, where there are less than two directors, by the sole director and
5 manager, stating—

- (a.) The total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and, in the case of shares partly paid up, the extent to which they are so paid up, and in either case the consideration for which they have been allotted ;
10 (b.) The total amount of cash received by the company in respect of such shares, distinguished as aforesaid ;
(c.) An abstract of the receipts and payments of the company on capital account to the date of the report, and an account or estimate of the preliminary expenses of the company ;
15 (d.) The names, addresses, and descriptions of the directors, auditors (if any), manager (if any), and secretary of the company ; and
20 (e.) The particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(3.) The report shall, so far as it relates to the shares allotted by
25 the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors (if any) of the company.

(4.) The directors shall cause a copy of the report, certified as aforesaid, to be filed with the Registrar forthwith after the sending
30 thereof to the members of the company.

(5.) The directors shall cause a list showing the names, addresses, and descriptions of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any
35 member of the company during the continuance of the meeting.

(6.) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the report, whether previous notice has been given or not, but no resolution of which notice has not been
40 given in accordance with the articles of association may be passed.

(7.) The meeting may adjourn from time to time, and at any such adjournment any resolution of which notice has been given in accordance with the articles of association, either before or subsequent to the former meeting, may be passed, and the adjourned meeting
45 shall have the same powers as an original meeting.

(8.) If default is made in filing such report as aforesaid, or in holding the statutory meeting, then, at the expiration of fourteen days after the last day on which the meeting ought to have been held, any member may petition the Court for the winding-up of the
50 company ; and upon the hearing of the petition the Court may either direct that the company be wound up, or give directions for the report to be filed, or a meeting to be held, or make such other order

as is just, and may order that the costs of the petition be paid by any persons who, in the opinion of the Court, are responsible for the default.

Repeal.

Extraordinary
general meeting.
63 & 64 Vic., c. 48,
sec. 13

(9.) Section eighty-four of the principal Act is hereby repealed.

15. (1.) Notwithstanding anything in the regulations of a company, the directors of a company shall, on the requisition of the holders of not less than one-tenth of the issued capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to convene an extraordinary general meeting of the company. 5

(2.) The requisition shall state the objects of the meeting, and be signed by the requisitionists and deposited at the office of the company, and may consist of several documents in like form, each signed by one or more requisitionists. 10

(3.) If the directors of the company do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists, or a majority in value of them, may themselves convene the meeting, but any meeting so convened shall not be held after three months from the date of such deposit. 15

(4.) If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith convene a further extraordinary general meeting for the purpose of considering the resolution, and, if thought fit, of confirming it as a special resolution; and if the directors do not convene the meeting within seven days from the date of the passing of the first resolution, the requisitionists, or a majority in value of them, may themselves convene the meeting. 20

(5.) Any meeting convened under this section by the requisitionists shall be convened in the same manner as nearly as possible as that in which meetings are to be convened by directors. 25 30

ANNUAL SUMMARY.

Annual summary.
63 & 64 Vic., c. 48,
sec. 19

16. (1.) The summary mentioned in section thirty-six of the principal Act shall be so framed as to distinguish between the shares issued for cash and the shares issued otherwise than for cash or only partly for cash, and shall, in addition to the particulars required by that section to be specified, also specify— 35

(a.) The total amount of debt due from the company in respect of all mortgages required to be registered under this Act; and 40

(b.) The names and addresses of the persons who are the directors of the company at the date of the summary.

(2.) The list and summary mentioned in the said section shall be signed by the manager or by the secretary of the company.

Sections 80 and 81
of principal Act
extended.

17. Sections eighty and eighty-one of the principal Act, relating to the list of directors required to be filed, shall apply to companies having a capital divided into shares; and the words "and not having a capital divided into shares" in those sections are hereby repealed. 45

AUDIT.

18. (1.) Every company shall at each annual general meeting appoint an auditor or auditors, to hold office until the next annual general meeting.
- 5 (2.) If an appointment of auditors is not made at an annual general meeting, the Colonial Secretary may, on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services.
- 10 (3.) A director or officer of the company shall not be capable of being appointed auditor of the company.
- (4.) The first auditors of the company may be appointed by the directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting, unless previously removed by a resolution of the members in general meeting, in which case the members at such meeting may appoint auditors.
- 15 (5.) The directors of a company may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors (if any) may act.
- 20 19. (1.) In any case where the auditor appointed by the Colonial Secretary under the last preceding section is the Audit Office, the Audit Office shall have, in respect of the company, its accounts, and all persons dealing with the moneys of the company, the same powers as if the company were a local authority within the meaning of section six of "The Public Revenues Act, 1892."
- 25 (2.) The costs and expenses of the Audit Office in connection with such audit shall be payable out of the assets of the company, and shall be paid into the Public Account and form part of the Consolidated Fund.
- 30 20. The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting, or to fill any casual vacancy, may be fixed by the directors.
- 35 21. (1.) Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors.
- (2.) The auditors shall sign a certificate at the foot of the balance-sheet stating whether or not all their requirements as auditors have been complied with, and shall make a report to the members on the accounts examined by them and on every balance-sheet laid before the company in general meeting during their tenure of office.
- 40 (3.) In every such report the auditors shall state whether, in their opinion, the balance-sheet referred to in the report is properly drawn up, so as to exhibit a true and correct view of the state of the company's affairs as shown by the books of the company; and such report shall be read before the company in general meeting.

