

EXPLANATORY STATEMENT

1981 No.14

Authority : Minister for Business and Consumer Affairs

Subject : Australian Capital Territory
 Companies (Amendment) Ordinance 1981

The purpose of this statement is to explain the provisions of the Companies (Amendment) Ordinance 1981, which is an Ordinance to amend the Companies Ordinance 1962 (the Principal Ordinance).

2. Authority : The Principal Ordinance was made under sub-section 12(1) of the Seat of Government (Administration) Act 1980. Sub-section 12(1) provides:-

"12(1) The Governor-General may make Ordinances for the peace, order and good government of the Territory."

This sub-section provides the authority for the making of the amending Ordinance.

3. Purposes of Amendments : The amending Ordinance has two purposes:-

- (1) to provide for the integration of the Companies (Acquisition of Shares) Act 1980 (the Act) with the Principal Ordinance; and

- (2) to complete a law reform exercise involving the Principal Ordinance by correcting drafting errors and bringing the law further into line with corresponding N.S.W. law (the Companies Act, 1961 of N.S.W.).

4. Integration of Companies (Acquisition of Shares) Act 1980 : The national scheme for uniform companies and securities industry regulation currently being implemented by the Commonwealth and the States involves (inter alia) a series of laws making up a "take-overs code". The central legislation of this code is the Act, which will replace the provisions of the Principal Ordinance in relation to company take-overs in the A.C.T. On Proclamation, section 4 of the Act will repeal Part VIB of, and the Tenth Schedule to, the Principal Ordinance. Part VIB and the Tenth Schedule (hereafter Part VIB) contain the current provisions regulating company take-overs in the A.C.T.

5. The functional relationship between Part VIB and the Tenth Schedule, and the Act, will be that most take-overs in course at the date of commencement of the Act will continue to be subject to Part VIB, and the provisions of the Principal Ordinance, due to the operation of section 38 of the Interpretation Ordinance 1967 (A.C.T.) as modified by section 64 of the Act. The Act, and the provisions of the Principal Ordinance as modified by this amending Ordinance, will apply to other take-overs which, in the main, will be take-overs initiated after the date of commencement of the Act.

6. Sections 5, 6, 7, 10, 11 and 13 of the amending Ordinance will amend provisions of the Principal Ordinance which refer to Part VIB, by inserting references to the provisions of the Act which generally correspond to provisions in Part VIB. This will ensure that, whether the take-over is subject to Part VIB or to the Act, it will be given similar treatment by the general provisions of the Principal Ordinance.

7. Law Reform : Sections 4, 8, 9, 12 and 13 of the amending Ordinance amend the Principal Ordinance to correct drafting errors and bring the law further into line with corresponding N.S.W. law (the Companies Act, 1962 of N.S.W.).

Provisions of the Amending Ordinance

SHORT TITLE - section 1 : provides for the short title of the Ordinance.

PRINCIPAL ORDINANCE - section 2 : defines the "Principal Ordinance" as the Companies Ordinance 1962.

COMMENCEMENT - section 3 : all provisions of the Ordinance will come into operation on the same day as the Act comes into operation. (Current planning is that the Act will be proclaimed to come into operation on 1 July 1981.

APPLICATION AND INTERPRETATION OF DIVISION - section 4 : amends paragraph 69(2)(a). Division 3A of Part IV of the Principal Ordinance deals with "substantial

shareholdings". The Division imposes obligations upon a shareholder who becomes a "substantial shareholder" to notify the relevant company of his becoming a substantial shareholder. A company which was a specified company for the purposes of the Companies (Uranium Mining Companies) Ordinance 1970 has been repealed (Ordinance No. 21 of 1979) and there is no continuing legal significance in the reference to such a company in paragraph 69(2)(a), which specifies the range of relevant companies. The reference is to be deleted.

POWER TO RESTRAIN FROM MANAGING COMPANIES - section 5 : amends sub-section 122(1). Certain persons who have committed offences relating to fraud or dishonesty are prohibited from taking part in the management of a company under sub-section 122(1). The amendment extends the range of relevant offences to an offence under section 44 of the Act which relates to false or misleading statements made in connection with a take-over subject to the Act. False or misleading statements currently made in connection with a take-over subject to Part VIB are included in the range of relevant offences by paragraph 122(1)(c) (reference to section 180J).

GENERAL DUTY TO MAKE DISCLOSURE - section 6 : amends paragraph 127(1)(c). Section 127 imposes upon the directors of a company a general duty to disclose certain

matters. The amendment extends the range of relevant matters to matters arising under the Act. Matters currently concerning a take-over subject to Part VIB are included in the range of relevant matters by paragraph 127(1)(c).

