

EXPLANATORY MEMORANDUM
AUSTRALIAN CAPITAL TERRITORY
COMPANIES ORDINANCE 1963

No. 19 of 1963

The Companies Ordinance 1962 of the Australian Capital Territory came into operation on 1 July, 1962, and is based on the model Companies Bill prepared under the direction of the Attorneys-General of the Commonwealth and the States. Sub-section (1.) of section 352 of the Ordinance is as follows:

“If a foreign company ceases to have a place of business or to carry on business in the Territory, it shall within seven days after so ceasing lodge with the Registrar notice in the prescribed form of that fact, and, if the company has ceased both to have a place of business and to carry on business in the Territory, its obligation to lodge any document (not being a document that ought to have been lodged before the company so ceased) with the Registrar ceases, and the Registrar shall, upon the expiration of twelve months after the lodging of the notice, remove the name of the foreign company from the register.”

Difficulties have arisen in the interpretation of this provision, some companies taking the view that if a foreign company opens a share register in Canberra, and closes it almost immediately after it was opened, it is not under any obligation to lodge documents under the Ordinance because it ceased to carry on business in the Territory before expiry of the time limit for lodging documents under the Ordinance.

The representatives of the Commonwealth and the States have agreed to amend the uniform company legislation to make sure that in such a case the company must lodge the necessary documents with the Registrar of Companies. As the Australian Capital Territory is used for share register transactions by companies incorporated in various States, because no stamp duty is payable on such transactions in the Territory, it has been recognised by the States that there is a case for amending the Australian Capital Territory Ordinance to deal specifically with the position under section 352. The attached amending Ordinance effects that purpose. Corresponding amendments to the Companies Acts in the States will be made as part of the first general revision of the uniform company law at a future date.

The amendment to section 344 is necessary to ensure the efficacy of the amendment to section 352.