



1855-6.

No. 25.

*An Act to provide for the Registration of Joint Stock Companies,
and for Limiting the Liability of Members thereof.*

[Assented to, June 18, 1856.]

*See also
No. 5 - 1856.*

WHEREAS it is expedient to assist in developing the resources of the Province by encouraging the formation of Joint Stock Companies for mining and other purposes, and in order to induce persons of capital to join such Associations, it is expedient to enable the members thereof, if they shall think fit, to limit their individual liability for the debts and engagements of the Companies with which they are connected—Be it therefore Enacted, by His Excellency the Governor-in-Chief of the Province of South Australia, by and with the advice and consent of the Legislative Council thereof, as follows:

Preamble.

1. That any Joint Stock Company now or hereafter to be established in the said Province, the members whereof shall be desirous of availing themselves of the provisions of this Act, shall file a memorial in the Supreme Court, in the form or to the effect of the memorial prescribed in Schedule A, to this Act annexed, and containing the particulars therein required to be set forth; together with an affidavit or declaration by two of the Directors of the Company, verifying the contents of such memorial; and together with a list of the members of the Company, containing their names, occupations, and residences, according to the information possessed by the Directors of the Company, and stating the number of shares held by each member respectively; and upon such memorial and affidavit, or declaration, being filed, with such list of members as aforesaid, and the provisions of this Act being otherwise complied with, the Registrar of Joint Stock Companies, shall grant to such Company a certificate of registration

Memorial of Company
to be filed in the
Supreme Court.

Certificate of Regis-
tration to be granted.

registration, in the form specified in the Schedule marked B, to this Act annexed, which certificate shall be received in evidence, without further proof, in any Court of Law or Equity, that such Company has been duly registered under this Act.

Companies to be constituted under deed of settlement.

2. Every Joint Stock Company, intended to be registered under this Act, must be constituted under a deed of settlement, and before a certificate of registration shall be granted under the provisions of this Act, an affidavit, or declaration by two of the Directors of the Company, must be filed in the Supreme Court, setting forth that one-half at least of the number of shares, into which the capital of the Company shall be divided, have been subscribed for, and a deposit amounting to at least ten per cent. upon the capital represented by such shares actually paid, and that the whole of the then shareholders have, by themselves or their attorneys, executed such deed of settlement.

Shares to be allotted by promoters to applicants in writing only.

3. The promoters of every Company hereafter to be established, who intend to avail themselves of the provisions of this Act, shall allot the shares of the Company only to persons making application in writing for the same; and every person making such application shall be liable to pay the deposit and calls in respect of the shares for which he shall have applied, and for the recovery of which the Company, after such registration as herein provided, may sue any such person, notwithstanding he may not have executed the deed of settlement of the Company: And the promoters of the Company shall, as soon as conveniently may be after the applications for shares have been received, and within six calendar months after the date of the first application, allot the shares of the Company to the applicants for the same, according to the discretion of the promoters; and shall give notice in writing, through the Post Office at Adelaide, or the nearest post town to the office or place of business of the Company, to such applicant to whom shares shall be allotted, stating the number of shares allotted to the person to whom such notice shall be addressed, and the promoters of the Company, or some or one of them, shall, within one calendar month after such allotment, call a general meeting of the members of the Company, at some convenient time and place, by advertisement in all the daily and weekly newspapers published in Adelaide, such advertisement to be inserted at least one week before the day of meeting, and the following business only shall be transacted at such meeting, namely—the election of a Chairman to preside thereat; the election of not less than three Directors to continue in office until new Directors shall be appointed under the deed of settlement of the Company, and the adjustment, and settling the terms, provisions, and clauses of the deed of settlement of the Company, which shall be produced by the promoters, and read to the meeting by the Chairman, or a person appointed for that purpose by him; and at every such meeting every person present, who shall hold a notice of allotment of shares in the Company, shall be entitled to one vote in respect of each share allotted to him on all subjects submitted to the meeting, and every question shall be decided by a majority of votes; and

After allotment, general meeting to be called for election of Directors, &c.

and any person holding a notice of allotment shall be qualified to be Chairman of the meeting, and a Director of the Company; and the Chairman shall be at liberty to adjourn such meeting from time to time, and if at any adjourned meeting the Chairman of the former meeting shall not be present, then another Chairman may be nominated from amongst the holders of notice of allotment present at the meeting.

