

COMPANIES (AMENDMENT) BILL, 1960.

*Schedule of the Amendments referred to in Legislative Council's
Message of 12 April, 1960.*

No. 1.—Page 3, clause 2. *After line 13 insert—*

- (c) (i) by omitting from paragraph (b) of subsection one of section one hundred and sixteen the word “and”;
(ii) by inserting at the end of the same subsection the following word and new paragraphs:—
- Sec. 116.
(Investigation of affairs of company by inspectors.)

; and

- (d) in the case of a company which either before or after the commencement of the Companies (Amendment) Act, 1960, issued any interest within the meaning of section 173A of this Act, where the Governor is satisfied that it is necessary for the protection of the holders of such interests, or any of them, that the affairs of the company should be investigated under this Division.

The provisions of paragraph (d) of this subsection shall apply *mutatis mutandis* to a foreign company.

- (iii) by omitting from subsection two of the same section the words “The application” and by inserting in lieu thereof the words “An application under paragraph (a), (b) or (c) of subsection one of this section”.

- (d) by inserting in subsection two of section one hundred and seventeen after the word “under” the words “paragraph (a), (b) or (c) of subsection one of”.
Sec. 117.
(Proceedings on report by inspectors.)

No. 2.—Page 5, clause 2, line 24. *After “invitation” insert “to the public”.*

No. 3.—Page 6, clause 2, line 20. *After “debentures” insert “, or relating to the deposits or loans invited to be made with or to the company,”.*

No. 4.—Page 6, clause 2, lines 23 and 24. *Omit “applications for shares or debentures” insert “any such application”.*

CONFIDENTIAL - SECURITY INFORMATION

1. The purpose of this document is to provide information regarding the activities of the [redacted] and the [redacted] in the [redacted] area. This information is being provided to you for your information only and is not to be disseminated to any other person without the express written consent of the [redacted].

2. The [redacted] has been identified as a [redacted] and is currently operating in the [redacted] area. The [redacted] is currently active in the [redacted] area and is currently operating in the [redacted] area. The [redacted] is currently active in the [redacted] area and is currently operating in the [redacted] area.

3. The [redacted] is currently active in the [redacted] area and is currently operating in the [redacted] area. The [redacted] is currently active in the [redacted] area and is currently operating in the [redacted] area. The [redacted] is currently active in the [redacted] area and is currently operating in the [redacted] area.

4. The [redacted] is currently active in the [redacted] area and is currently operating in the [redacted] area. The [redacted] is currently active in the [redacted] area and is currently operating in the [redacted] area. The [redacted] is currently active in the [redacted] area and is currently operating in the [redacted] area.

5. The [redacted] is currently active in the [redacted] area and is currently operating in the [redacted] area. The [redacted] is currently active in the [redacted] area and is currently operating in the [redacted] area. The [redacted] is currently active in the [redacted] area and is currently operating in the [redacted] area.

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 6 April, 1960.*

The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.

J. R. STEVENSON,
Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, 12 April, 1960.*

New South Wales



ANNO NONO

ELIZABETHÆ II REGINÆ

Act No. , 1960.

An Act to make provisions with respect to invitations to the public to deposit money with or to lend money to companies; to impose restrictions on the offer of certain interests in certain undertakings, schemes, and enterprises; for these and other purposes to amend the Companies Act, 1936, as amended by subsequent Acts; and for purposes connected therewith.

BE

99391 199—A

NOTE.—The words to be *omitted* are ruled through; those to be *inserted* are printed in **black letter**.

Companies (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. (1) This Act may be cited as the "Companies (Amendment) Act, 1960".

Short title, citation and commencement.

(2) The Companies Act, 1936, as amended by subsequent Acts and by this Act, may be cited as the Companies Act, 1936-1960.

(3) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. The Companies Act, 1936, as amended by subsequent 15 Acts, is amended—

Amendment of Act No. 33, 1936.

(a) (i) by inserting next after the matter relating to Division 6 of Part VIII in section two the words and figures "DIVISION 6A.—*Other Interests*—ss. 173A-173J.";

Sec. 2. (Division into Parts.)

(ii) by omitting from the matter relating to the Schedules in the same section the figures "1-13" and by inserting in lieu thereof the figures "1-14";

(b) (i) by inserting in subsection one of section six next after the definition of "Manager" the following new definition :—

Sec. 6. (Interpretation.)

"Marketable securities" means any debentures funds stocks shares or bonds of any Government or of any local government authority or of any corporation or society and includes any right or option in respect of shares in any corporation.

(ii)

Companies (Amendment).

(ii) by omitting from the same subsection the definition of "Prospectus" and by inserting in lieu thereof the following definition :—

5 "Prospectus" means any prospectus notice
circular advertisement or other invitation
inviting applications or offers from the
public to subscribe for or purchase or
offering to the public for subscription or
10 purchase any shares in or debentures of
or any units of shares in or units of
debentures of a company or foreign
company or proposed company or pro-
posed foreign company.

15 (c) (i) by omitting from paragraph (b) of subsection Sec. 116.
one of section one hundred and sixteen the (Investiga-
word "and"; tion of

(ii) by inserting at the end of the same subsection affairs of
the following word and new paragraphs :— company by
inspectors.)

; and

20 (d) in the case of a company which either
before or after the commencement of
the Companies (Amendment) Act, 1960,
issued any interest within the meaning of
25 section 173A of this Act, where the
Governor is satisfied that it is necessary
for the protection of the holders of such
interests, or any of them, that the affairs
of the company should be investigated
under this Division.

30 The provisions of paragraph (d) of this
subsection shall apply mutatis mutandis to a
foreign company.

35 (iii) by omitting from subsection two of the same
section the words "The application" and by
inserting in lieu thereof the words "An
application under paragraph (a), (b) or (c) of
subsection one of this section".

(d)

Companies (Amendment).

(d) by inserting in subsection two of section one hundred and seventeen after the word "under" the words "paragraph (a), (b) or (c) of subsection one of". Sec. 117. (Proceedings on report by inspectors.)

5 **(e) ~~(e)~~ by inserting next after section one hundred and thirty-seven the following new section :—** New sec. 137A.

10 **137A. (1) No invitation to the public to deposit money with or to lend money to any company, whether incorporated in the State or elsewhere, shall be made unless a debenture is intended to be issued in respect of every deposit or loan so made and a debenture shall be issued in respect of every deposit or loan so made.** As to invitations to the public to deposit money with companies. cf. No. 6455 Vic. s. 36.

15 **(2) A company shall not in pursuance of any such invitation accept from any person a deposit or loan of money unless it is accompanied by a form of application signed by such person and such application was issued to such person with a prospectus which complies in all respects with the requirements of section one hundred and thirty-seven of this Act.**

(3) Nothing in this section shall require a debenture or prospectus to be issued in connection with any invitation to the public to deposit money with a banking company.

25 **(4) Where an invitation is made to the public to deposit money with or lend money to any company and such deposit or loan is not to be secured by a charge over all or any of the company's assets the invitation shall state that the document to be issued acknowledging the deposit or loan of money made pursuant to the invitation is to be an unsecured note or an unsecured deposit note, as the case may be, and shall not state that such document is to be a debenture.**

(5)

Companies (Amendment).

5 (5) Where any document is issued by a company (being one of a series of such documents) which either expressly or by implication acknowledges the indebtedness of the company in respect of money borrowed by it but is not secured by a charge over all or any of the company's assets the document shall be described on the face of it as an unsecured note or as an unsecured deposit note, as the case may be, and shall not be described on its face as a debenture.

(6) Every person who knowingly contravenes or permits or authorises the contravention of any of the provisions of this section shall be guilty of an offence.

15 Penalty : One thousand pounds.

(f) ~~(d)~~ by omitting section one hundred and thirty-eight and by inserting in lieu thereof the following section :—

138. (1) Every advertisement—

20 (a) offering, or calling attention to an offer or intended offer of, shares in or debentures of a company to the public for subscription or purchase, or

Certain advertisements deemed to be prospectuses. cf. No. 6455 Vic. s. 37 (4).

25 (b) inviting or calling attention to an invitation or intended invitation **to the public** to deposit money with or lend money to a company,

30 shall whether the company is incorporated in the State or elsewhere be deemed to be a prospectus issued by the person responsible for publishing or disseminating the advertisement (and all enactments and rules of law as to the contents of prospectuses and

Companies (Amendment).

and as to liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses shall apply and have effect accordingly) unless it contains no more information than the following :—

- 5
- (i) the number and description of the shares or debentures concerned or, as the case may be, particulars of the deposits with or loans to the company invited or intended to be invited by the company;
- 10
- (ii) the name and date of registration of the company and its paid up share capital;
- (iii) the general nature of the main business or proposed main business of the company;
- 15
- (iv) the names of the directors or proposed directors and of the brokers or underwriters to the issue;
- (v) the place at which copies of the full prospectus and forms of application for the shares or debentures, **or relating to the deposits or loans invited to be made with or to the company,** may be obtained,
- 20

and states that ~~applications for shares or debentures~~ **any such application** will proceed only on one of the forms of application referred to and attached to a printed copy of the prospectus.

25

(2) No statement that, or to the effect that, the advertisement is not a prospectus shall prevent the operation of this section.

30

(3) This section shall apply to advertisements published or disseminated in the State by newspaper broadcasting television cinematograph or any other means whatsoever.

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(4) Nothing in this section shall require a prospectus to be issued in connection with any invitation or intended invitation to the public to deposit money with a banking company.

(g)

Companies (Amendment).

(g) ~~(e)~~ by inserting next after section one hundred and seventy-two the following new section :— New sec. 172A.

5 172A. (1) Every company, whether incorporated in the State or elsewhere, issuing debentures to the public for subscription in the State shall (except where a debenture is given by one instrument to not more than twenty-five persons without any right to subdivide their interests) make provision in the debentures or in a trust deed for the appointment of not less than two persons (the appointment of one or more but not all of whom may if the debentures or deed so provide be reserved to be made by the holders of the debentures) as trustees for the holders of the debentures. Trustees for debenture holders. cf. No. 6455 Vic. s. 62.

15 (2) Such debentures or deed shall contain covenants by the company or, if it does not expressly contain such covenants, shall be deemed to contain covenants, to the following effect :—

20 (a) that the company will use its best endeavours to carry on and conduct its business in a proper and efficient manner ;

25 (b) that, to the same extent as if the trustees for the holders of the debentures or any auditor appointed by the trustees were directors of the company, it will—

(i) make available for their inspection the whole of the books of account of the company ; and

30 (ii) give to them such information as they require with respect to all matters relating to the books of account of the company ; and

(c)

Companies (Amendment).

