

No. 6 of 1888.

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

(See No. 4 of 1861.)

Preamble.

WHEREAS "The Joint Stock Companies' Ordinance, 1861," requires in some respects to be amended : It is hereby enacted by the Governor of Ceylon, by and with the advice and consent of the Legislative Council thereof, as follows :

Short title.

1 This Ordinance may be cited for all purposes as "The Joint Stock Companies' Ordinance, 1888."

Ordinance to be construed as one with Ordinance No. 4 of 1861.

2 "The Joint Stock Companies' Ordinance, 1861," is hereinafter referred to as "the principal Ordinance," and the principal Ordinance and this Ordinance are hereinafter distinguished, and may be cited for all purposes, as "The Joint Stock Companies' Ordinances, 1861 and 1888," and this Ordinance shall, so far as is consistent with the tenor thereof, be construed as one with the principal Ordinance ; 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 this Ordinance.

Commencement of Ordinance.

3 This Ordinance shall come into force on the first day of January, 1889, which date is hereinafter referred to as the commencement of this Ordinance.

Joint Stock Companies.

4 The word "capital" as used in this Ordinance shall include paid-up capital, and the power to reduce capital conferred by this Ordinance shall include a power to cancel any lost capital or any capital unrepresented by available assets, or to pay off any capital which may be in excess of the wants of the company; and paid-up capital may be reduced either with or without extinguishing or reducing the liability (if any) remaining on the shares of the company; and to the extent to which such liability is not extinguished or reduced, it shall be deemed to be preserved.

Construction of capital and powers to reduce capital.

5 Any company limited by shares may by special resolution so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed, or as altered by special resolution, as to reduce its capital; but no such resolution for reducing the capital of any company shall come into operation until an order of the court is registered by the registrar of joint stock companies, as is hereinafter mentioned.

Power to company to reduce capital.

6 The company shall, after the date of the passing of any special resolution for reducing its capital, add to its name, until such date as the court may fix, the words "and reduced" as the last words in its name, and those words shall, until such date, be deemed to be part of the name of the company, within the meaning of the principal Ordinance.

Company to add "and reduced" to its name for a limited period.

7 A company which has passed a special resolution for reducing its capital may apply to the court by petition for an order confirming the reduction; and on the hearing of the petition the court, if satisfied that, with respect to every creditor of the company, who, under the provisions of this Ordinance, is entitled to object to the reduction, either his consent to the reduction has been obtained, or his debt or claim has been discharged, or has determined, or has been secured as hereinafter provided, may make an order confirming the reduction on such terms and subject to such conditions as it deems fit.

Company to apply to the court for an order confirming reduction.

8 The expression "the court" shall in this Ordinance mean the district court which has jurisdiction to make an order for winding up the petitioning company, and the 68th section of the principal Ordinance shall be construed as if that section included proceedings under this Ordinance; and the court may in any proceedings under this Ordinance make such order as to costs as it deems fit.

Definition of "the court."

9 Where a company proposes to reduce its capital, every creditor of the company who at the date fixed by the court is entitled to any debt or claim, which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the proposed reduction and to be entered in the list of creditors who are so entitled to object.

Creditors may object to reduction, and list of objecting creditors to be settled by the court.

The court shall settle a list of such creditors, and for that purpose shall ascertain as far as possible, without requiring an application from any creditor, the names of such creditors

Joint Stock Companies.

and the nature and amount of their debts or claims, and may publish notices fixing a certain day or days within which creditors of the company who are not entered on the list are to claim to be so entered, or to be excluded from the right of objecting to the proposed reduction.

Court may dispense with consent of creditor on security being given for his debt.

10 Where a creditor whose name is entered on the list of creditors, and whose debt or claim is not discharged or determined, does not consent to the proposed reduction, the court may, if it think fit, dispense with such consent on the company securing the payment of the debt or claim of such creditor by setting apart and appropriating in such manner as the court may direct a sum of such amount as is hereinafter mentioned; that is to say:

- (1) If the full amount of the debt or claim of the creditor is admitted by the company, or, though not admitted, is such as the company are willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated.
- (2) If the full amount of the debt or claim of the creditor is not admitted by the company, and is not such as the company are willing to set apart and appropriate, or if the amount is contingent, or not ascertained, then the court may, if it think fit, inquire into and adjudicate upon the validity of such debt or claim and the amount for which the company may be liable in respect thereof, in the same manner as if the company were being wound up by the court; and the amount fixed by the court on such inquiry and adjudication shall be set apart and appropriated.