4. So soon as the deed of settlement shall be agreed to at the meeting to be called as before provided, or any adjournment thereof, the directors shall cause the same to be engrossed, or fairly written out, and shall give notice through the post office to each person to whom shares in the Company shall have been allotted, stating the time when, and the place where such deed of settlement may be executed, and in case any person, to whom shares shall have been allotted, shall neglect or refuse to execute such deed of settlement for the space of fourteen days after such notice as last aforesaid, then the Directors, or any two of them may, and they are hereby empowered for and on behalf of such person so neglecting or refusing to execute, and as the attorney of such person to sign and execute such deed of settlement, and the execution thereof by such two Directors shall be as valid and effectual, to all intents and purposes, and as binding upon the person so neglecting or refusing to execute, as if he had personally executed the same: Provided always, that, if any person to whom shares shall have been allotted, shall dissent from the deed of settlement, and shall give notice of such dissent to the Directors of the Company within the said period of fourteen days, such person shall thereupon cease to be a shareholder of the Company; and all moneys paid by such person in respect of any shares allotted to him shall be forfeited to the Company, and the shares so allotted shall be cancelled; nevertheless, every such person shall be liable for the payment of the deposit, and all other moneys due in respect of the shares so cancelled, up to the time of giving such notice as last aforesaid, in like manner as if he had executed the deed of settlement; and the Company may recover such deposit, and other moneys due, upon an account stated.

In case any allottee shall neglect to execute deed of settlement after notice, Directors may execute on his behalf.

5. In the months of January and July, in every year, the Directors of every Joint Stock Company, registered under this Act, shall make or cause to be made, the following returns to the Registrar of Joint Stock Companies, that is to say—A return according to Schedule C, hereunto annexed, and containing the particulars therein set forth of every transfer of any share in such Company which shall have been made since the preceding half-yearly return (or, in the case of the first return made by such Company, since the registration thereof) and which shall have come to the knowledge of the Directors; and also a return according to the Schedule D, hereunto annexed, and containing the particulars therein set forth of the names and places of abode of all persons who shall either have ceased to be shareholders of such Company, or have become shareholders of such Company, otherwise than by a transfer as aforesaid, since the preceding half-yearly return, or since the registration of the Company, as the case may

Half-yearly returns to be made to the Registrar.

may require, and also of the changes in the names of all shareholders of such Company, whose names shall have been changed by marriage or otherwise since the last preceding half-yearly return, or since the registration of the Company, as the case may require; and if within any such period any such return be not made, then, on conviction thereof, every Director of such Company shall be liable to a penalty not exceeding Five Pounds, for each month beyond such period during which such return shall not have been made.

Until return made of transfer of shares the transferrer deemed a member of the Company.

6. Until the return of the transfer or other fact or event whereby a person becomes the holder of any shares be made, pursuant to the provisions hereinbefore contained, it shall not be lawful for such Company, its Directors, or officers, if such transfer, fact, or other event be known to them respectively, to pay to any such person any part of the profits of the concern, nor for any such person to sue for or recover any part of the profits arising in respect of such shares, or in anywise to act as a shareholder; and until the return of the transfer of any share shall have been made pursuant to the provisions hereinbefore contained, the person whose share shall have been transferred, shall, so far as respects his liability to the debts and engagements of the Company, and also as respects the reimbursements of any loss, damages, costs, and charges he may incur thereby, be deemed to continue a shareholder of such Company: Provided always, that if at any time any party to a transfer of a share, the calls on which having been duly paid, request the Directors of any such Company, in writing, to make a return thereof, then, forthwith, on such request, and the transfer being duly entered in the books of the Company, the Directors shall make such return accordingly.

Transfer registered any time at request of shareholders.

Registrar to make returns, with date of filing, &c.

7. When the particulars and documents severally by this Act required to be returned to or filed with the Registrar of Joint Stock Companies shall have been so returned, or filed, it shall be the duty of the said Registrar, and he is hereby required to cause to be written on every such document, and return of particulars brought to him, the day of the receipt thereof, and to cause to be marked on every such return or document, in writing or otherwise, a number denoting the order in which the same was received, and the same shall be entered by the said Registrar in a book to be kept by him for the purpose of facilitating reference thereto.

Annual returns to be made by Companies.

