



ANNO DECIMO NONO

ELIZABETHAE II REGINAE

A.D. 1970

No. 17 of 1970

An Act to amend the Companies Act, 1962-1968.

[Assented to 24th September, 1970]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short titles.

1. (1) This Act may be cited as the "Companies Act Amendment Act, 1970".

(2) The Companies Act, 1962-1968, as amended by this Act, may be cited as the "Companies Act, 1962-1970".

(3) The Companies Act, 1962-1968, is hereinafter referred to as "the principal Act".

Enactment of
s. 26a of
principal Act—

2. The following section is enacted and inserted in the principal Act immediately after section 26 thereof:—

Conversion of
a no-liability
company to a
limited
company.

26a. (1) Subject to this section, a no-liability company, upon the issued shares of which no amount remains unpaid, may convert to a public company limited by shares by lodging with the Registrar a copy of a special resolution—

(a) determining to convert to a public company limited by shares and specifying an appropriate alteration to its name;

and

(b) altering the provisions of its memorandum and articles into a form appropriate to a public company limited by shares.

(2) If the Registrar is satisfied that the resolution contains appropriate alterations to the name, and the memorandum and articles, of the company he shall issue a certificate of incorporation altered accordingly and, on the issue of the certificate, the company shall be a public company limited by shares.

(3) A special resolution passed for the purposes of this section shall not become operative until the Registrar issues the certificate of incorporation pursuant to subsection (2) of this section.

(4) The copy of the resolution to be lodged with the Registrar under subsection (1) of this section must be so lodged within the fourteen days next ensuing after the right to make application to the Court under this section expires, or if there is such an application, the copy of the resolution together with an office copy of the order of the Court must be lodged with the Registrar within the fourteen days next ensuing after the determination of the application.

(5) The conversion of a company pursuant to this section shall not affect the identity of the company or any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings that could have been continued or commenced by or against it prior to the conversion may notwithstanding any change in the company's name or capacity in consequence of the conversion be continued or commenced by or against it after the conversion.

(6) Where a company proposes to convert, pursuant to the provisions of this section, into a public company limited by shares, it shall give by post twenty-one days' written notice specifying the intention to propose the necessary resolution, as a special resolution, and to submit it for passing to a meeting of the company to be held on a day specified in the notice.

(7) The notice shall be given to all members, and to all trustees for debenture holders, and if there are no trustees for any class of debenture holders, to all debenture holders of that class whose names are, at the time of the posting of the notice, known to the company.

(8) The Court may in the case of any person or class of persons, for such reasons as to it seem sufficient, dispense with the notice required by subsection (6) of this section.

(9) If an application for cancellation of the resolution in so far as it purports to convert the company into a public company limited by shares or to alter the memorandum with respect to the objects of the company is made to the Court in accordance with this section by—

(a) the holders of not less in the aggregate than ten per centum in nominal value of the company's issued share capital or any class of that capital;

or

(b) the holders of not less than ten per centum in nominal value in the company's debentures,

the Court may, subject to such terms and conditions as it thinks fit, declare the proposed conversion of the company void and cancel the resolution, or cancel any proposed alteration to the memorandum with respect to the objects of the company.

(10) The application shall be made within twenty-one days after the date on which the resolution was passed and may be made on behalf of the persons entitled to make the application by such one or more of their number as they appoint in writing for the purpose.

(11) On the application the Court—

(a) shall have regard to the rights and interests of the members of the company or of any class of them as well as to the rights and interests of the creditors;

(b) may if it thinks fit adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase (otherwise than by the company) of the interests of dissentient members;

and

(c) may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.

(12) Section 28 of this Act shall not apply to or in relation to a resolution under this section.

(13) Sections 331 and 332 of this Act shall, *mutatis mutandis* and so far as they may be applicable, continue to apply to a company converted into a company limited by shares under this section.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

J. M. NAPIER, Governor's Deputy.