- 5 (c) that the company will, on the application of the holders of debentures of any class holding not less than one-fifth in nominal value of the issued debentures of that class delivered to its registered office, by giving notice—
- 10 (i) to each of the holders of the debentures (other than debentures payable to bearer) of that class at his address as specified in the register of debentures; and
- 15 (ii) by advertisement in a daily newspaper circulating generally throughout the State addressed to all holders of debentures of that class,
- 20 summon a meeting to consider the accounts and balance-sheet which were laid before the last preceding ordinary general meeting of the company and give to the trustees directions in relation to the exercise of their powers, such meeting to be held at a time and place specified in the notice and advertisement under the chairmanship of a trustee or such other person as is appointed in that behalf by the holders of debentures present
- 25 at the meeting.
- (3) Without the leave of the court—
- 30 (a) a director shareholder solicitor or auditor of the company or of any other company which has entered into any guarantee in respect of the principal debt or interest thereon or itself holds beneficially shares of the firstmentioned company; or
- 35 (b) a company which directly or indirectly controls or is controlled by the firstmentioned company,
- shall not be appointed or act as a trustee.

(4)

Companies (Amendment).

(4) The company shall in writing furnish the trustees, whether or not any demand therefor has been made, with—

5 (a) particulars (within twenty-one days after the creation of any charge requiring registration under this Act) of such charge, and when the amount to be advanced is indeterminate
10 particulars (within seven days after the advance) of the amount or amounts in fact advanced :

15 Provided that when any such advances are merged in a current account with bankers or trade creditors it shall be sufficient for particulars of the net amount outstanding in respect of any such advances to be furnished every three months ;

20 (b) particulars (within twenty-one days after creation of the charge) of any charge created by the company, other than a charge created in the ordinary course of the business of the company.

25 (5) The court may on the application of the trustees order a meeting (to be held and conducted in such manner as the court thinks fit, under the chairmanship of a trustee or such other person as the meeting appoints) of the holders of debentures of any class to be called to consider any matters in which they are concerned and advise the trustees thereon and may give such ancillary or consequential
30 directions as it thinks fit.

35 (6) The trustees shall exercise diligence in ascertaining whether or not the assets of the company which constitute or may constitute the security for the debentures are sufficient or are likely to become sufficient to discharge the principal debt and any interest thereon.

(7)

Companies (Amendment).

(7) Notwithstanding anything in any debenture or trust deed the security for any debentures which are irredeemable or redeemable only on the happening of a contingency or at an uncertain time shall be enforceable forthwith or at such time as the court directs if, on the application of a debenture holder (where there is no trustee for debenture holders) or the trustees, the court is satisfied that—

5
10 (a) at the time of the issue of the debentures the assets of the company which constituted or were intended to constitute the security therefor were sufficient or likely to become sufficient to discharge the principal debt and any interest thereon;

15
20 (b) the security, if realised under the circumstances existing at the time of the application, would be likely to bring not more than sixty per centum of the principal sum of moneys outstanding (regard being had to all prior charges, if any); and

25
30 (c) the assets covered by the security, on a fair valuation on the basis of a going concern, are worth less than the said principal sum and the company is not earning the interest payable on the principal sum or (where no definite rate of interest is payable) interest thereon at such rate as the court considers would be a fair rate to expect from a similar investment, after allowing a reasonable amount for depreciation,

35 but this subsection shall not affect any power to vary rights or accept any compromise or arrangement created by the terms of the debentures or under a compromise or arrangement between the company and creditors.

(8)

Companies (Amendment).

(8) The appointment of a company or the Public Trustee as sole trustee for debenture holders shall be sufficient compliance with the provisions of this section and the word "trustees" in this section includes a company or the Public Trustee so appointed as sole trustee for the debenture holders.

(9) If a company makes default in complying with any requirement of this section, the company, and every officer of the company who is in default, shall be guilty of an offence. Penalty for default.

Penalty : Fifty pounds for every day during which the default continues.

(h) ~~(f)~~ by inserting next after section one hundred and seventy-three the following new Division :— New Division 6A.

DIVISION 6A.—*Other Interests.*

173A. In this Division unless the context or subject matter otherwise indicates or requires— or Restriction in offer, &c., of certain interests in undertakings, &c. cf. No. 6455 Vic. s. 63 (1).

"Interest" means any right to participate, or interest whether enforceable or not and whether actual prospective or contingent,

(a) in any profits assets or realisation of any financial or business undertaking or scheme whether in the State or elsewhere;

(b) in any common enterprise whether in the State or elsewhere in which the holder of the right or interest is led to expect profits rent or interest from the efforts of the promoter or a third party; or

(c)

Companies (Amendment).

5 (c) in any investment contract—
whether or not the right or interest is
evidenced by a formal document or by an
interest in any physical asset but does not
include—

10 (i) any share in or debenture of a com-
pany or co-operative society registered
under the Co-operation, Community
Settlement, and Credit Act, 1923, as
amended by subsequent Acts;

(ii) any interest in or arising out of a
policy of life assurance;

(iii) any interest in a partnership agree-
ment; or

15 (iv) any prescribed right or interest.

20 “Investment contract” means any contract scheme
or arrangement which in substance and
irrespective of the form thereof involves the
investment of money in or under such circum-
stances that the investor acquires or may
acquire an interest in or right in respect of
property which under or in accordance with
the terms of investment will or may at the
option of the investor be used or employed
25 in common with any other interest in or right
in respect of property acquired in or under
like circumstances.

30 173B. No person except a public company or an
agent of a public company authorised in that behalf
under the seal of the company shall issue or offer
to the public for subscription or purchase or shall
invite the public to subscribe for or purchase any
interest.

Only
public
company
may issue
or offer
interest.
cf. No. 6455
Vic. s. 63
(2).

35 173C. (1) Before a company (whether itself or
by an agent so authorised) issues or offers to the
public for subscription or purchase or invites the
public to subscribe for or purchase any interest the
company

Company
to issue
statement.
cf. *Ibid.*
s. 63 (3).

Companies (Amendment).

5 company shall issue or cause to be issued a state-
ment in writing in connection therewith which
statement shall for all purposes be deemed to be a
prospectus issued by a company, and all provisions
of this Act and rules of law relating to prospectuses
or to the offering or to an intended offering of shares
for subscription or purchase to the public shall with
such adaptations as are necessary apply and have
effect accordingly as if such interest were shares
10 offered or intended to be offered to the public for
subscription or purchase and as if persons accepting
any offer or invitation in respect of or subscribing
for or purchasing any such interest were subscribers
for such shares.

15 (2) Such statement shall, in lieu of the
matters and reports specified in Schedule Eight to
this Act, set out the matters and reports specified in
Schedule Fourteen to this Act and where such
interest consists of anything other than rights or
20 interests in marketable securities of companies other
than those of the company issuing the statement, the
statement shall set out in addition such of the matters
and reports specified in Schedule Eight to this Act
as are required by the Registrar-General :

25 Provided that the Registrar-General may excuse
any such company from including in any such
statement such of the matters specified in Schedule
Fourteen to this Act as he thinks fit.

30 Except where any such interest consists only of
rights or interests in marketable securities of
companies other than those of the company issuing
the statement and the statement sets out the matters
and reports specified in Schedule Fourteen to this
Act, no such statement shall be issued unless the
35 Registrar-General has informed the company, by
notice in writing, that—

40 (a) he requires the statement to contain such of
the matters and reports specified in Schedule
Eight to this Act as are specified in the
notice; or

(b)

Companies (Amendment).

(b) he does not require the statement to contain any such matters or reports.

5 173D. A person shall not issue or offer to the public for subscription or purchase or invite the public to subscribe for or purchase any interest unless the person has in relation to the interest made provision in a deed (which deed and any amendment thereof has been approved for the purposes of this Division by the Registrar-General) for the appointment of a person or company as trustee for or as representative of the holders of such interests and for other matters as prescribed by this Division.

Company to make provision in deed for appointment of trustee. cf. No. 6455 Vic. s. 63 (4).

15 173E. (1) No appointment of such a trustee or representative shall be made for the purposes of this Division without the approval of the Minister.

Appointment to be approved by Minister. cf. *Ibid.* s. 63 (5).

20 (2) The first appointment of any such trustee or representative and all appointments to fill vacancies in the office shall be made with reasonable despatch, in default of which the person shall be deemed to have contravened the provisions of this Division.

25 (3) No such trustee or representative shall be removable except by the Minister, or by resignation or death, or by a majority decision of the holders of the interests to which the deed relates.

(4) Every such trustee or representative shall exercise all due diligence and vigilance in watching the rights and interests of holders of interests to which the deed relates.

30 (5) Every such trustee or representative shall keep proper books of account in relation to the interests to which the deed relates and shall annually post a statement of such accounts with the report of an auditor thereon to each holder of any such interests.

35

173F.

Companies (Amendment).

173F. (1) Every deed referred to in section 173D of this Act shall contain covenants by the company, or (if it does not expressly contain such covenants) shall be deemed to contain them, to the following effect, namely :—

Deed to contain or to be deemed to contain certain covenants.
cf. No. 6455
Vic. s. 63
(6).

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- (a) that the company will use its best endeavours to carry on and conduct the business of the company in a proper and efficient manner and to ensure that any undertaking, scheme or enterprise to which the deed relates is carried on and conducted in a proper and efficient manner ;
- (b) that to the same extent as if the trustee or representative were a director of the company the company will—
 - (i) make available to the trustee or representative, or to any auditor appointed by him, for inspection the whole of the books of the company whether kept at the registered office or elsewhere ; and
 - (ii) give to the trustee or representative such oral or written information as he requires with respect to all matters relating to the undertaking, scheme or enterprise of the company or any property (whether acquired before or after the date of the deed) of the company or otherwise relating to the affairs thereof ;
- (c) that the company will make available or ensure that there is made available to the trustee or representative such details as he requires with respect to all matters relating to the undertaking, scheme or enterprise to which the deed relates ;
- (d) that the company will not exercise the right to vote in respect of any shares held by the trustee or representative at any election for directors of a company whose shares are so held

Companies (Amendment).

held without the consent of the holders of the interests concerned given at a meeting of those holders summoned in the same manner as a meeting may be summoned under paragraph (e) of this subsection for the purpose of authorising the exercise of the right in a particular case; and

(e) that the company will from time to time on the application, delivered to the company at its registered office, of not less than one-tenth in number of the holders of interests to which the deed relates—

(i) by giving notice at least seven days before the proposed meeting by letter through the post addressed to each of the holders of such interests at his last known address; and

(ii) by giving notice at least fourteen days before the proposed meeting by advertisement in a daily newspaper circulating generally throughout the State addressed to the holders of all such interests,

summon a meeting of such holders for the purpose of laying before the meeting the accounts and balance-sheet which were laid before the last preceding ordinary general meeting of the company or the last audited statement of accounts of the trustee or representative, and of the meeting giving to the trustee or representative such directions as the meeting thinks proper.

(2) Every such meeting shall be held at the time and place specified in the notice and advertisement under the chairmanship of the trustee or representative or a nominee of the trustee or representative approved by the Minister or of such other person as is appointed in that behalf by the holders of such interests present at the meeting, and shall

Companies (Amendment).

shall be conducted in accordance with the provisions of the deed or, insofar as the deed makes no provision, as directed by the chairman of the meeting.

(3) Every such deed and any amendment thereof shall be lodged by the company in the office of the Registrar-General within fourteen days after the execution of such deed or amendment.

173G. (1) Every company which either before or after the commencement of the Companies (Amendment) Act, 1960, has issued any interest shall—

Company to lodge return with Registrar-General.