8. Sometime in the month of January, in every year, every Joint Stock Company, registered under this Act, shall make a return to the Registrar of the name, and business, or purposes of the Company, and of the Chief Officer of the Company, and of the capital of the Company, and the names of the then Directors, in the form set forth in Schedule E, to this Act annexed, which return shall be signed by two of the Directors of the Company, and filed with the said Registrar; and if such return shall not be made, then the Company neglecting to make such return shall be deemed to have discontinued its business, and shall be liable to be dissolved, under the provisions of the Act of Council

Council No. 5 of 1854, intituled "An Act to facilitate the dissolution, and provide for winding up the affairs of Joint Stock Companies:" Winding up Act.
 Provided always that, if no proceedings shall be taken under the last mentioned Act for the dissolution of the Company so neglecting, as aforesaid, for a period of two calendar months next after the time limited for making such annual return as hereinbefore mentioned, then it shall be lawful for the Company, at any time before the expiration of the said period of two calendar months, to make such return; and such return shall, for all the purposes of this Act, be deemed to have been made in the month of January then next preceding the actual making thereof.

9. Upon the registration of any Company, certified by the Registrar as hereinbefore provided, such Company, and the then shareholders therein, and all the succeeding shareholders, whilst shareholders, shall be, and are hereby incorporated, as from the date of such certificate, by the name of the Company, as set forth in the deed of settlement, and for the purpose of carrying on the trade or business for which the Company was formed, but only according to the provisions of this Act, and of such deed as aforesaid, and for the purposes of suing and being sued, and of taking, and enjoying the property and effects of the said Company; and such Company shall continue so incorporated until it shall be dissolved, and all its affairs wound up: but such incorporation shall not restrict the liability of any of the shareholders of the Company under any judgment, decree, or order for the payment of money, which shall have been obtained against such Company in any action or suit prosecuted by or against such Company in any Court of Law or Equity, unless such liability shall be limited under the provisions of this Act hereinafter contained; and upon such incorporation, it shall be lawful for such Company and they are hereby empowered as follows, that is to say: First—To use the registered name of the Company, adding thereto the word "registered:" Second—To have a common seal (with power to break, alter, and change the same from time to time) but on which must be inscribed the name of the Company: Third—To sue and be sued by their registered name in respect of any claim by or upon the Company upon or by any person, whether a member of the Company or not: Fourth—To purchase and hold lands, tenements, and hereditaments in the name of the Company, and for the purposes thereof.

When certificate of registry obtained Company incorporated.

10. Every Joint Stock Company registered under this Act shall appoint two auditors for the auditing the accounts of the Company, and an audit shall take place at least once in every year, and always immediately before the declaration of a dividend; and such auditors shall be appointed at any meeting of shareholders, and may be members or not of the Company, and may be removed and others appointed in their stead by the shareholders at any meeting; and every auditor shall have full power to call for and inspect the books of account of the Company, and all such documents as they shall require for the full performance of their duty in auditing the accounts.

Two auditors to be appointed for every Company.

How contracts entered into, &c.

11. Every contract entered into on behalf of any Joint Stock Company registered under this Act (except contracts for the purchase of any article the payment or consideration for which shall not exceed the sum of Fifty Pounds), shall be in writing and signed by a quorum of the Directors of the Company, on whose behalf the same shall be entered into, and shall be countersigned by the Secretary; and every bill of exchange and promissory note (where the Directors of any Company are authorized by deed of settlement or by-law to issue or accept bills of exchange or promissory notes), and every cheque or order for the payment of money shall be made, accepted, or signed by a quorum of Directors of the Company, and shall be countersigned by the Secretary, and all deeds and instruments bearing the seal of the Company shall be also signed by a quorum of Directors, and countersigned by the Secretary.

Companies may obtain a certificate of registration with limited liability.

12. Any Joint Stock Company to be formed under this Act may obtain a certificate of registration with limited liability upon complying with the provisions of this Act, and adding the word "limited" to the title or designation of the Company, in lieu of the word registered, which word shall be the last word in such title or designation: Provided always that every such Company shall contain a statement in the deed of settlement that it is formed with limited liability.

Companies to affix title on the outside of office, &c.

13. Every Joint Stock Company which has obtained a certificate of registration with limited liability, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the Company is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraven in legible characters, on the seal, and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such Company, and in all bills of exchange, promissory notes, cheques, orders for money, bills of parcels, invoices, receipts, letters, and other writings, used in the transaction of the business of the Company.

