

No. 3 of 1893.

An Ordinance to amend "The Joint Stock Companies' Ordinances, 1861 and 1888."

(See No. 4 of 1861 and No. 6 of 1888.)

WHEREAS it is expedient to amend "The Joint Stock Companies' Ordinances, 1861 and 1888:" Be it therefore enacted by the Governor of Ceylon, by and with the advice and consent of the Legislative Council thereof, as follows :

Preamble.

1 This Ordinance may be cited for all purposes as "The Joint Stock Companies' Ordinance, 1893."

Short title.

2 "The Joint Stock Companies' Ordinance, 1861," is hereafter referred to as "the principal Ordinance," and the principal Ordinance, "The Joint Stock Companies' Ordinance, 1888," and this Ordinance shall be read as one Ordinance, and may be cited for all purposes as "The Joint Stock Companies' Ordinance, 1861, 1888, and 1893;" and the expression "this Ordinance" in the principal Ordinance, and any expression referring to the principal Ordinance which occurs in any Ordinance or other document, shall be construed to mean the principal Ordinance as amended by "The Joint Stock Companies' Ordinance, 1888," and this Ordinance.

Ordinance to be construed as one with Ordinances No. 4 of 1861 and No. 6 of 1888.

3 This Ordinance shall come into force on the first day of January, 1894, which date is hereinafter referred to as "the commencement of this Ordinance."

Commencement of Ordinance.

4 In section 8 of the principal Ordinance, for the words "such first-mentioned company may" shall be substituted the words "such first-mentioned company shall."

Section 8 amended.

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Power of
company to
change name.

5 After section 8 of the principal Ordinance the following section shall be added and numbered 8 (a), namely :

Any company with the sanction of a special resolution of the company passed in manner hereinafter mentioned, and with the approval of the Governor, testified in writing under the hand of the Colonial Secretary or of one of the assistant colonial secretaries, may change its name, and upon such change being made the registrar shall enter the new name in the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case ; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

Section 21
amended.

6 To section 21 of the principal Ordinance the following words shall be added, namely :

And every director or manager of the company who shall knowingly and wilfully authorize or permit a contravention of this section shall incur the like penalty.

Section 26
amended.

7 To section 26 of the principal Ordinance the following words shall be added, namely :

And every director and manager of the company who shall knowingly authorize or permit such refusal shall incur the like penalty.

Section 34
amended.

8 To section 34 of the principal Ordinance the following words shall be added, namely :

And if any company make default in forwarding a copy of the memorandum of association, if any, to a member in pursuance of this section, the company so making default shall for each offence incur a penalty not exceeding ten rupees.

Section 47
amended.

9 In section 47 of the principal Ordinance for the words "one month" shall be substituted the words "fourteen days," and for the words "three months" shall be substituted the words "two months."

Section 63
amended.

10 For section 63 of the principal Ordinance the following shall be substituted, namely :

Service of notice
on company and
registrar.

Any summons or notice requiring to be served upon the company may, except in cases where a particular mode of service is directed, be served by leaving the same with any director, secretary, or other principal officer of the company at their registered office, or by sending it through the post by letter addressed to such company, and any notice to the registrar may be served by sending it to him through the post by letter, or by delivering it to him, or by leaving it for him at his office.

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11 (1) In the distribution of the assets of any company being wound up under the principal Ordinance, there shall be paid in priority to other debts—

Wages and salaries to be a claim.

(a) All wages or salary of any clerk or servant in respect of service rendered to the company during four months before the commencement of the winding up, not exceeding five hundred rupees ; and

(b) All wages of any labourers or workmen in respect of service rendered to the company during two months before the commencement of the winding up.

(2) The foregoing debts shall rank equally among themselves, and shall be paid in full, unless the assets of the company are insufficient to meet them, in which case they shall abate in equal proportions between themselves.

Such claims to rank equally.

(3) Subject to the retention of such sums as may be necessary for the cost of administration or otherwise the liquidator or liquidators or official liquidator shall discharge the foregoing debts forthwith, so far as the assets of the company are and will be sufficient to meet them, as and when such assets come into the hands of such liquidator or liquidators or official liquidator.

Liquidators to discharge same upon receipt of sufficient assets.

12 Every prospectus of a company, and every notice inviting persons to subscribe for shares in any joint stock company, shall specify the dates and the names of the parties to any contract entered into by the company, or the promoters, directors, or trustees thereof before the issue of such prospectus or notice, whether subject to adoption by the directors, or the company, or otherwise, and any prospectus or notice not specifying the same shall be deemed fraudulent on the part of the promoters, directors, and officers of the company knowingly issuing the same, as regards any person taking shares in the company on the faith of such prospectus unless he shall have had notice of such contract. And any promoter, director, or officer of a company who shall issue any such prospectus or notice contrary to the provisions of this section shall be guilty of an offence, and be punished with imprisonment of either description for a term which may extend to twelve months, and with a fine not exceeding five thousand rupees.