(a) once at least in every calendar year, not more than sixty days after the date of the first or only ordinary general meeting of the company in that year, lodge with the Registrar-General—

(i) a return containing a list of all persons who on the day of the first or only ordinary general meeting of the year are holders of such interests showing their names and addresses and the extent of their holdings of such interests and if any such interest consists of a specific interest in any real or personal property a description of the property and its location; and

(ii) a copy of the lists and statements required by paragraph (b) of this subsection and by subsection two of this section, to be posted to the holders of such interests; and

(b) not less than seven days before the first or only ordinary general meeting of the year post to any holder of an interest who has requested the company to supply him with the documents hereinafter referred to a copy of—

(i) its balance-sheet;

(ii) its profit and loss account;

(iii)

Companies (Amendment).

(iii) its directors' report;

(iv) a summary of all purchases and sales of marketable securities by the company affecting such holders during the period to which the accounts relate;

(v) a statement of the total amount of brokerage affecting such holders paid or charged by the company during the period to which the accounts relate and the proportion thereof paid to any stock or share broker who or any employee or nominee of whom is an officer of the company and the proportion retained by the company; and

(vi) a list of all the investments of the company affecting such holders as at the date of the balance-sheet showing the names and quantities of such investments.

(2) There shall accompany every balance-sheet posted to a holder of an interest—

cf. Tas. Act No. 29, 1959, s. 62 (14).

(a) a list of all marketable securities affecting such holders held by the trustee or representative appointed under section 173D of this Act as at the date to which the accounts are made up, showing the quantities of those securities and the basis on which they have been valued;

(b) a list of all purchases and sales of marketable securities affecting such holders made by the trustee or representative, or by the company on behalf of the trustee or representative, during the period to which the accounts relate;

(c)

Companies (Amendment).

5 (c) a list of all the investments affecting such holders made by the trustee or representative, or by the company on behalf of the trustee or representative, showing the names and quantities of those investments; and

(d) such other statements and particulars (if any) affecting such holders as may be prescribed;

10 each of which shall be signed by the persons who signed the balance-sheet.

15 (3) Subject to the regulations any company which is required pursuant to this section to lodge with the Registrar-General a return of holders and which has its registered office at a place within three miles of the office of the Registrar-General need not lodge such return with the Registrar-General if such return is available without fee for inspection and copying by any person at the registered office of the company during the hours in which the registered office is accessible to the public. Exemption of certain companies.

20 173H. A person shall not be relieved from any liability to any holder of an interest by reason of any contravention of or failure to comply with any of the provisions of this Division. Default not to relieve company or person from liability.

25 173I. Any person who and any company which contravenes or fails to comply with any of the provisions of this Division or of any covenant of any deed under this Division and any person who is a director of such company shall be guilty of an offence. Penalty.

30 Penalty: Five hundred pounds or imprisonment for twelve months.

35 173J. This Division shall not apply in the case of the sale of any interest by a personal representative liquidator receiver or trustee in bankruptcy in the normal course of realisation of assets. Exceptions.

(i)

Companies (Amendment).

(i) ~~(g)~~ (i) by inserting at the end of the proviso to sub-
section two of section three hundred and forty-three the following word and new para-
graph :—

Sec. 343.
(Restrictions
on offering
of shares
for
subscription
or
purchase.)

5

; or

(d) where the offer relates to—

10

(i) an interest within the meaning of
section 173A of this Act and is
accompanied by a statement in
writing as required by section
173C; or

(ii) deposits or loans to a company of
the kind referred to in subsection
two of section 137A of this Act.

15

(ii) by inserting in subsection eight of the same
section next before the definition of "Shares"
the following new definition :—

"Purchase" includes barter or exchange.

20

(iii) by inserting in the same subsection after the
word "damages," the words "and also includes
interests within the meaning of section 173A of
this Act,".

(iv) by inserting at the end of the same subsection
the following new paragraph :—

25

In subsection two of this section a reference
to "an offer in writing" includes an offer by
way of broadcasting, television or cinemato-
graph and where an offer is made by way of
broadcasting, television or cinematograph, the
statement accompanying it referred to in that
subsection shall be made by the same means as
the offer is made instead of in writing.

30

(i) ~~(h)~~ by inserting in Schedule Twelve next after the Sch. Twelve.
matter relating to "Sec. 168." the words:—

35

Sec. 173F.—As to lodging a deed or any amend-
ment thereof.

(k)

Companies (Amendment).

(k) (i) by inserting in Part II of Schedule Thirteen next after the matter relating to "Sec. 169 (5)." the words and symbols :—

5 Sec. 172A (3).—Application for leave to act as trustee.

 Sec. 172A (5).—Application to call meeting.

 Sec. 172A (7).—Application to enforce debentures.

(l) (j) by inserting next after Schedule Thirteen the following new Schedule :—

10 **SCHEDULE FOURTEEN.** Sec. 173c.
 The Companies Act, 1936.

(a) Matters and reports required to be included in statement made pursuant to section 173c (2).

- 15 1. The date of the statement.
- 2. The date of and parties to the deed referred to in section 173D of this Act.
- 3. The date of and parties to any deed or instrument by which any of the provisions of the firstmentioned deed has been amended or abrogated.
- 20 4. The name of the trustee or representative under any such deed and the address of the trustee's or representative's registered office.
- 5. A summary of the provisions of the deed regulating the retirement, removal and replacement of the trustee or representative.
- 25 6. The name of the company referred to in section 173c of this Act (hereinafter called "the management company") and the address of its registered office.
- 7. A summary of the provisions of the deed regulating the retirement, removal and replacement of the management company.
- 30 8. The name and address of the auditor of the trust declared by the deed.
- 9. A summary of the provisions of the deed regulating the appointment, retirement, removal and replacement of such auditor.
- 35

Companies (Amendment).

10. The period of the trust declared by the deed and a summary of the provisions of the deed for the winding up of the trust on its termination.
- 5 11. The nature of the unit or sub-unit of interests issued or offered to the public for subscription or purchase and the description and number of the shares to which such interests attach.
- 10 12. The method of calculation provided by the deed of the greatest price at which the management company may sell any such unit or sub-unit of interest.
- 15 13. What obligations are imposed under the deed upon the management company to purchase from holders thereof the unit or sub-units of interests for which they have subscribed or which they have purchased, and a statement of the method provided by the deed for the calculation of the purchase price of such units or sub-units.
- 20 14. A summary of any provisions of the deed whereby investments made thereunder may be varied.
- 25 15. Full information regarding the remuneration of the trustee and the management company respectively and the manner in which under the provisions of the deed such remuneration is provided for and what (if any) charges are made in respect of such remuneration upon the sale of or subscription for a unit or sub-unit of interests under the deed and upon the distribution of income and capital thereunder.
- 30 16. Whether units or sub-units of interests are transferable by the holders thereof and, if so, a summary of the provisions of the deed regulating such transfer.
- 35 17. A summary of the provisions of the deed regulating the distribution to the holders of units or sub-units of interests of the income of the trust.
- 40 18. If any reference is made to the yield of income obtained or to be obtained by the holders of units or sub-units of interests, a statement as to whether and to what extent anything other than cash receipts by way of dividends, interest or bonuses has been taken into account in calculating the yield.
- 45 19. A summary of the provisions of the deed regulating the convening of meetings of holders of units or sub-units of interests.
20. The names and the date of commencement of operation of any other unit trusts conducted by the management company during the five years immediately preceding the date of the statement.

Companies (Amendment).

5 21. A statement that certificates shall be allotted by the trustee to purchasers of or subscribers for units or sub-units of interests purchased or subscribed for pursuant to this statement not more than six months from the date appearing in paragraph 1 hereof.

(b) Reports to be set out in statement.

22. A report by an accountant registered pursuant to the Public Accountants Registration Act, 1945-1958, who shall be named, setting out—

10 (1) in respect of the interests referred to in the deed—

(a) a statement setting out the number of distributions of income in respect of each unit or sub-unit of interests during the five years immediately preceding the date of the statement, the amount of each such distribution and to what extent each such distribution consisted of anything other than dividends, interests or bonuses and if so the nature and amount of such other components ;

20 (b) a statement setting out the selling price and the purchase price respectively of such units or sub-units of interests on each of the dates upon which each distribution of income was made by the trustee ;

25 (c) a statement setting out the selling price and the purchase price respectively of such units or sub-units of interests on the date immediately preceding the date of the statement ;

30 (2) in respect of units or sub-units of interests referred to in the deeds relating to each of the other trusts (if any) conducted by the management company during the five years immediately preceding the date of the statement, similar information to that required in respect of subparagraph (1) hereof.

35 23. If in the case of a company which has been carrying on business, or of a business which has been carried on, for less than five years, the accounts of the company or business have only been made up in respect of four years, three years, two years, or one year, this Schedule shall have effect as if references to four years, three years, two years, or one year, as the case may be, were substituted for references to five years.

The Commission on the Administration of Justice
has the honor to acknowledge the receipt of your
report of the 10th day of June, 1911, and to
express its appreciation for the valuable
information it contains.

Your report is being referred to the
Public Accounts Committee for their
consideration.

(1) In regard to the proposed amendments to the
Act relating to the appointment of judges,
the Commission is of the opinion that the
proposed amendments are in the interest of
the public and should be adopted.

(2) In regard to the proposed amendments to the
Act relating to the appointment of judges,
the Commission is of the opinion that the
proposed amendments are in the interest of
the public and should be adopted.

(3) In regard to the proposed amendments to the
Act relating to the appointment of judges,
the Commission is of the opinion that the
proposed amendments are in the interest of
the public and should be adopted.

(4) In regard to the proposed amendments to the
Act relating to the appointment of judges,
the Commission is of the opinion that the
proposed amendments are in the interest of
the public and should be adopted.

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 6 April, 1960.*

The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.

Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, April, 1960.*

New South Wales



ANNO NONO

ELIZABETHÆ II REGINÆ

Act No. , 1960.

An Act to make provisions with respect to invitations to the public to deposit money with or to lend money to companies; to impose restrictions on the offer of certain interests in certain undertakings, schemes, and enterprises; for these and other purposes to amend the Companies Act, 1936, as amended by subsequent Acts; and for purposes connected therewith.

BE

99391 199—A

NOTE.—The words to be *omitted* are ruled through; those to be *inserted* are printed in **black letter**.

R.

Companies (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. (1) This Act may be cited as the "Companies (Amendment) Act, 1960". Short title, citation and commencement.

(2) The Companies Act, 1936, as amended by subsequent Acts and by this Act, may be cited as the Companies Act, 1936-1960.

(3) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. The Companies Act, 1936, as amended by subsequent Acts, is amended— Amendment of Act No. 33, 1936.

(a) (i) by inserting next after the matter relating to Division 6 of Part VIII in section two the words and figures "DIVISION 6A.—*Other Interests*—ss. 173A-173J."; Sec. 2. (Division into Parts.)

(ii) by omitting from the matter relating to the Schedules in the same section the figures "1-13" and by inserting in lieu thereof the figures "1-14";

(b) (i) by inserting in subsection one of section six next after the definition of "Manager" the following new definition :— Sec. 6. (Interpretation.)

