

AUSTRALIAN CAPITAL TERRITORY

COMPANIES ORDINANCE 1974

EXPLANATORY MEMORANDUM

The purpose of this Ordinance is to amend the Companies Ordinance 1962-1973 (referred to in this memorandum as 'the principal Ordinance') so as to -

- (a) provide certain safeguards in relation to -
  - (i) companies incorporated under section 24 of the principal Ordinance,
  - (ii) dispensations granted by the Registrar from compliance with the accounting provisions of the principal Ordinance, and
  - (iii) a company officer required to assist in relation to a prosecution,
- (b) revoke amendments made to the principal Ordinance in 1973 concerning the date to which the annual return of an exempt proprietary company must be made up, and
- (c) make certain minor improvements of a miscellaneous nature.

2. The amendments referred to under (a), above, have been prepared as a result of views expressed by the Senate Standing Committee on Regulations and Ordinances on certain of the provisions of the Companies Ordinance 1973.

Companies incorporated under section 24

3. Section 24 of the principal Ordinance provides that the Attorney-General may by licence direct the incorporation of a company with limited liability without the addition of the word 'Limited' to its name, where the Attorney-General is satisfied that the company is being formed for any of the purposes prescribed in the section or any other object useful to the community.

4. Sub-section (4A) of section 24, inserted in 1973, permits the Attorney-General, in the licence, to exempt the company from complying with all or any of the requirements of the Ordinance relating to the lodging of annual returns and of returns of particulars of directors, managers and secretaries.

5. It is considered, however, that there is a public interest in the disclosure of the affairs of a section 24 company, and this Ordinance (section 4(a)) accordingly repeals sub-section (4A).

6. Sub-section (4C) of section 24 permits the Attorney-General to revoke an exemption from the obligation to file returns - whether the exemption is held under this or any previous law. This Ordinance

(section 4(b)) inserts a new sub-section (4D) which requires the Attorney-General to give notice of his intention to revoke the exemption and affords the company the opportunity to be heard on the matter.

7. Sub-section (5) of section 24 empowers the Attorney-General to revoke a licence issued under section 24. This Ordinance (section 4(c)) replaces sub-section (5) by sub-sections (5) to (5F), which -

- . prescribe criteria governing the exercise of the Attorney-General's discretion to revoke,
- . require two months written notice of intention to revoke to be given to the company, and
- . give the company a right of appeal, within 90 days, against the revocation.

#### Dispensation by the Registrar from compliance with the accounting provisions

8. Under section 162C of the principal Ordinance the Registrar of Companies is empowered to make an order relieving the directors of a company from compliance with specified requirements of the Ordinance relating to the form and content of accounts and the directors' reports, where these are not appropriate to the circumstances of the company or would impose unreasonable burdens on the company.

9. This Ordinance, by section 7, inserts a new sub-section (3A) in section 162C, requiring the Registrar not to make an order under the section if he is aware of any circumstances by reason of which the making of the order would be contrary to the public interest. The sub-section thus ensures that the public interest is to be paramount over any inconsistent private interest of the company.

10. Sub-section (5) of section 162C of the principal Ordinance requires the Registrar, in deciding whether to make an order under the section, to take into account any views that he knows to be held by the Registrars of Companies in the States. Sub-section (5) was inserted in 1973 with a view to promoting a uniform approach to the administration of the section. The provision was not intended to relieve the Registrar of the obligation to form his own view on the basis of the criteria prescribed in the section. However, the provision could be construed as placing some limitation on the Registrar's responsibility to exercise an independent discretion, and accordingly this Ordinance (section 7(b)) repeals sub-section (5).

#### Company officer required to assist in relation to a prosecution

11. Section 9(a) of this Ordinance inserts a new sub-section (6B) in section 306 of the principal Ordinance, designed to protect from self incrimination a company officer who is required to assist in connexion with a prosecution arising out of the report of a liquidator.

Annual return of exempt proprietary company

12. Section 158 of the principal Ordinance was amended in 1973 so as to require the annual returns of certain exempt proprietary companies to be made up to the date of the anniversary of the incorporation of the company, instead of the date of the annual general meeting as previously. The object was to obtain a spread of lodgment dates throughout the year and thus facilitate the processing of returns by the Registrar of Companies. Similar amendments were made to the Companies Act of most of the States from 1971 onwards.

13. The amended provisions have been found by the States to present a number of practical problems, and as a result they have never been brought into force. Similar problems are to be expected in the Australian Capital Territory.

14. This Ordinance (section 6) accordingly restores the law on this matter to the pre-1973 position.

Other amendments

15. Clause 3 amends section 12 of the principal Ordinance so as to transfer from the Registrar of Companies to the Chief Archivist, Commonwealth Archives Office, the discretion whether to destroy archives from the Registrar's office.

16. The remaining amendments made by this Ordinance are of a consequential or drafting nature.