Prospectus, &c., to specify dates and names of parties to any contract made prior to issue of such prospectus, &c.

Penalty for breach.

13 Every limited company under the principal Ordinance shall keep a register of all mortgages and charges specifically affecting property of the company, and shall enter in such register in respect of each mortgage or charge a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge ; if any property of the company is mortgaged or charged without such entry as aforesaid being made every director, manager, or other officer of the company who knowingly and wilfully authorizes or permits the omission of such entry shall incur a penalty not exceeding five hundred rupees. The register of mortgages required by

Register of mortgages.

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this section shall be open to inspection by any creditor or member of the company at all reasonable times, and if such inspection is refused, any officer of the company refusing the same, and every director and manager of the company authorizing or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding fifty rupees, and a further penalty not exceeding twenty rupees for every day during which such refusal continues, and in addition to the above penalty any district judge, in the case of companies subject to his jurisdiction, may by order compel an immediate inspection of the register.

Power of company to alter objects subject to confirmation by court.

14 (1) Subject to the provisions hereinafter mentioned a company registered under the principal Ordinance may, by special resolution, alter the provisions of its memorandum of association with respect to the objects of the company, but in no case shall any such alteration take effect until confirmed on petition by the court which has jurisdiction to make an order for winding up the company.

(2) Before confirming any such alteration the court must be satisfied—

- (a) That sufficient notice has been given to every holder of debentures or debenture stock of the company, and any person or class of persons whose interests will, in the opinion of the court, be affected by the alteration ; and
- (b) That with respect to every creditor who in the opinion of the court is entitled to object, and who signifies his objection in manner directed by the court, either his consent to the alteration has been obtained or his debt or claim has been discharged, or has been determined, or has been secured to the satisfaction of the court. Provided that the court may, in the case of any person or class of persons, for special reasons dispense with the notice required by this section.

(3) An order confirming any such alteration may be made on such terms and subject to such conditions as to the court seems fit, and the court may make such orders as to costs as it deems proper.

(4) The court shall, in exercising its discretion under this Ordinance, have regard to the rights and interests of the members of the company, or of any class of those members, as well as to the rights and interests of the creditors, and 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 of the interests of dissentient members ; and the court may give such directions and make such orders as it may think expedient for the purpose of facilitating any such arrangement or carrying the same into effect : Provided always that it shall not be lawful to expend any part of the capital of the company in any such purchase.

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(5) The court may confirm, either wholly or in part, any such alteration as aforesaid with respect to the objects of the company if it appears that the alteration is required in order to enable the company—

- (a) To carry on its business more economically or more efficiently ; or
- (b) To attain its main purpose by new or improved means ; or
- (c) To enlarge or change the local area of its operations ; or
- (d) To carry on some business or businesses which under existing circumstances may conveniently or advantageously be combined with the business of the company ; or
- (e) To restrict or abandon any of the objects specified in the memorandum of association.

15 (1) Where a company has altered the provisions of its memorandum of association with respect to the objects of the company, and such alteration has been confirmed by the court, an office copy of the order confirming such alteration, together with a printed copy of the memorandum of association, shall be delivered by the company to the registrar of joint stock companies within fifteen days from the date of the order, and the registrar shall register the same and shall certify under his hand the registration thereof, and his certificate shall be conclusive evidence that all the requisitions of this Ordinance, with respect to such alteration and the confirmation thereof, have been complied with, and thenceforth (but subject to the provisions of this Ordinance) the memorandum so altered shall be the memorandum of association, and shall apply to the company in the same manner as if the company were a company registered under the principal Ordinance with such memorandum.

Registration of order together with memorandum as altered, and consequences thereof.

(2) If a company makes default in delivering to the registrar any document required by this section to be delivered to him, the company shall be liable to a penalty not exceeding one hundred rupees for every day during which it is in default.

16 All penalties imposed by and recoverable under this or the principal Ordinance shall be deemed and taken to be a debt to Her Majesty of the party, parties, or company liable to pay the same, and shall and may, whatever may be the amount claimed, be sued for and recovered by the registrar on behalf of Her Majesty in the court of requests, Colombo.

Penalties to be recoverable at the suit of the registrar in the court of requests, Colombo.

21st November, 1893.