"Marketable securities" means any debentures funds stocks shares or bonds of any Government or of any local government authority or of any corporation or society and includes any right or option in respect of shares in any corporation. (ii)

Companies (Amendment).

(ii) by omitting from the same subsection the definition of "Prospectus" and by inserting in lieu thereof the following definition :—

5

"Prospectus" means any prospectus notice circular advertisement or other invitation inviting applications or offers from the public to subscribe for or purchase or offering to the public for subscription or purchase any shares in or debentures of or any units of shares in or units of debentures of a company or foreign company or proposed company or proposed foreign company.

10

15

(c) (i) by omitting from paragraph (b) of subsection one of section one hundred and sixteen the word "and";

Sec. 116. (Investigation of affairs of company by inspectors.)

(ii) by inserting at the end of the same subsection the following word and new paragraphs :—

; and

20

(d) in the case of a company which either before or after the commencement of the Companies (Amendment) Act, 1960, issued any interest within the meaning of section 173A of this Act, where the Governor is satisfied that it is necessary for the protection of the holders of such interests, or any of them, that the affairs of the company should be investigated under this Division.

25

30

The provisions of paragraph (d) of this subsection shall apply mutatis mutandis to a foreign company.

35

(iii) by omitting from subsection two of the same section the words "The application" and by inserting in lieu thereof the words "An application under paragraph (a), (b) or (c) of subsection one of this section".

(d)

Companies (Amendment).

(d) by inserting in subsection two of section one hundred and seventeen after the word "under" the words "paragraph (a), (b) or (c) of subsection one of".

Sec. 117. (Proceedings on report by inspectors.)

5 (e) ~~(e)~~ by inserting next after section one hundred and thirty-seven the following new section :—

New sec. 137A.

10 137A. (1) No invitation to the public to deposit money with or to lend money to any company, whether incorporated in the State or elsewhere, shall be made unless a debenture is intended to be issued in respect of every deposit or loan so made and a debenture shall be issued in respect of every deposit or loan so made.

As to invitations to the public to deposit money with companies. cf. No. 6455 Vic. s. 36.

15 (2) A company shall not in pursuance of any such invitation accept from any person a deposit or loan of money unless it is accompanied by a form of application signed by such person and such application was issued to such person with a prospectus which complies in all respects with the requirements of section one hundred and thirty-seven of this Act.

20 (3) Nothing in this section shall require a debenture or prospectus to be issued in connection with any invitation to the public to deposit money with a banking company.

25 (4) Where an invitation is made to the public to deposit money with or lend money to any company and such deposit or loan is not to be secured by a charge over all or any of the company's assets the invitation shall state that the document to be issued acknowledging the deposit or loan of money made pursuant to the invitation is to be an unsecured note or an unsecured deposit note, as the case may be, and shall not state that such document is to be a debenture.

(5)

Companies (Amendment).

5 (5) Where any document is issued by a
 company (being one of a series of such documents)
 which either expressly or by implication acknow-
 ledges the indebtedness of the company in respect of
 money borrowed by it but is not secured by a charge
 over all or any of the company's assets the document
 shall be described on the face of it as an unsecured
 note or as an unsecured deposit note, as the case may
 be, and shall not be described on its face as a
 10 debenture.

(6) Every person who knowingly contra-
 venes or permits or authorises the contravention of
 any of the provisions of this section shall be guilty
 of an offence.

15 Penalty : One thousand pounds.

(f) ~~(d)~~ by omitting section one hundred and thirty-eight and Subst.
 by inserting in lieu thereof the following section :— sec. 138.

138. (1) Every advertisement—

20 (a) offering or calling attention to an offer or
 intended offer of, shares in or debentures of
 a company to the public for subscription or
 purchase, or

Certain
 advertise-
 ments
 deemed
 to be
 prospectuses.
 cf. No. 6455
 Vic. s. 37
 (4).

25 (b) inviting or calling attention to an invitation
 or intended invitation **to the public** to deposit
 money with or lend money to a company,

30 shall whether the company is incorporated in the
 State or elsewhere be deemed to be a prospectus
 issued by the person responsible for publishing or
 disseminating the advertisement (and all enactments
 and rules of law as to the contents of prospectuses
 and

Companies (Amendment).

and as to liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses shall apply and have effect accordingly) unless it contains no more information than the following :—

- (i) the number and description of the shares or debentures concerned or, as the case may be, particulars of the deposits with or loans to the company invited or intended to be invited by the company;
- (ii) the name and date of registration of the company and its paid up share capital;
- (iii) the general nature of the main business or proposed main business of the company;
- (iv) the names of the directors or proposed directors and of the brokers or underwriters to the issue;
- (v) the place at which copies of the full prospectus and forms of application for the shares or debentures, **or relating to the deposits or loans invited to be made with or to the company,** may be obtained,

and states that ~~applications for shares or debentures~~ **any such application** will proceed only on one of the forms of application referred to and attached to a printed copy of the prospectus.

(2) No statement that, or to the effect that, the advertisement is not a prospectus shall prevent the operation of this section.

(3) This section shall apply to advertisements published or disseminated in the State by newspaper broadcasting television cinematograph or any other means whatsoever.

(4) Nothing in this section shall require a prospectus to be issued in connection with any invitation or intended invitation to the public to deposit money with a banking company.

(g)

Companies (Amendment).

(g) ~~(e)~~ by inserting next after section one hundred and seventy-two the following new section :— New sec. 172A.

5 172A. (1) Every company, whether incorporated in the State or elsewhere, issuing debentures to the public for subscription in the State shall (except where a debenture is given by one instrument to not more than twenty-five persons without any right to subdivide their interests) make provision in the debentures or in a trust deed for the appointment of not less than two persons (the appointment of one or more but not all of whom may if the debentures or deed so provide be reserved to be made by the holders of the debentures) as trustees for the holders of the debentures.

Trustees for debenture holders. cf. No. 6455 Vic. s. 62.

15 (2) Such debentures or deed shall contain covenants by the company or, if it does not expressly contain such covenants, shall be deemed to contain covenants, to the following effect :—

20 (a) that the company will use its best endeavours to carry on and conduct its business in a proper and efficient manner ;

25 (b) that, to the same extent as if the trustees for the holders of the debentures or any auditor appointed by the trustees were directors of the company, it will—

 (i) make available for their inspection the whole of the books of account of the company ; and

30 (ii) give to them such information as they require with respect to all matters relating to the books of account of the company ; and

(c)

Companies (Amendment).

- 5 (c) that the company will, on the application of
the holders of debentures of any class holding
not less than one-fifth in nominal value of
the issued debentures of that class delivered
to its registered office, by giving notice—
- 10 (i) to each of the holders of the deben-
tures (other than debentures payable
to bearer) of that class at his address
as specified in the register of deben-
tures; and
- 15 (ii) by advertisement in a daily newspaper
circulating generally throughout the
State addressed to all holders of
debentures of that class,
- 20 summon a meeting to consider the accounts
and balance-sheet which were laid before the
last preceding ordinary general meeting of
the company and give to the trustees direc-
tions in relation to the exercise of their
powers, such meeting to be held at a time and
place specified in the notice and advertise-
ment under the chairmanship of a trustee or
such other person as is appointed in that
25 behalf by the holders of debentures present
at the meeting.
- (3) Without the leave of the court—
- 30 (a) a director shareholder solicitor or auditor of
the company or of any other company which
has entered into any guarantee in respect of
the principal debt or interest thereon or itself
holds beneficially shares of the firstmentioned
company; or
- 35 (b) a company which directly or indirectly con-
trols or is controlled by the firstmentioned
company,
- shall not be appointed or act as a trustee.

(4)

Companies (Amendment).

(4) The company shall in writing furnish the trustees, whether or not any demand therefor has been made, with—

5 (a) particulars (within twenty-one days after the creation of any charge requiring registration under this Act) of such charge, and when the amount to be advanced is indeterminate particulars (within seven days after the advance) of the amount or amounts in fact
10 advanced :

15 Provided that when any such advances are merged in a current account with bankers or trade creditors it shall be sufficient for particulars of the net amount outstanding in respect of any such advances to be furnished every three months ;

20 (b) particulars (within twenty-one days after creation of the charge) of any charge created by the company, other than a charge created in the ordinary course of the business of the company.

25 (5) The court may on the application of the trustees order a meeting (to be held and conducted in such manner as the court thinks fit, under the chairmanship of a trustee or such other person as the meeting appoints) of the holders of debentures of any class to be called to consider any matters in which they are concerned and advise the trustees thereon and may give such ancillary or consequential
30 directions as it thinks fit.

35 (6) The trustees shall exercise diligence in ascertaining whether or not the assets of the company which constitute or may constitute the security for the debentures are sufficient or are likely to become sufficient to discharge the principal debt and any interest thereon.

(7)

Companies (Amendment).

(7) Notwithstanding anything in any debenture or trust deed the security for any debentures which are irredeemable or redeemable only on the happening of a contingency or at an uncertain time shall be enforceable forthwith or at such time as the court directs if, on the application of a debenture holder (where there is no trustee for debenture holders) or the trustees, the court is satisfied that—

Enforce-ability of certain debentures.

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(a) at the time of the issue of the debentures the assets of the company which constituted or were intended to constitute the security therefor were sufficient or likely to become sufficient to discharge the principal debt and any interest thereon;

(b) the security, if realised under the circumstances existing at the time of the application, would be likely to bring not more than sixty per centum of the principal sum of moneys outstanding (regard being had to all prior charges, if any); and

(c) the assets covered by the security, on a fair valuation on the basis of a going concern, are worth less than the said principal sum and the company is not earning the interest payable on the principal sum or (where no definite rate of interest is payable) interest thereon at such rate as the court considers would be a fair rate to expect from a similar investment, after allowing a reasonable amount for depreciation,

but this subsection shall not affect any power to vary rights or accept any compromise or arrangement created by the terms of the debentures or under a compromise or arrangement between the company and creditors.

(8)

Companies (Amendment).

5 (8) The appointment of a company or the Public Trustee as sole trustee for debenture holders shall be sufficient compliance with the provisions of this section and the word "trustees" in this section includes a company or the Public Trustee so appointed as sole trustee for the debenture holders.

10 (9) If a company makes default in complying with any requirement of this section, the company, and every officer of the company who is in default, shall be guilty of an offence. Penalty for default.

Penalty : Fifty pounds for every day during which the default continues.

(h) ~~(f)~~ by inserting next after section one hundred and seventy-three the following new Division :— New Division 6A.

15 DIVISION 6A.—*Other Interests.*

173A. In this Division unless the context or subject matter otherwise indicates or requires— or Restriction in offer, &c., of certain interests in undertakings, &c.

20 "Interest" means any right to participate, or interest whether enforceable or not and whether actual prospective or contingent, cf. No. 6455 Vic. s. 63 (1).

(a) in any profits assets or realisation of any financial or business undertaking or scheme whether in the State or elsewhere;

25 (b) in any common enterprise whether in the State or elsewhere in which the holder of the right or interest is led to expect profits rent or interest from the efforts of the promoter or a third party; or

30 (c)

Companies (Amendment).

