

## AUSTRALIAN CAPITAL TERRITORY

### COMPANIES ORDINANCE (NO. 2) 1966

#### EXPLANATORY STATEMENT

No. 13 of 1966

This Ordinance makes a number of amendments to the Companies Ordinance 1962-1966 of the Australian Capital Territory designed to include in that Ordinance alterations of the uniform companies legislation agreed upon by the Standing Committee of Commonwealth and State Attorneys-General. The Companies Ordinance 1962-1966 is based on the model Companies Act prepared under the direction of the Standing Committee.

The Companies Ordinance (No. 2) 1966 also contains amendments converting all monetary references in the Companies Ordinance 1962-1966 into decimal currency as well as several amendments of a statute law revision nature and other minor amendments consequential upon the main amendments being made to the Ordinance.

The principal amendments arising from proposals considered by the Standing Committee relate to public borrowings. The chief features of the scheme that has been evolved for the protection of the lending public require prospectuses relating to invitations to deposit money with or lend money to a corporation to be registered with the Registrar of Companies and require the corporation to issue a document acknowledging the deposit or loan. The matters required to be included in a prospectus are set out in detail.

The amending Ordinance introduces new provisions making it compulsory for a corporation that offers debentures to the public for subscription or purchase to make provision in the debentures or in a trust deed relating to the debentures for the appointment of a corporation of a specified class as trustee for the debenture-holders. The debentures or trust deed are also required to contain a limitation on the amount that the borrowing corporation may borrow in pursuance of the debentures or trust deed, and certain covenants are to be implied if not expressly included in the debentures or trust deed. These covenants require the borrowing corporation to use its best endeavours to conduct its business in a proper and efficient manner, to make available for inspection by the trustee for the debenture-holders the accounting or other records of the borrowing corporation and to give to the trustee any information that the trustee requires concerning those records, and to summon a meeting of the debenture-holders to consider the accounts and balance-sheet of the borrowing corporation when required by the debenture-holders.

The new provisions also specify the duties of a trustee for the holders of debentures in relation to protection of the interests of the debenture-holders. Where

the trustee is of the opinion that the assets of the borrowing corporation are insufficient, the trustee may apply to the Attorney-General for an order imposing restrictions on the activities of the borrowing corporation, such as restrictions on advertising for deposits or loans and on borrowing by the corporation. The trustee is also empowered to apply to the Supreme Court for directions in connexion with the performance of his functions as trustee or for the determination of any question in relation to the interests of the debenture-holders.

The duties of the directors of a borrowing corporation are also specified. They are required to submit a report every three months to the trustee for the debenture-holders and to the Registrar of Companies setting out in detail any matters adversely affecting the security or the interests of the debenture-holders, including whether the limitations on the amount that the corporation may borrow have been exceeded. Where a prospectus issued in connexion with an invitation to the public to subscribe for or to purchase debentures of a corporation states a particular purpose or project for which the moneys received by the corporation in response to the invitation are to be applied, the corporation must also make periodical reports to the trustee on the progress made towards achieving the purpose or completing the project.

The personal responsibility of officers of a company for the payment of debts of the company has been increased by the amending Ordinance. Where an officer of a company has been convicted for the offence of being knowingly a party to the contracting of a debt by the company at a time when the company had no reasonable or probable ground of expectation of paying the debt, the Supreme Court may declare the officer to be personally responsible, without limitation of liability, for payment of the debt.

In addition to the provisions relating to public borrowings referred to in the preceding paragraphs, other amendments arising from consideration by the Standing Committee of Attorneys-General will permit large partnerships of up to 50 persons, without incorporation under the Companies Ordinance, to carry on certain professions or callings not customarily conducted in the Commonwealth by a corporation (the general rule permits partnerships of up to 20 persons to exist without incorporation).

Several amendments are also made to the provisions of the Companies Ordinance 1962-1966 that authorize investigations of the affairs of companies. These amendments will permit the Attorney-General to appoint inspectors to investigate and report upon the affairs of a company or foreign company where he is satisfied that it is in the public interest that the company's affairs should be investigated, such as where allegations are made of fraud or misfeasance by persons concerned with the company's formation or management. An inspector will be authorized to retain possession of a corporation's books and documents produced to him during the course of an investigation, but is to permit the corporation to have reasonable access to them. Where the Attorney-General has appointed inspectors to make a special investigation of the affairs of a company, the Attorney-General will be able to order that the Commonwealth be reimbursed in respect of the expenses of the investigation by the company investigated or by the person who requested the appointment of the inspectors.

A further amendment will give the Attorney-General power to appoint inspectors to investigate and report on the ownership of shares in or debentures of a corporation or on the circumstances under which a person acquired or disposed of shares or debentures.

The amending Ordinance also re-makes the Second Schedule to the Companies Ordinance 1962-1966, which is the schedule prescribing the fees to be paid to the Registrar of Companies on the registration of companies and on the lodgment of documents with the Registrar. As well as expressing all amounts of money in decimal currency, the new Second Schedule contains a number of alterations giving effect to decisions of the Standing Committee of Attorneys-General, including alterations related to the new public borrowings provisions and an increase from \$4.00 to \$6.00 in the fee for lodging with the Registrar an annual return of a company. This increase was agreed to by the Standing Committee because it was felt that the increase was necessary to help to meet the high cost of investigation into the affairs of companies. Other alterations change the rate of charge for the making by the Registrar of copies of documents or extracts from documents in his custody from a rate per folio of 72 words to a rate per page, and provide for the making of photographic copies of documents in the Registrar's custody.