Appointment of auditors.
Ibid, sec. 21

Where Audit Office is appointed.

Remuneration of auditors.
63 & 64 Vic., c. 48, sec. 22

Rights and duties of auditors.
Ibid, sec. 23

REGISTRATION OF MORTGAGES.

Provisions for
registration of
mortgages.

22. With respect to the registration of mortgages created by companies, as required by section nine of "The Companies Act Amendment Act, 1900," the following provisions shall apply:—

Ibid, sec. 14

63 and 64 Vic., c. 48,
sec. 15

- (1.) It shall be the duty of the manager and secretary of a company to cause to be registered every mortgage created by that company and required to be registered under the said section, and for that purpose to supply the Registrar with the required particulars; but any such mortgage may be registered on the application of any person interested therein. 5
- (2.) The Registrar shall cause a register-book to be kept, wherein every such mortgage shall be entered, and such register and the documents entered therein shall be open to inspection of all persons on payment of a fee of *one shilling*. The Registrar shall keep an index of the register in such manner and form as is prescribed by the Governor. 15
- (3.) Where a series of debentures containing or constituting any mortgage, to the benefit of which the holders thereof are entitled *pari passu*, is created by a company, it shall be sufficient to enter on the register,— 20
 - (a.) The total amount secured by the whole series; and
 - (b.) The dates of the resolutions creating the series, and of the covering deed (if any) by which the security is created or defined; and 25
 - (c.) A general description of the property mortgaged; and
 - (d.) The names of the trustees (if any) for the debenture-holders. 30
- (4.) Where more than one issue is made of debentures in the same series, the company may require the Registrar to enter in the register the date and amount of any particular issue; but an omission to do this shall not affect the validity of the debentures issued. 35
- (5.) On any registration under subsections *three* and *four* of this section one registration-fee only as required by the said section *nine* shall be payable.
- (6.) The registration of a mortgage, in pursuance of the said section, shall not be invalid merely by reason of any accidental or inadvertent omission or misstatement in the copy lodged, as required by that section, provided it substantially discloses the nature of the security, and such omissions or misstatements are not of such a nature as to be liable to mislead or deceive any person to his prejudice. 40 45
- (7.) A Judge of the Supreme Court, on being satisfied that the omission to register any mortgage, or the omission or misstatement of any particular with respect to any mortgage, was accidental, or due to inadvertence, and was not of such a nature as to be liable to mislead or deceive any person to his prejudice, may, on the application of any person interested, and on such terms and conditions as he deems expedient, order that such omission or misstatement be rectified. 50 55

New subclause.

(8.) In the case of debentures issued subsequently to the coming into operation of "The Companies Act Amendment Act, 1900," and prior to the coming into operation of this Act, their registration shall be deemed to be validly effected if the particulars prescribed by subsection *three* of this section are entered on the register within twenty-eight days after the coming into operation of this Act, or such extended period as a Judge of the Supreme Court, on application in that behalf, may order.

23. A Judge of the Supreme Court may, on being satisfied that the debt, claim, or liability for which any registered mortgage was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register.

Memorandum of satisfaction.
Ibid, sec. 16

24. If any director, manager, or secretary of a company makes default in complying with any of the requirements of this Act relating to the registration of mortgages, he shall, without prejudice to any other liability, be liable to a penalty not exceeding *fifty* pounds.

Penalty for breach of Act.

WINDING-UP OF COMPANIES BY THE COURT.

25. In every case where, after the coming into operation of this Act, a company is ordered to be wound up by the Court under the principal Act, the Official Assignee under "The Bankruptcy Act, 1892," of the ~~Supreme Court~~ district wherein the company's principal office is situate shall, by force of this Act, and without the necessity of any appointment or order, be the sole and Official Liquidator of such company.

Official Assignee to be Official Liquidator of company.

26. (1.) In any such case the Court may, on the application of any creditor or contributory of the company, appoint any number of fit persons (not exceeding three) to be Supervisors for the purpose of assisting and advising the Official Liquidator in the winding-up of the company.

Court may appoint Supervisors to assist in winding up.

(2.) Any Supervisor may resign by notice in writing to the Official Liquidator, or may be removed by the Court on due cause shown, and any vacancy occasioned thereby or by the death of the Supervisor may be filled up by the Court.