5 (c) in any investment contract—
whether or not the right or interest is
evidenced by a formal document or by an
interest in any physical asset but does not
include—

10 (i) any share in or debenture of a com-
pany or co-operative society registered
under the Co-operation, Community
Settlement, and Credit Act, 1923, as
amended by subsequent Acts;

(ii) any interest in or arising out of a
policy of life assurance;

(iii) any interest in a partnership agree-
ment; or

15 (iv) any prescribed right or interest.

20 “Investment contract” means any contract scheme
or arrangement which in substance and
irrespective of the form thereof involves the
investment of money in or under such circum-
stances that the investor acquires or may
acquire an interest in or right in respect of
property which under or in accordance with
the terms of investment will or may at the
option of the investor be used or employed
25 in common with any other interest in or right
in respect of property acquired in or under
like circumstances.

30 173B. No person except a public company or an
agent of a public company authorised in that behalf
under the seal of the company shall issue or offer
to the public for subscription or purchase or shall
invite the public to subscribe for or purchase any
interest.

Only
public
company
may issue
or offer
interest.
cf. No. 6455
Vic. s. 63
(2).

35 173C. (1) Before a company (whether itself or
by an agent so authorised) issues or offers to the
public for subscription or purchase or invites the
public to subscribe for or purchase any interest the
company

Company
to issue
statement.
cf. *Ibid.*
s. 63 (3).

Companies (Amendment).

5 company shall issue or cause to be issued a state-
ment in writing in connection therewith which
statement shall for all purposes be deemed to be a
prospectus issued by a company, and all provisions
of this Act and rules of law relating to prospectuses
or to the offering or to an intended offering of shares
for subscription or purchase to the public shall with
such adaptations as are necessary apply and have
effect accordingly as if such interest were shares
10 offered or intended to be offered to the public for
subscription or purchase and as if persons accepting
any offer or invitation in respect of or subscribing
for or purchasing any such interest were subscribers
for such shares.

15 (2) Such statement shall, in lieu of the
matters and reports specified in Schedule Eight to
this Act, set out the matters and reports specified in
Schedule Fourteen to this Act and where such
interest consists of anything other than rights or
20 interests in marketable securities of companies other
than those of the company issuing the statement, the
statement shall set out in addition such of the matters
and reports specified in Schedule Eight to this Act
as are required by the Registrar-General :

25 Provided that the Registrar-General may excuse
any such company from including in any such
statement such of the matters specified in Schedule
Fourteen to this Act as he thinks fit.

30 Except where any such interest consists only of
rights or interests in marketable securities of
companies other than those of the company issuing
the statement and the statement sets out the matters
and reports specified in Schedule Fourteen to this
Act, no such statement shall be issued unless the
35 Registrar-General has informed the company, by
notice in writing, that—

(a) he requires the statement to contain such of
the matters and reports specified in Schedule
Eight to this Act as are specified in the
40 notice; or

(b)

Companies (Amendment).

(b) he does not require the statement to contain any such matters or reports.

5 173D. A person shall not issue or offer to the public for subscription or purchase or invite the public to subscribe for or purchase any interest unless the person has in relation to the interest made provision in a deed (which deed and any amendment thereof has been approved for the purposes of this Division by the Registrar-General) for the appointment of a person or company as trustee for or as representative of the holders of such interests and for other matters as prescribed by this Division.

Company to make provision in deed for appointment of trustee. cf. No. 6455 Vic. s. 63 (4).

15 173E. (1) No appointment of such a trustee or representative shall be made for the purposes of this Division without the approval of the Minister.

Appointment to be approved by Minister. cf. *Ibid.* s. 63 (5).

20 (2) The first appointment of any such trustee or representative and all appointments to fill vacancies in the office shall be made with reasonable despatch, in default of which the person shall be deemed to have contravened the provisions of this Division.

25 (3) No such trustee or representative shall be removable except by the Minister, or by resignation or death, or by a majority decision of the holders of the interests to which the deed relates.

(4) Every such trustee or representative shall exercise all due diligence and vigilance in watching the rights and interests of holders of interests to which the deed relates.

(5) Every such trustee or representative shall keep proper books of account in relation to the interests to which the deed relates and shall annually post a statement of such accounts with the report of an auditor thereon to each holder of any such interests.

173F.

Companies (Amendment).

173F. (1) Every deed referred to in section 173D of this Act shall contain covenants by the company, or (if it does not expressly contain such covenants) shall be deemed to contain them, to the following effect, namely :—

Deed to contain or to be deemed to contain certain covenants.
cf. No. 6455
Vic. s. 63
(6).

- 5
- (a) that the company will use its best endeavours to carry on and conduct the business of the company in a proper and efficient manner and to ensure that any undertaking, scheme or enterprise to which the deed relates is carried on and conducted in a proper and efficient manner ;
- 10
- (b) that to the same extent as if the trustee or representative were a director of the company the company will—
- 15
- (i) make available to the trustee or representative, or to any auditor appointed by him, for inspection the whole of the books of the company whether kept at the registered office or elsewhere ; and
- 20
- (ii) give to the trustee or representative such oral or written information as he requires with respect to all matters relating to the undertaking, scheme or enterprise of the company or any property (whether acquired before or after the date of the deed) of the company or otherwise relating to the affairs thereof ;
- 25
- (c) that the company will make available or ensure that there is made available to the trustee or representative such details as he requires with respect to all matters relating to the undertaking, scheme or enterprise to which the deed relates ;
- 30
- (d) that the company will not exercise the right to vote in respect of any shares held by the trustee or representative at any election for directors of a company whose shares are so
- 35
- 40
- held

Companies (Amendment).

5 held without the consent of the holders of the interests concerned given at a meeting of those holders summoned in the same manner as a meeting may be summoned under paragraph (e) of this subsection for the purpose of authorising the exercise of the right in a particular case; and

10 (e) that the company will from time to time on the application, delivered to the company at its registered office, of not less than one-tenth in number of the holders of interests to which the deed relates—

15 (i) by giving notice at least seven days before the proposed meeting by letter through the post addressed to each of the holders of such interests at his last known address; and

20 (ii) by giving notice at least fourteen days before the proposed meeting by advertisement in a daily newspaper circulating generally throughout the State addressed to the holders of all such interests,

25 summon a meeting of such holders for the purpose of laying before the meeting the accounts and balance-sheet which were laid before the last preceding ordinary general meeting of the company or the last audited statement of accounts of the trustee or representative, and of the meeting giving to
30 the trustee or representative such directions as the meeting thinks proper.

35 (2) Every such meeting shall be held at the time and place specified in the notice and advertisement under the chairmanship of the trustee or representative or a nominee of the trustee or representative approved by the Minister or of such other person as is appointed in that behalf by the holders of such interests present at the meeting, and shall

Companies (Amendment).

shall be conducted in accordance with the provisions of the deed or, insofar as the deed makes no provision, as directed by the chairman of the meeting.

5 (3) Every such deed and any amendment thereof shall be lodged by the company in the office of the Registrar-General within fourteen days after the execution of such deed or amendment.

10 173G. (1) Every company which either before or after the commencement of the Companies (Amendment) Act, 1960, has issued any interest shall— Company to lodge return with Registrar-General.

(a) once at least in every calendar year, not more than sixty days after the date of the first or only ordinary general meeting of the company in that year, lodge with the Registrar-General—

15 (i) a return containing a list of all persons who on the day of the first or only ordinary general meeting of the year are holders of such interests showing their names and addresses and the extent of their holdings of such interests and if any such interest consists of a specific interest in any real or personal property a description of the property and its location; and

20 (ii) a copy of the lists and statements required by paragraph (b) of this subsection and by subsection two of this section, to be posted to the holders of such interests; and

30 (b) not less than seven days before the first or only ordinary general meeting of the year post to any holder of an interest who has requested the company to supply him with the documents hereinafter referred to a copy of—

35 (i) its balance-sheet;

(ii) its profit and loss account;

(iii)

Companies (Amendment).

- (iii) its directors' report;
 - (iv) a summary of all purchases and sales of marketable securities by the company affecting such holders during the period to which the accounts relate;
 - (v) a statement of the total amount of brokerage affecting such holders paid or charged by the company during the period to which the accounts relate and the proportion thereof paid to any stock or share broker who or any employee or nominee of whom is an officer of the company and the proportion retained by the company; and
 - (vi) a list of all the investments of the company affecting such holders as at the date of the balance-sheet showing the names and quantities of such investments.
- (2) There shall accompany every balance-sheet posted to a holder of an interest—
- (a) a list of all marketable securities affecting such holders held by the trustee or representative appointed under section 173D of this Act as at the date to which the accounts are made up, showing the quantities of those securities and the basis on which they have been valued;
 - (b) a list of all purchases and sales of marketable securities affecting such holders made by the trustee or representative, or by the company on behalf of the trustee or representative, during the period to which the accounts relate;

cf. Tas. Act
No. 29,
1959, s. 62
(14).

(c)

Companies (Amendment).

5 (c) a list of all the investments affecting such holders made by the trustee or representative, or by the company on behalf of the trustee or representative, showing the names and quantities of those investments; and

(d) such other statements and particulars (if any) affecting such holders as may be prescribed;

10 each of which shall be signed by the persons who signed the balance-sheet.

(3) Subject to the regulations any company which is required pursuant to this section to lodge with the Registrar-General a return of holders and which has its registered office at a place within three miles of the office of the Registrar-General need not lodge such return with the Registrar-General if such return is available without fee for inspection and copying by any person at the registered office of the company during the hours in which the registered office is accessible to the public. Exemption of certain companies.

173H. A person shall not be relieved from any liability to any holder of an interest by reason of any contravention of or failure to comply with any of the provisions of this Division. Default not to relieve company or person from liability.

25 173I. Any person who and any company which contravenes or fails to comply with any of the provisions of this Division or of any covenant of any deed under this Division and any person who is a director of such company shall be guilty of an offence. Penalty.

30 Penalty: Five hundred pounds or imprisonment for twelve months.

35 173J. This Division shall not apply in the case of the sale of any interest by a personal representative liquidator receiver or trustee in bankruptcy in the normal course of realisation of assets. Exceptions.

(i)

Companies (Amendment).

(i) ~~(g)~~ (i) by inserting at the end of the proviso to sub-
 section two of section three hundred and forty-three the following word and new para-
 graph :—

Sec. 343.
 (Restrictions
 on offering
 of shares
 for
 subscription
 or
 purchase.)

5

; or

(d) where the offer relates to—

10

(i) an interest within the meaning of
 section 173A of this Act and is
 accompanied by a statement in
 writing as required by section
 173C; or

(ii) deposits or loans to a company of
 the kind referred to in subsection
 two of section 137A of this Act.

15

(ii) by inserting in subsection eight of the same
 section next before the definition of "Shares"
 the following new definition :—

"Purchase" includes barter or exchange.

20

(iii) by inserting in the same subsection after the
 word "damages," the words "and also includes
 interests within the meaning of section 173A of
 this Act,".

(iv) by inserting at the end of the same subsection
 the following new paragraph :—

25

In subsection two of this section a reference
 to "an offer in writing" includes an offer by
 way of broadcasting, television or cinemato-
 graph and where an offer is made by way of
 broadcasting, television or cinematograph, the
 statement accompanying it referred to in that
 subsection shall be made by the same means as
 the offer is made instead of in writing.