Dispensing with consent of creditors and of adding the words "and reduced" in certain cases.

11 Where the reduction of the capital of a company does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid up capital—

- (1) The creditors of the company shall not, unless the court otherwise direct, be entitled to object, or required to consent to the reduction; and
- (2) It shall not be necessary, before the presentation of the petition for confirming the reduction, to add, and the court may, if it thinks it expedient so to do, dispense altogether with the addition of the words "and reduced."

In any case that the court thinks fit so to do, it may require the company to publish in such manner as it thinks fit the reasons for the reduction of its capital, or such other information in regard to the reduction of its capital as the court may think expedient with a view to give proper information to the public in relation to the reduction of its capital by a company, and, if the court thinks fit, the causes which led to such reduction.

Order and minute to be registered.

12 The registrar of joint stock companies, upon the production to him of an order of the court confirming the reduction of the capital of a company, and the delivery to him of a copy of the order and of a minute (approved by the

Joint Stock Companies.

court), showing with respect to the capital of the company as altered by the order the amount of such capital, the number of shares in which it is to be divided, the amount of each share, and the amount (if any) proposed to be deemed to have been paid upon each share at the date of the registration, shall register the order and minute, and on the registration the special resolution confirmed by the order so registered shall take effect.

Notice of such registration shall be published in such manner as the court may direct.

The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of this Ordinance with respect to the reduction of capital have been complied with, and that the capital of the company is such as is stated in the minute.

13 The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of association of the company, and shall be of the same validity, and subject to the same alterations, as if it had been originally contained in the memorandum of association, and subject as in this Ordinance mentioned, no member of the company, whether past or present, shall be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute.

Minute to form part of memorandum of association.

14 If any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital of a company under this Ordinance is, in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction the company is unable within the meaning of the 76th section of the principal Ordinance to pay to the creditor the amount of such debt or claim, every person who was a member of the company at the date of the registration of the order and minute relating to the reduction of the capital of the company shall be liable to contribute for the payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day prior to such registration, and on the company being wound up, the court, on the application of such creditor, and on proof that he was ignorant of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, may, if it think fit, settle a list of such contributories accordingly, and make and enforce calls and orders on the contributories settled on such list in the same manner in all respects as if they were ordinary contributories in a winding up; but the provisions of this section shall not affect the rights of the contributories of the company among themselves.

Saving of rights of creditors who are ignorant of proceedings.

Joint Stock Companies.

Copy of registered minute.

15 A minute when registered shall be embodied in every copy of the memorandum of association issued after its registration, and if any company makes default in complying with the provisions of this section, it shall incur a penalty not exceeding ten rupees for each copy in respect of which such default is made, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Penalty on concealment of name of creditor.

16 If any director, manager, or officer of the company wilfully conceals the name of any creditor of the company who is entitled to object to the proposed reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the company, or if any director or manager of the company aids or abets in, or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager, or officer shall be guilty of an offence and shall be punishable by such punishment as the court before which a conviction therefor shall be obtained shall award.

Power to make rules extended to making rules concerning matters in this Ordinance.

17 The powers of making rules concerning winding up conferred on the judges of the Supreme Court by the 104th section of the principal Ordinance shall respectively extend to making rules concerning matters in which jurisdiction is by this Ordinance given to the court which has the power of making an order to wind up a company; and until such rules are made the practice of the court in matters of the same nature shall, so far as the same is applicable, be followed.

Power to reduce capital by the cancellation of unissued shares.

18 Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed, or as altered by special resolution, as to reduce its capital by cancelling any shares which at the date of the passing of such resolution have not been taken, or agreed to be taken, by any person, and the provisions hereinbefore contained shall not apply to any reduction of capital made in pursuance of this section.

Provision for the reception in evidence of certified copies of certificates of incorporation and other documents.

19 And whereas it is expedient to make provision for the reception as legal evidence of certificates of incorporation other than the original certificates, and of certified copies of extracts from any documents filed and registered under "The Joint Stock Companies' Ordinances, 1861 and 1888:" Be it enacted that any certificate of the incorporation of any company given by the registrar for the time being shall be received in evidence as if it were the original certificate, and any copy of, or extract from, any of the documents or part of the documents kept and registered at the office for the registration of joint stock companies, if duly certified to be a true copy under the hand of the registrar for the time being, and whom it shall not be necessary to prove to be the registrar, shall in all legal proceedings, civil or criminal, and in all cases whatsoever, be received in evidence as of equal validity with the original document.

11th December, 1888.