27. The Official Liquidator shall have regard to the views and advice of the Supervisors; and, if any question or difference arises between him and them or any of them, the Court, on the application of the Official Liquidator or of any Supervisor, may give directions in the matter.

Settlement of questions between Official Liquidator and Supervisors.

28. With the consent of the Supervisors (if any) the Official Liquidator may from time to time employ a solicitor to assist him in the performance of his duties.

Official Liquidator may appoint solicitor.

29. (1.) The Official Liquidator and each Supervisor shall be entitled to such remuneration out of the assets of the company as is fixed by the Court.

Remuneration to be paid out of assets of company.

(2.) Such remuneration shall be a first charge on the assets of the company, and, in the case of the Official Assignee, shall be paid into the Public Account and form part of the Consolidated Fund.

Style and duties of Official Liquidator

30. The Official Liquidator shall be described by the style of the Official Liquidator of the particular company in respect of which he is appointed, and not by his individual name; he shall take into his custody or under his control all the property, effects, and things in action to which the company is or appears to be entitled, and shall perform such duties in reference to the winding-up of the company as are imposed by the Court.

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Struck out.

Powers of Deputy and Acting Assignees.

31. For all the purposes of this Act the provisions of "The Bankruptcy Act, 1892," relating to the powers and functions of Deputy Assignees and Acting Assignees shall, *mutatis mutandis*, apply:

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Provided that, on the application of the Official Liquidator, the Court may, in the course of the winding-up of a company, appoint any fit person to act in lieu of the Deputy Assignee: and in such case, and for the purposes of such winding-up, the person so appointed shall be deemed to be the Deputy Assignee.

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New clause.

31A. On the application of the Official Liquidator, the Court may, in the course of the winding-up of a company, appoint the Deputy Assignee or other fit person to act in lieu of the Official Liquidator, under the style of the "Deputy Official Liquidator"; and in such case, and for the purposes of such winding-up, the person so appointed shall have all the powers and functions of the Official Liquidator.

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Remuneration of Deputy Assignee when acting.

32. In every case where the ~~Deputy Assignee~~ *Official Liquidator* acts in the winding-up of a company he shall be entitled to receive, out of moneys to be appropriated by Parliament, such remuneration as the Governor directs, in no case exceeding the amount paid into the Public Account in respect of the Official Liquidator's remuneration for such winding-up.

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Official Liquidator's accounts and audit.

33. The provisions of section one hundred and forty-nine of "The Bankruptcy Act, 1892," relating to accounts and audit, shall, *mutatis mutandis*, apply to the Official Assignee as Official Liquidator.

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Court may order liquidator's accounts to be audited by Audit Office.

34. (1.) On the application of any creditor, or shareholder, or contributory of a company in course of being wound up by order of the Court, whether the winding-up was commenced before or after the coming into operation of this Act, the Court may order that the accounts of the liquidator or liquidators (other than the Official Assignee) shall be audited by the Audit Office, and in such case the Audit Office shall have, in respect of the liquidators, their accounts, and all persons dealing with the moneys of the company, the same powers as it would possess if the Official Assignee were the Official Liquidator.

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(2.) The costs and expenses of the Audit Office in connection with such audit shall be payable out of the assets of the company, and shall be paid into the Public Account and form part of the Consolidated Fund:

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Provided that if there are no assets available for the payment of such costs and expenses, or if by reason of the accounts having been already audited, in whole or in part, by an auditor other than the

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Audit Office, or for any other reason, the Court is of opinion that the same should not be payable out of the assets of the company, the order for audit by the Audit Office shall not be made unless the applicant is willing to pay such costs and expenses, and gives security to the satisfaction of the Court for the payment thereof: Provided, also, that upon giving such security the applicant shall be entitled to the order as of right.

5 35. Sections one hundred and fifty-five, one hundred and fifty-six, one hundred and fifty-seven, and one hundred and sixty of the principal Act, and sections eighty-six to ninety-four of "The Mining Companies Act, 1894," are hereby repealed. **Repeal.**

DEFUNCT COMPANIES.

15 36. Where a company is being wound up and the Registrar has reasonable cause to believe that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six months after notice by the Registrar demanding the returns has been sent by post to the registered office of the company, or to the liquidator at his last known place of business, the provisions of section ten of "The Companies Act Amendment Act, 1900," shall apply in like manner as if the Registrar had not within one month after sending the second letter therein mentioned received any answer thereto. **Section 10 of "The Companies Act Amendment Act, 1900," extended.**

New Clauses.

25 36A. The Fourth Schedule to "The Mining Companies Act, 1894," is hereby amended by the addition of the following words under the heading "Debts," at the end of the said Schedule: "The amount of debts owing by the company."

APPLICATION TO MINING COMPANIES.

30 36B. "The Companies Act Amendment Act, 1900," and this Act shall apply to all companies, whether registered under the principal Act or "The Mining Companies Act, 1894." **Application to mining companies.**