30

(j) ~~(h)~~ by inserting in Schedule Twelve next after the Sch. Twelve.
 matter relating to "Sec. 168." the words:—

35

Sec. 173F.—As to lodging a deed or any amend-
 ment thereof.

(k)

Companies (Amendment).

(k) ~~(i)~~ by inserting in Part II of Schedule Thirteen next after the matter relating to "Sec. 169 (5)." the words and symbols :—

5 Sec. 172A (3).—Application for leave to act as trustee.

 Sec. 172A (5).—Application to call meeting.

 Sec. 172A (7).—Application to enforce debentures.

(l) ~~(j)~~ by inserting next after Schedule Thirteen the following new Schedule :—

10 SCHEDULE FOURTEEN. Sec. 173c.
 The Companies Act, 1936.

(a) Matters and reports required to be included in statement made pursuant to section 173c (2).

- 15 1. The date of the statement.
- 2. The date of and parties to the deed referred to in section 173d of this Act.
- 3. The date of and parties to any deed or instrument by which any of the provisions of the firstmentioned deed has been amended or abrogated.
- 20 4. The name of the trustee or representative under any such deed and the address of the trustee's or representative's registered office.
- 5. A summary of the provisions of the deed regulating the retirement, removal and replacement of the trustee or representative.
- 25 6. The name of the company referred to in section 173c of this Act (hereinafter called "the management company") and the address of its registered office.
- 7. A summary of the provisions of the deed regulating the retirement, removal and replacement of the management company.
- 30 8. The name and address of the auditor of the trust declared by the deed.
- 9. A summary of the provisions of the deed regulating the appointment, retirement, removal and replacement of such auditor.
- 35

Companies (Amendment).

10. The period of the trust declared by the deed and a summary of the provisions of the deed for the winding up of the trust on its termination.
- 5 11. The nature of the unit or sub-unit of interests issued or offered to the public for subscription or purchase and the description and number of the shares to which such interests attach.
- 10 12. The method of calculation provided by the deed of the greatest price at which the management company may sell any such unit or sub-unit of interest.
- 15 13. What obligations are imposed under the deed upon the management company to purchase from holders thereof the unit or sub-units of interests for which they have subscribed or which they have purchased, and a statement of the method provided by the deed for the calculation of the purchase price of such units or sub-units.
- 20 14. A summary of any provisions of the deed whereby investments made thereunder may be varied.
- 25 15. Full information regarding the remuneration of the trustee and the management company respectively and the manner in which under the provisions of the deed such remuneration is provided for and what (if any) charges are made in respect of such remuneration upon the sale of or subscription for a unit or sub-unit of interests under the deed and upon the distribution of income and capital thereunder.
- 30 16. Whether units or sub-units of interests are transferable by the holders thereof and, if so, a summary of the provisions of the deed regulating such transfer.
- 35 17. A summary of the provisions of the deed regulating the distribution to the holders of units or sub-units of interests of the income of the trust.
- 40 18. If any reference is made to the yield of income obtained or to be obtained by the holders of units or sub-units of interests, a statement as to whether and to what extent anything other than cash receipts by way of dividends, interest or bonuses has been taken into account in calculating the yield.
- 45 19. A summary of the provisions of the deed regulating the convening of meetings of holders of units or sub-units of interests.
20. The names and the date of commencement of operation of any other unit trusts conducted by the management company during the five years immediately preceding the date of the statement.

Companies (Amendment).

5 21. A statement that certificates shall be allotted by the trustee to purchasers of or subscribers for units or sub-units of interests purchased or subscribed for pursuant to this statement not more than six months from the date appearing in paragraph 1 hereof.

(b) Reports to be set out in statement.

22. A report by an accountant registered pursuant to the Public Accountants Registration Act, 1945-1958, who shall be named, setting out—

10 (1) in respect of the interests referred to in the deed—

15 (a) a statement setting out the number of distributions of income in respect of each unit or sub-unit of interests during the five years immediately preceding the date of the statement, the amount of each such distribution and to what extent each such distribution consisted of anything other than dividends, interests or bonuses and if so the nature and amount of such other components ;

20 (b) a statement setting out the selling price and the purchase price respectively of such units or sub-units of interests on each of the dates upon which each distribution of income was made by the trustee ;

25 (c) a statement setting out the selling price and the purchase price respectively of such units or sub-units of interests on the date immediately preceding the date of the statement ;

30 (2) in respect of units or sub-units of interests referred to in the deeds relating to each of the other trusts (if any) conducted by the management company during the five years immediately preceding the date of the statement, similar information to that required in respect of subparagraph (1) hereof.

35 23. If in the case of a company which has been carrying on business, or of a business which has been carried on, for less than five years, the accounts of the company or business have only been made up in respect of four years, three years, two years, or one year, this Schedule shall have effect as if references to four years, three years, two years, or one year, as the case may be, were substituted for references to five years.

40

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Main body of faint, illegible text, appearing to be several paragraphs of a document.

Handwritten or stamped text, possibly initials or a signature.

Additional faint, illegible text at the bottom of the page, possibly a footer or concluding remarks.

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 6 April, 1960.*

*The LEGISLATIVE COUNCIL has this day agreed to this Bill with
an Amendment.*

Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, April, 1960.*

New South Wales



ANNO NONO

ELIZABETHÆ II REGINÆ

Act No. , 1960.

An Act to make provisions with respect to invitations to the public to deposit money with or to lend money to companies; to impose restrictions on the offer of certain interests in certain undertakings, schemes, and enterprises; for these and other purposes to amend the Companies Act, 1936, as amended by subsequent Acts; and for purposes connected therewith.

BE

99391 199—A

NOTE.—The words to be *omitted* are ruled through; those to be *inserted* are printed in **black letter**.

Companies (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. (1) This Act may be cited as the "Companies (Amendment) Act, 1960".

Short title, citation and commencement.

(2) The Companies Act, 1936, as amended by subsequent Acts and by this Act, may be cited as the Companies Act, 1936-1960.

(3) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. The Companies Act, 1936, as amended by subsequent Acts, is amended—

Amendment of Act No. 33, 1936.

(a) (i) by inserting next after the matter relating to Division 6 of Part VIII in section two the words and figures "DIVISION 6A.—*Other Interests*—ss. 173A-173J.";

Sec. 2. (Division into Parts.)

(ii) by omitting from the matter relating to the Schedules in the same section the figures "1-13" and by inserting in lieu thereof the figures "1-14";

(b) (i) by inserting in subsection one of section six next after the definition of "Manager" the following new definition :—

Sec. 6. (Interpretation.)

"Marketable securities" means any debentures funds stocks shares or bonds of any Government or of any local government authority or of any corporation or society and includes any right or option in respect of shares in any corporation.

(ii)

Companies (Amendment).

- (ii) by omitting from the same subsection the definition of "Prospectus" and by inserting in lieu thereof the following definition :—

5 "Prospectus" means any prospectus notice
circular advertisement or other invitation
inviting applications or offers from the
public to subscribe for or purchase or
offering to the public for subscription or
10 purchase any shares in or debentures of
or any units of shares in or units of
debentures of a company or foreign
company or proposed company or pro-
posed foreign company.

- 15 (c) (i) by omitting from paragraph (b) of subsection Sec. 116.
one of section one hundred and sixteen the (Investiga-
word "and"; tion of
affairs of
company by
inspectors.)

- (ii) by inserting at the end of the same subsection
the following word and new paragraphs :—

; and

- 20 (d) in the case of a company which either
before or after the commencement of
the Companies (Amendment) Act, 1960,
issued any interest within the meaning of
25 section 173A of this Act, where the
Governor is satisfied that it is necessary
for the protection of the holders of such
interests, or any of them, that the affairs
of the company should be investigated
under this Division.

30 The provisions of paragraph (d) of this
subsection shall apply mutatis mutandis to a
foreign company.

- 35 (iii) by omitting from subsection two of the same
section the words "The application" and by
inserting in lieu thereof the words "An
application under paragraph (a), (b) or (c) of
subsection one of this section".

(d)

Companies (Amendment).

(d) by inserting in subsection two of section one hundred and seventeen after the word "under" the words "paragraph (a), (b) or (c) of subsection one of". Sec. 117. (Proceedings on report by inspectors.)

5 (e) ~~(e)~~ by inserting next after section one hundred and thirty-seven the following new section :— New sec. 137A.

10 137A. (1) No invitation to the public to deposit money with or to lend money to any company, whether incorporated in the State or elsewhere, shall be made unless a debenture is intended to be issued in respect of every deposit or loan so made and a debenture shall be issued in respect of every deposit or loan so made. As to invitations to the public to deposit money with companies. cf. No. 6455 Vic. s. 36.

15 (2) A company shall not in pursuance of any such invitation accept from any person a deposit or loan of money unless it is accompanied by a form of application signed by such person and such application was issued to such person with a prospectus which complies in all respects with the requirements of section one hundred and thirty-seven of this Act.
20

(3) Nothing in this section shall require a debenture or prospectus to be issued in connection with any invitation to the public to deposit money with a banking company.

25 (4) Where an invitation is made to the public to deposit money with or lend money to any company and such deposit or loan is not to be secured by a charge over all or any of the company's assets the invitation shall state that the document to be issued acknowledging the deposit or loan of money made pursuant to the invitation is to be an unsecured note or an unsecured deposit note, as the case may be, and shall not state that such document is to be a debenture.
30

(5)

Companies (Amendment).

5 (5) Where any document is issued by a
 company (being one of a series of such documents)
 which either expressly or by implication acknow-
 ledges the indebtedness of the company in respect of
 money borrowed by it but is not secured by a charge
 over all or any of the company's assets the document
 shall be described on the face of it as an unsecured
 note or as an unsecured deposit note, as the case may
 be, and shall not be described on its face as a
 10 debenture.

(6) Every person who knowingly contra-
 venes or permits or authorises the contravention of
 any of the provisions of this section shall be guilty
 of an offence.

15 Penalty : One thousand pounds.

(f) ~~(d)~~ by omitting section one hundred and thirty-eight and Subst.
 by inserting in lieu thereof the following section : — sec. 138.

138. (1) Every advertisement—

20 (a) offering, or calling attention to an offer or
 intended offer of, shares in or debentures of
 a company to the public for subscription or
 purchase, or

Certain
 advertise-
 ments
 deemed
 to be
 prospectuses.
 cf. No. 6455
 Vic. s. 37
 (4).

25 (b) inviting or calling attention to an invitation
 or intended invitation to deposit money with
 or lend money to a company,

30 shall whether the company is incorporated in the
 State or elsewhere be deemed to be a prospectus
 issued by the person responsible for publishing or
 disseminating the advertisement (and all enactments
 and rules of law as to the contents of prospectuses
 and

Companies (Amendment).

and as to liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses shall apply and have effect accordingly) unless it contains no more information than the following : —

5

(i) the number and description of the shares or debentures concerned or, as the case may be, particulars of the deposits with or loans to the company invited or intended to be invited by the company ;

10

(ii) the name and date of registration of the company and its paid up share capital ;

(iii) the general nature of the main business or proposed main business of the company ;

15

(iv) the names of the directors or proposed directors and of the brokers or underwriters to the issue ;

20

(v) the place at which copies of the full prospectus and forms of application for the shares or debentures may be obtained,

and states that applications for shares or debentures will proceed only on one of the forms of application referred to and attached to a printed copy of the prospectus.