Penalty.

14. If such Company do not paint or affix, and keep painted or affixed, its name in the manner aforesaid, each of the Directors thereof shall be liable to a penalty not exceeding Five Pounds, for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed; and if any Director or other officer of the Company, or any person on behalf of the Company, use any seal purporting to be a seal of the Company, wherein its name is not so engraven as aforesaid, or issue, or authorize the issue of any notice, advertisement, or other official publication of such Company, or of any bill of exchange, promissory note, cheque, order for money, bill of parcels, invoice, receipt, letter, or other writing used in the transaction of the business of the Company, wherein its name is not mentioned in the manner aforesaid, he shall be liable to a penalty of Five Pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money,

money, for the amount thereof, unless the same shall be duly paid by the Company.

15. The members of a Joint Stock Company which has so obtained a certificate of registration with limited liability, after such certificate is granted, shall not be liable under any judgment, decree, or order, which shall be obtained against such Company, or for any debt or engagement of such Company further or otherwise than is herein-after provided. How liability limited.

16. If any execution or other process, in the nature of an execution, either at law or in equity, shall have been issued against any such Company as last aforesaid, or against the property or effects thereof, and if there cannot be found sufficient whereon to levy or enforce such execution or other process, then such execution or other process may be issued against any one or more of the shareholders to the extent of the portions of their shares respectively in the capital of the Company not then paid up; but no shareholder shall be liable to pay in satisfaction of any one or more execution or other process a greater sum than shall be equal to the portion of his shares not paid up: Provided always, that no such execution shall issue against any shareholder, except upon an order of the Court, or of a Judge of the Court in which the action, suit, or other proceeding shall have been brought or instituted, and such Court or Judge may order execution to issue accordingly, with the reasonable costs of such application and execution, to be taxed by the proper officer of such Court, and for the purpose of ascertaining the names of the shareholders, and the amount of capital remaining to be paid upon their respective shares, the returns filed in the Supreme Court, under the provisions of this Act, shall be sufficient evidence. In what manner and to what extent execution may be issued against individual members.

17. If the Directors of any Company, which has obtained a certificate of registration with limited liability, shall declare and pay any dividend, when the Company is known by them to be insolvent, or any dividend the payment of which would, to their knowledge, render it insolvent, they shall be jointly and severally liable for all the debts of the Company then existing, and for all that shall be thereafter contracted, so long as they shall respectively continue in office: Provided that the amount for which they shall all be so liable shall not exceed the amount of such dividend, and that if any of the Directors shall be absent at the time of making such dividend, or shall object thereto, and shall file such objection, in writing, with the Clerk of the Company, they shall be exempted from the said liability. Directors not to pay dividends when Company insolvent.

18. In the case of any Company which has obtained a certificate of limited liability, whenever, on taking the yearly accounts of such Company, or by any report of the Auditors thereof, it shall appear that three-fourths of the subscribed capital of the Company has been lost, the trading or business of such Company shall forthwith cease, or shall be carried on for the sole purpose of winding up its affairs, and the Directors of such Company shall forthwith take proper steps Company to be wound up when three-fourths of subscribed capital lost.
for

for the dissolution of such Company, and for the winding up of its affairs, either under the deed of settlement of the Company or the provisions of the said Act of Council No. 5 of 1854,

Contributions by members in case of insolvency of Company.

19. In case of the insolvency of any Company registered with limited liability, the members shall only be liable to contribute towards the payment of the debts of the Company to the extent of the unpaid portion of the subscribed capital held by them respectively, notwithstanding the provisions of the said Act of 1854, No. 5.

Before whom affidavits, &c., to be made.

20. All affidavits, affirmations, and declarations required to be made by this Act, may be made before a Justice of the Peace, or a Notary Public of the Province.

Governor may appoint a Registrar.

21. It shall be lawful for the Governor to appoint a Registrar of Joint Stock Companies, for the purposes of this Act, and until such appointment shall be made, the duties of such Registrar shall be discharged by the Master or Chief Clerk of the Supreme Court, who shall keep proper books of reference, and allow searches therein to be made at any time during the hours of business in the office of the said Court.

Fees.

22. The fees specified in Schedule F shall be payable in respect of the several matters and things therein mentioned.

Construction clause.