PAYMENT TO DIRECTOR FOR LOSS OF OFFICE, ETC. - section 7 : amends sub-section 129(2). Section 129 requires a director of a company to whom a payment is proposed to be made in connection with the transfer of shares to give particulars of the proposed payment to shareholders. The amendment extends the requirement to take-overs subject to either the Act or Part VIB. Proposed payments relating to a take-over subject to section 184 are dealt with in sub-section 129(2). Section 184 has been repealed (Ordinance No. 5 of 1971, which inserted Part VIB).

INTERPRETATION AND APPLICATION - section 8 : amends sub-section 168. Part VIA of the Principal Ordinance deals with "Special Investigations". Section 168 provides definitions for the Part. Section 8 corrects drafting errors having unintended effects, and brings section 168 into line with the corresponding N.S.W. law upon which Part VIA was modelled.

COST OF INVESTIGATION - section 9 : amends sub-section 179(1)

and (2). Section 179 provides for the recovery of the costs of an investigation under Part VIA. Section 9 corrects drafting errors. The amendment will result in section 179 referring to those situations where recovery of costs was intended, and bring section 169 into line with the corresponding N.S.W. law upon which Part VIA was modelled.

ACQUISITION OF SHARES OF SHAREHOLDERS DISSENTING FROM SCHEME

OR CONTRACT APPROVED BY MAJORITY - section 10 : amends

sub-section 185(1). Section 185 provides a mechanism whereby the shares of minority shareholders may be compulsorily acquired. The provision applies primarily to arrangements and reconstitutions of companies under Part VII of the Principal Ordinance, which must first be approved by the Court, and it does not generally apply to take-overs under Part VIB. Part VIB makes special provision for the acquisition of the shares of minority dissenting shareholders under a take-over scheme subject to that part (section 180X). The amendment to sub-section 185(1) will remove from the application of section 185 certain take-over schemes in sections 16 and 17 of the Act. Section 42 of the Act, in turn, makes special provision relating to the acquisition of shares of minority dissenting shareholders under a take-over subject to the Act.

THE BRANCH REGISTER - section 11 : amends sub-section 354(8).

Section 354 requires certain foreign companies (those which do not prohibit invitations to the public to subscribe for its shares) to have a branch share register in the A.C.T. Sub-section 354(8) provides that section 354 shall cease to apply to a foreign company where the company notifies a dissenting shareholder that it desires any of his shares registered on the branch register under the provisions of a law of its place of incorporation corresponding to section 180X (a provisions of Part VIB) or 185. Section 11 will insert a reference to section 42 of the Act into sub-section 154(8). Section 42 is the provision of the Act which corresponds to section 180X.

EIGHTH SCHEDULE - section 12 : the Eighth Schedule provides the form of the annual return required to be prepared and lodged for registration by companies incorporated in the A.C.T. A paragraph in Part II of the Eighth Schedule, relating to the inclusion of the latest accounts of a company in its annual return, has been found not to satisfactorily reflect the law in the Principal Ordinance. The amendment will result in the paragraph accurately reflecting that law, and also bring the paragraph into line with its corresponding equivalent in N.S.W. law.

SCHEDULE - section 13 : section 13 provides for further amendments which are set out in the Schedule:

- . sub-section 7(9) is amended to correct a drafting defect (incorrect reference to a provision of the Principal Ordinance)
- . sub-sections 69D(2), 69E(2) and 69F(2) are amended to reduce the time, from 14 days to 2 days, within which a shareholder is required to notify the company of his becoming a substantial shareholder, thereby increasing the availability of relevant information within a short period of a significant event (substantial shareholding) occurring
- . section 83 is amended to delete transitional provisions which are now spent
- . paragraph 167(2)(d) is amended to delete words affecting, in an unintended manner, the ability of an auditor to report on the accounts of a company under sub-section 167(2)
- . sub-section 178(10) is amended to correct a drafting defect (incorrect reference to a provision of the Principal Ordinance)

- . sub-section 185(10), section 286, sub-section 364(5) and the English Schedule, Part II, are amended to reflect the change in citation of the Unclaimed Moneys Ordinance 1950 (A.C.T)
- . the Fourth Schedule is amended to reflect the citation of the year of the Bankruptcy Act 1966.

9. A.C.T. Legislative Assembly : The amendments to the Principal Ordinance are mainly consequential adjustments to the law to give full effect to Government policy as expressed in the Act. The substantive law is not significantly altered by the amending Ordinance. For these reasons, the amending Ordinance has not been referred to the A.C.T. Legislative Assembly.

Ord. No. 12/81