

Hon. Mr. J. McGowan.

MINING COMPANIES.

ANALYSIS.

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A BILL INTITULED

AN ACT to make Better Provision for the Registration and Winding-up of Mining Companies. 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 Mining Companies Act, 1904"; and it shall form part of and be read together with "The No. 53—1. Short Title.

Companies Act, 1903" (hereinafter referred to as "the principal Act").

Interpretation.

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

"Mining company" means a company, partnership, or co-adventure for mining purposes: 5

"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. 10 15 20

Mining companies to be registered under this Act.

3. After the commencement of this Act no company, association, or partnership consisting of more than ten 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. 25

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. 30

(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. 35

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. 40

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. 45

(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 of Companies under the principal Act, to be entered and filed under that Act.

8. A mining company may be registered either as—

Varieties of mining companies.

5 (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

10 (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.

15 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
20 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
25 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.

30 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.

35 (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.

40 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
45 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
50 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.

Forfeiture of Shares.

Forfeiture of shares for non-payment of calls.

13. (1.) Where a call on any share in a mining company remains unpaid at the expiration of twenty-one days after the day on which it was payable, 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.

(2.) Notwithstanding the forfeiture of any share, the holder thereof at the time of its forfeiture shall continue to be subject to the provisions of section sixty-six of the principal Act :

Provided that this subsection shall not apply to no-liability companies.

Notice of forfeiture to be given.

14. (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.

Forfeited shares to be sold by auction.

15. (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.

(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.

16. (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.

17. (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.

18. 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 company 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.

Redemption of
forfeited shares.

19. 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

Office to be open
the day before sale.

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.

20. (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. 5

(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. 10

(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. 15

Dividends.

No dividend payable on shares when call is unpaid.

21. 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. 20

Dividends payable from profits only.

22. (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. 25

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. 30 35

(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. 40

Directors.

Disqualification of directors.

23. (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. 45

(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 ;
- 5 (d.) Is indebted to the company in any sum due in respect of any shares held by him ; or
- (e.) Is a sharebroker.
- (3.) Nothing in the *last preceding* subsection shall apply to any remuneration the directors may be entitled to receive by reso-
10 lution of the members at any special or general meeting.

Meetings.

24. A general meeting of every mining company shall be held General meeting.
half-yearly.

15 25. (1.) Not less than seven days before the day on which any Half-yearly report and statement.
half-yearly general meeting of a mining company is to be held, 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 pre-
20 ceeding 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.

(2.) Not less than three days before any such meeting, a copy of such half-yearly report and statement shall be filed with the
25 Registrar, accompanied by a statutory declaration verifying the same.

(3.) A copy of such report and statement shall be sent by post to every member, addressed to his last-known place of abode.

Accounts.

30 26. (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.

35 (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
40 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
45 by the secretary as true, and shall be signed by him.

(5.) The Colonial Treasurer from time to time may prescribe Form of books of account.
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.

27. 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. 5

Yearly return to be
published.

28. 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. 10 15

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

29. If default is made in compliance with the provisions of either sections *twenty-five* or *twenty-eight* 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. 20

Foreign Mining Companies.

Provisions relating
to foreign mining
companies.

30. 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:— 25

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,— 30 35

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 40

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 executing and issuing on behalf of the company the scrip certificates in respect of such shares; and also 45 50

(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.

31. 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.

Repeals.

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

Schedules.

SCHEDULES.

Section 28.

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.