25

(2) No statement that, or to the effect that, the advertisement is not a prospectus shall prevent the operation of this section.

30

(3) This section shall apply to advertisements published or disseminated in the State by newspaper broadcasting television cinematograph or any other means whatsoever.

35

(4) Nothing in this section shall require a prospectus to be issued in connection with any invitation or intended invitation to the public to deposit money with a banking company.

(g)

Companies (Amendment).

(g) ~~(e)~~ by inserting next after section one hundred and seventy-two the following new section :— New sec. 172A.

5 172A. (1) Every company, whether incorporated Trustees for
in the State or elsewhere, issuing debentures to the debenture
public for subscription in the State shall (except holders.
where a debenture is given by one instrument to not cf. No. 6455
more than twenty-five persons without any right to Vic. s. 62.
subdivide their interests) make provision in the
debentures or in a trust deed for the appointment of
10 not less than two persons (the appointment of one
or more but not all of whom may if the debentures
or deed so provide be reserved to be made by the
holders of the debentures) as trustees for the holders
of the debentures.

15 (2) Such debentures or deed shall contain
covenants by the company or, if it does not expressly
contain such covenants, shall be deemed to contain
covenants, to the following effect :—

20 (a) that the company will use its best endeavours
to carry on and conduct its business in a
proper and efficient manner ;

25 (b) that, to the same extent as if the trustees
for the holders of the debentures or any
auditor appointed by the trustees were
directors of the company, it will—

(i) make available for their inspection the
whole of the books of account of the
company ; and

30 (ii) give to them such information as they
require with respect to all matters
relating to the books of account of
the company ; and

(c)

Companies (Amendment).

- 5 (c) that the company will, on the application of the holders of debentures of any class holding not less than one-fifth in nominal value of the issued debentures of that class delivered to its registered office, by giving notice—
- 10 (i) to each of the holders of the debentures (other than debentures payable to bearer) of that class at his address as specified in the register of debentures; and
- 15 (ii) by advertisement in a daily newspaper circulating generally throughout the State addressed to all holders of debentures of that class,
- 20 summon a meeting to consider the accounts and balance-sheet which were laid before the last preceding ordinary general meeting of the company and give to the trustees directions in relation to the exercise of their powers, such meeting to be held at a time and place specified in the notice and advertisement under the chairmanship of a trustee or such other person as is appointed in that behalf by the holders of debentures present
- 25 at the meeting.
- (3) Without the leave of the court—
- 30 (a) a director shareholder solicitor or auditor of the company or of any other company which has entered into any guarantee in respect of the principal debt or interest thereon or itself holds beneficially shares of the firstmentioned company; or
- 35 (b) a company which directly or indirectly controls or is controlled by the firstmentioned company,
- shall not be appointed or act as a trustee.

(4)

Companies (Amendment).

(4) The company shall in writing furnish the trustees, whether or not any demand therefor has been made, with—

5 (a) particulars (within twenty-one days after the creation of any charge requiring registration under this Act) of such charge, and when the amount to be advanced is indeterminate
10 particulars (within seven days after the advance) of the amount or amounts in fact advanced :

15 Provided that when any such advances are merged in a current account with bankers or trade creditors it shall be sufficient for particulars of the net amount outstanding in respect of any such advances to be furnished every three months ;

20 (b) particulars (within twenty-one days after creation of the charge) of any charge created by the company, other than a charge created in the ordinary course of the business of the company.

25 (5) The court may on the application of the trustees order a meeting (to be held and conducted in such manner as the court thinks fit, under the chairmanship of a trustee or such other person as the meeting appoints) of the holders of debentures of any class to be called to consider any matters in which they are concerned and advise the trustees thereon and may give such ancillary or consequential
30 directions as it thinks fit.

35 (6) The trustees shall exercise diligence in ascertaining whether or not the assets of the company which constitute or may constitute the security for the debentures are sufficient or are likely to become sufficient to discharge the principal debt and any interest thereon.

(7)

Companies (Amendment).

(7) Notwithstanding anything in any debenture or trust deed the security for any debentures which are irredeemable or redeemable only on the happening of a contingency or at an uncertain time shall be enforceable forthwith or at such time as the court directs if, on the application of a debenture holder (where there is no trustee for debenture holders) or the trustees, the court is satisfied that—

Enforce-ability of certain debentures.

(a) at the time of the issue of the debentures the assets of the company which constituted or were intended to constitute the security therefor were sufficient or likely to become sufficient to discharge the principal debt and any interest thereon;

(b) the security, if realised under the circumstances existing at the time of the application, would be likely to bring not more than sixty per centum of the principal sum of moneys outstanding (regard being had to all prior charges, if any); and

(c) the assets covered by the security, on a fair valuation on the basis of a going concern, are worth less than the said principal sum and the company is not earning the interest payable on the principal sum or (where no definite rate of interest is payable) interest thereon at such rate as the court considers would be a fair rate to expect from a similar investment, after allowing a reasonable amount for depreciation,

but this subsection shall not affect any power to vary rights or accept any compromise or arrangement created by the terms of the debentures or under a compromise or arrangement between the company and creditors.

(8)

Companies (Amendment).

5 (8) The appointment of a company or the Public Trustee as sole trustee for debenture holders shall be sufficient compliance with the provisions of this section and the word "trustees" in this section includes a company or the Public Trustee so appointed as sole trustee for the debenture holders.

10 (9) If a company makes default in complying with any requirement of this section, the company, and every officer of the company who is in default, shall be guilty of an offence. Penalty for default.

Penalty : Fifty pounds for every day during which the default continues.

(h) ~~(f)~~ by inserting next after section one hundred and seventy-three the following new New Division 6A. Division : —

15 DIVISION 6A.—*Other Interests.*

173A. In this Division unless the context or Restriction in offer, &c., of certain interests in subject matter otherwise indicates or requires— under-

20 "Interest" means any right to participate, or interest whether enforceable or not and takings, &c. cf. No. 6455 Vic. s. 63 (1). whether actual prospective or contingent,

(a) in any profits assets or realisation of any financial or business undertaking or scheme whether in the State or elsewhere;

25 (b) in any common enterprise whether in the State or elsewhere in which the holder of the right or interest is led to expect profits rent or interest from the efforts of the promoter or a third party; or

30 (c)

Companies (Amendment).

(c) in any investment contract—
whether or not the right or interest is
evidenced by a formal document or by an
interest in any physical asset but does not
include—

5

(i) any share in or debenture of a com-
pany or co-operative society registered
under the Co-operation, Community
Settlement, and Credit Act, 1923, as
amended by subsequent Acts;

10

(ii) any interest in or arising out of a
policy of life assurance;

(iii) any interest in a partnership agree-
ment; or

15

(iv) any prescribed right or interest.

“Investment contract” means any contract scheme
or arrangement which in substance and
irrespective of the form thereof involves the
investment of money in or under such circum-
stances that the investor acquires or may
acquire an interest in or right in respect of
property which under or in accordance with
the terms of investment will or may at the
option of the investor be used or employed
in common with any other interest in or right
in respect of property acquired in or under
like circumstances.

20

25

173B. No person except a public company or an
agent of a public company authorised in that behalf
under the seal of the company shall issue or offer
to the public for subscription or purchase or shall
invite the public to subscribe for or purchase any
interest.

30

Only
public
company
may issue
or offer
interest.
cf. No. 6455
Vic. s. 63
(2).

173c. (1) Before a company (whether itself or
by an agent so authorised) issues or offers to the
public for subscription or purchase or invites the
public to subscribe for or purchase any interest the
company

Company
to issue
statement.
cf. *Ibid.*
s. 63 (3).

Companies (Amendment).

5 company shall issue or cause to be issued a state-
ment in writing in connection therewith which
statement shall for all purposes be deemed to be a
prospectus issued by a company, and all provisions
of this Act and rules of law relating to prospectuses
or to the offering or to an intended offering of shares
for subscription or purchase to the public shall with
such adaptations as are necessary apply and have
effect accordingly as if such interest were shares
10 offered or intended to be offered to the public for
subscription or purchase and as if persons accepting
any offer or invitation in respect of or subscribing
for or purchasing any such interest were subscribers
for such shares.

15 (2) Such statement shall, in lieu of the
matters and reports specified in Schedule Eight to
this Act, set out the matters and reports specified in
Schedule Fourteen to this Act and where such
interest consists of anything other than rights or
20 interests in marketable securities of companies other
than those of the company issuing the statement, the
statement shall set out in addition such of the matters
and reports specified in Schedule Eight to this Act
as are required by the Registrar-General :

25 Provided that the Registrar-General may excuse
any such company from including in any such
statement such of the matters specified in Schedule
Fourteen to this Act as he thinks fit.

30 Except where any such interest consists only of
rights or interests in marketable securities of
companies other than those of the company issuing
the statement and the statement sets out the matters
and reports specified in Schedule Fourteen to this
Act, no such statement shall be issued unless the
35 Registrar-General has informed the company, by
notice in writing, that—

(a) he requires the statement to contain such of
the matters and reports specified in Schedule
Eight to this Act as are specified in the
40 notice ; or

(b)

Companies (Amendment).

(b) he does not require the statement to contain any such matters or reports.

5 173D. A person shall not issue or offer to the public for subscription or purchase or invite the public to subscribe for or purchase any interest unless the person has in relation to the interest made provision in a deed (which deed and any amendment thereof has been approved for the purposes of this Division by the Registrar-General) for the appoint-
 10 ment of a person or company as trustee for or as representative of the holders of such interests and for other matters as prescribed by this Division.

Company to make provision in deed for appointment of trustee. cf. No. 6455 Vic. s. 63 (4).

15 173E. (1) No appointment of such a trustee or representative shall be made for the purposes of this Division without the approval of the Minister.

Appointment to be approved by Minister. cf. *Ibid.* s. 63 (5).

20 (2) The first appointment of any such trustee or representative and all appointments to fill vacancies in the office shall be made with reasonable despatch, in default of which the person shall be deemed to have contravened the provisions of this Division.

25 (3) No such trustee or representative shall be removable except by the Minister, or by resignation or death, or by a majority decision of the holders of the interests to which the deed relates.

(4) Every such trustee or representative shall exercise all due diligence and vigilance in watching the rights and interests of holders of interests to which the deed relates.

30 (5) Every such trustee or representative shall keep proper books of account in relation to the interests to which the deed relates and shall annually post a statement of such accounts with the report of an auditor thereon to each holder of any such
 35 interests.

173F.

Companies (Amendment).

173F. (1) Every deed referred to in section 173D of this Act shall contain covenants by the company, or (if it does not expressly contain such covenants) shall be deemed to contain them, to the following effect, namely :—

Deed to contain or to be deemed to contain certain covenants.

cf. No. 6455
Vic. s. 63
(6).