23. The words member and shareholder, when used in this Act, shall mean member, shareholder, or proprietor of shares, or person having an interest as partner in the Company; every word importing the singular number only shall extend to the plural number also; and every word importing the male gender only shall equally apply to females; the words Company, and Joint Stock Company, shall mean any Company, Association, or partnership (except Banks and Assurance Companies), consisting originally of not less than six persons; the Supreme Courts shall mean the Supreme Court of South Australia; the word Promoters shall mean the persons whose names shall appear in any public advertisement as the Committee, Provisional Committee, Committee of Management, Directors, or other persons originating or promoting the establishment of the Company; the word Registrar shall mean the person for the time being discharging the duties of Registrar of Joint Stock Companies, under this Act.

* See Act 5-1856

Service of notice and process on the Company.

24. In all cases wherein it may be necessary for any person to serve any summons, demand, or notice, or any writ, or other proceeding at law or in equity, or otherwise, upon any Company registered under this Act, service thereof respectively on the clerk of such Company, or by leaving the same at the head office for the time being of such Company; or, in case such clerk shall not be found or known, then service thereof on any agent or officer employed by such Company, or by leaving the same at the usual place of abode of such agent or officer, shall be deemed good and sufficient service of the same respectively on the said Company.

25. In

25. In all cases wherein it may be necessary for any Company to serve or give any summons, demand, or notice of any kind whatsoever, to any person or Corporation, under the provisions or directions contained in this Act, such summons, demand, or notice, may be given, in writing, signed by the clerk, attorney, or solicitor, for the time being, of the said Company, without being required to be under the common seal of the said Company ; and, unless otherwise provided in this Act, may be sent through the Post Office.

Service of notice by
the Company.

26. All pecuniary penalties imposed by this Act may be recovered in a summary way, before any two Justices of the Peace of the Province.

Penalties how re-
coverable.

SCHEDULES REFERRED TO.

A

Memorial of the (*here insert the name of the Company, and if the liability of the members is intended to be limited, add the word limited*), filed in pursuance of (*here set out the title of this Act*).

1. The name of the Company.
2. The business or purpose of the Company.
3. Whether the liability of members is intended to be limited, }
or not. }
4. The principal, or only place for carrying on the business of }
the Company. }
5. The amount of the capital, or intended capital, of the }
Company, and how divided. }
6. The amount of capital subscribed at date of filing this }
memorial. }
7. The amount of paid up capital at date of filing this memorial.
8. The names of the then Directors of the Company.
9. The names of the then Trustees of the Company (if any).
10. The names of the then Auditors of the Company.
11. The duration of the Company, and the mode provided for }
its dissolution. }

B

I, _____ Master, or Chief Clerk, of the Supreme Court of South Australia, or Registrar of Joint Stock Companies (as the case may be), do hereby certify that (*here insert the designation of the Company*) is registered under the provisions of the Act of Council, 1855-6, No. _____ intitled (*here insert the title of this Act*).

C

Return made pursuant to the Act of Council, 1855-6, No. _____ intitled (*here insert the title of this Act*).

(*Here insert the designation of the Company.*)

Name and place of abode of person by whom transfer is made.	Name and place of abode of person to whom transfer is made.	Distinctive numbers of the shares transferred.	Date of transfer.

(Date.)

(Signature.)

D

D

Return made pursuant to Act of Council, 1855-6, No. intituled (*here insert title of this Act*).

(*Here insert designation of the Company.*)

Persons known to have ceased to be shareholders (except by transfer), since the day of

Name.	Place of abode.	Distinctive number of shares.

Persons known to have become members (except by transfer), since the day of

Name.	Place of abode.	Distinctive number of shares.

Persons whose names have become changed by marriage, or otherwise.

Former name.	Former place of abode.	Present name.	Present place of abode.	Distinctive number of shares.

(*Date.*)

(*Signature.*)

E

Return made pursuant to the Act of Council, 1855-6, No. intituled (*here insert the title of the Act*).

(*Here insert the name of the Company, and the names of the Directors.*)

Business of the Company.	Officer of the Company.	Number of Shares.	Amount of each share.	Amount paid up on each Share.

(*Date.*)

(*Signature.*)

F

The following fees shall be payable, in respect of the several matters and things herein mentioned:—

	£	s.	d.
For every search at the Supreme Court for documents filed	0	2	6
For filing any returns or other document	0	2	6
For a certificate of registration	2	0	0