- 5
- (a) that the company will use its best endeavours to carry on and conduct the business of the company in a proper and efficient manner and to ensure that any undertaking, scheme or enterprise to which the deed relates is carried on and conducted in a proper and efficient manner ;
- 10
- (b) that to the same extent as if the trustee or representative were a director of the company the company will—
- 15
- (i) make available to the trustee or representative, or to any auditor appointed by him, for inspection the whole of the books of the company whether kept at the registered office or elsewhere ; and
- 20
- (ii) give to the trustee or representative such oral or written information as he requires with respect to all matters relating to the undertaking, scheme or enterprise of the company or any property (whether acquired before or after the date of the deed) of the company or otherwise relating to the affairs thereof ;
- 25
- (c) that the company will make available or ensure that there is made available to the trustee or representative such details as he requires with respect to all matters relating to the undertaking, scheme or enterprise to which the deed relates ;
- 30
- (d) that the company will not exercise the right to vote in respect of any shares held by the trustee or representative at any election for directors of a company whose shares are so
- 35
- 40
- held

Companies (Amendment).

held without the consent of the holders of the interests concerned given at a meeting of those holders summoned in the same manner as a meeting may be summoned under paragraph (e) of this subsection for the purpose of authorising the exercise of the right in a particular case; and

(e) that the company will from time to time on the application, delivered to the company at its registered office, of not less than one-tenth in number of the holders of interests to which the deed relates—

(i) by giving notice at least seven days before the proposed meeting by letter through the post addressed to each of the holders of such interests at his last known address; and

(ii) by giving notice at least fourteen days before the proposed meeting by advertisement in a daily newspaper circulating generally throughout the State addressed to the holders of all such interests,

summon a meeting of such holders for the purpose of laying before the meeting the accounts and balance-sheet which were laid before the last preceding ordinary general meeting of the company or the last audited statement of accounts of the trustee or representative, and of the meeting giving to the trustee or representative such directions as the meeting thinks proper.

(2) Every such meeting shall be held at the time and place specified in the notice and advertisement under the chairmanship of the trustee or representative or a nominee of the trustee or representative approved by the Minister or of such other person as is appointed in that behalf by the holders of such interests present at the meeting, and shall

Companies (Amendment).

shall be conducted in accordance with the provisions of the deed or, insofar as the deed makes no provision, as directed by the chairman of the meeting.

5 (3) Every such deed and any amendment thereof shall be lodged by the company in the office of the Registrar-General within fourteen days after the execution of such deed or amendment.

10 173G. (1) Every company which either before or after the commencement of the Companies (Amendment) Act, 1960, has issued any interest shall— Company to lodge return with Registrar-General.

(a) once at least in every calendar year, not more than sixty days after the date of the first or only ordinary general meeting of the company in that year, lodge with the Registrar-General—

15 (i) a return containing a list of all persons who on the day of the first or only ordinary general meeting of the year are holders of such interests showing their names and addresses and the extent of their holdings of such interests and if any such interest consists of a specific interest in any real or personal property a description of the property and its location; and

20 (ii) a copy of the lists and statements required by paragraph (b) of this subsection and by subsection two of this section, to be posted to the holders of such interests; and

25 (b) not less than seven days before the first or only ordinary general meeting of the year post to any holder of an interest who has requested the company to supply him with the documents hereinafter referred to a copy of—

30 (i) its balance-sheet;

(ii) its profit and loss account;

(iii)

Companies (Amendment).

- (iii) its directors' report;
- 5 (iv) a summary of all purchases and sales of marketable securities by the company affecting such holders during the period to which the accounts relate;
- 10 (v) a statement of the total amount of brokerage affecting such holders paid or charged by the company during the period to which the accounts relate and the proportion thereof paid to any stock or share broker who or any employee or nominee of whom is an officer of the company and the proportion retained by the company; and
- 15 (vi) a list of all the investments of the company affecting such holders as at the date of the balance-sheet showing the names and quantities of such investments.

20 (2) There shall accompany every balance-sheet posted to a holder of an interest—
cf. Tas. Act No. 29, 1959, s. 62 (14).

- 25 (a) a list of all marketable securities affecting such holders held by the trustee or representative appointed under section 173D of this Act as at the date to which the accounts are made up, showing the quantities of those securities and the basis on which they have been valued;
- 30 (b) a list of all purchases and sales of marketable securities affecting such holders made by the trustee or representative, or by the company on behalf of the trustee or representative, during the period to which the accounts relate;

(c)

Companies (Amendment).

5 (c) a list of all the investments affecting such holders made by the trustee or representative, or by the company on behalf of the trustee or representative, showing the names and quantities of those investments; and

(d) such other statements and particulars (if any) affecting such holders as may be prescribed;

10 each of which shall be signed by the persons who signed the balance-sheet.

(3) Subject to the regulations any company which is required pursuant to this section to lodge with the Registrar-General a return of holders and which has its registered office at a place within three miles of the office of the Registrar-General need not lodge such return with the Registrar-General if such return is available without fee for inspection and copying by any person at the registered office of the company during the hours in which the registered office is accessible to the public.

Exemption of certain companies.

173H. A person shall not be relieved from any liability to any holder of an interest by reason of any contravention of or failure to comply with any of the provisions of this Division.

Default not to relieve company or person from liability.

25 173I. Any person who and any company which contravenes or fails to comply with any of the provisions of this Division or of any covenant of any deed under this Division and any person who is a director of such company shall be guilty of an offence.

Penalty.

30 Penalty: Five hundred pounds or imprisonment for twelve months.

35 173J. This Division shall not apply in the case of the sale of any interest by a personal representative liquidator receiver or trustee in bankruptcy in the normal course of realisation of assets.

Exceptions.

(i)

Companies (Amendment).

(i) ~~(g)~~ (i) by inserting at the end of the proviso to sub-section two of section three hundred and forty-three the following word and new paragraph :—

Sec. 343.
(Restrictions
on offering
of shares
for
subscription
or
purchase.)

5

; or

(d) where the offer relates to—

10

(i) an interest within the meaning of section 173A of this Act and is accompanied by a statement in writing as required by section 173C; or

(ii) deposits or loans to a company of the kind referred to in subsection two of section 137A of this Act.

15

(ii) by inserting in subsection eight of the same section next before the definition of "Shares" the following new definition :—

"Purchase" includes barter or exchange.

20

(iii) by inserting in the same subsection after the word "damages," the words "and also includes interests within the meaning of section 173A of this Act,".

25

(iv) by inserting at the end of the same subsection the following new paragraph :—

In subsection two of this section a reference to "an offer in writing" includes an offer by way of broadcasting, television or cinematograph and where an offer is made by way of broadcasting, television or cinematograph, the statement accompanying it referred to in that subsection shall be made by the same means as the offer is made instead of in writing.

30

(i) ~~(h)~~ by inserting in Schedule Twelve next after the matter relating to "Sec. 168." the words:—

35

Sec. 173F.—As to lodging a deed or any amendment thereof.

(k)

Companies (Amendment).

(k) ~~(i)~~ by inserting in Part II of Schedule Thirteen next after the matter relating to "Sec. 169 (5)." the words and symbols :—

5 Sec. 172A (3).—Application for leave to act as trustee.

 Sec. 172A (5).—Application to call meeting.

 Sec. 172A (7).—Application to enforce debentures.

(l) ~~(j)~~ by inserting next after Schedule Thirteen the following new Schedule :—

10 SCHEDULE FOURTEEN. Sec. 173c.
 The Companies Act, 1936.

(a) Matters and reports required to be included in statement made pursuant to section 173c (2).

1. The date of the statement.

15 2. The date of and parties to the deed referred to in section 173D of this Act.

 3. The date of and parties to any deed or instrument by which any of the provisions of the firstmentioned deed has been amended or abrogated.

20 4. The name of the trustee or representative under any such deed and the address of the trustee's or representative's registered office.

25 5. A summary of the provisions of the deed regulating the retirement, removal and replacement of the trustee or representative.

 6. The name of the company referred to in section 173c of this Act (hereinafter called "the management company") and the address of its registered office.

30 7. A summary of the provisions of the deed regulating the retirement, removal and replacement of the management company.

 8. The name and address of the auditor of the trust declared by the deed.

35 9. A summary of the provisions of the deed regulating the appointment, retirement, removal and replacement of such auditor.

Companies (Amendment).

10. The period of the trust declared by the deed and a summary of the provisions of the deed for the winding up of the trust on its termination.
- 5 11. The nature of the unit or sub-unit of interests issued or offered to the public for subscription or purchase and the description and number of the shares to which such interests attach.
- 10 12. The method of calculation provided by the deed of the greatest price at which the management company may sell any such unit or sub-unit of interest.
- 15 13. What obligations are imposed under the deed upon the management company to purchase from holders thereof the unit or sub-units of interests for which they have subscribed or which they have purchased, and a statement of the method provided by the deed for the calculation of the purchase price of such units or sub-units.
- 20 14. A summary of any provisions of the deed whereby investments made thereunder may be varied.
- 25 15. Full information regarding the remuneration of the trustee and the management company respectively and the manner in which under the provisions of the deed such remuneration is provided for and what (if any) charges are made in respect of such remuneration upon the sale of or subscription for a unit or sub-unit of interests under the deed and upon the distribution of income and capital thereunder.
- 30 16. Whether units or sub-units of interests are transferable by the holders thereof and, if so, a summary of the provisions of the deed regulating such transfer.
- 35 17. A summary of the provisions of the deed regulating the distribution to the holders of units or sub-units of interests of the income of the trust.
- 40 18. If any reference is made to the yield of income obtained or to be obtained by the holders of units or sub-units of interests, a statement as to whether and to what extent anything other than cash receipts by way of dividends, interest or bonuses has been taken into account in calculating the yield.
- 45 19. A summary of the provisions of the deed regulating the convening of meetings of holders of units or sub-units of interests.
20. The names and the date of commencement of operation of any other unit trusts conducted by the management company during the five years immediately preceding the date of the statement.

Companies (Amendment).

5 21. A statement that certificates shall be allotted by the trustee to purchasers of or subscribers for units or sub-units of interests purchased or subscribed for pursuant to this statement not more than six months from the date appearing in paragraph 1 hereof.

(b) Reports to be set out in statement.

22. A report by an accountant registered pursuant to the Public Accountants Registration Act, 1945-1958, who shall be named, setting out—

10 (1) in respect of the interests referred to in the deed—

15 (a) a statement setting out the number of distributions of income in respect of each unit or sub-unit of interests during the five years immediately preceding the date of the statement, the amount of each such distribution and to what extent each such distribution consisted of anything other than dividends, interests or bonuses and if so the nature and amount of such other components;

20 (b) a statement setting out the selling price and the purchase price respectively of such units or sub-units of interests on each of the dates upon which each distribution of income was made by the trustee;

25 (c) a statement setting out the selling price and the purchase price respectively of such units or sub-units of interests on the date immediately preceding the date of the statement;

30 (2) in respect of units or sub-units of interests referred to in the deeds relating to each of the other trusts (if any) conducted by the management company during the five years immediately preceding the date of the statement, similar information to that required in respect of subparagraph (1) hereof.

35 23. If in the case of a company which has been carrying on business, or of a business which has been carried on, for less than five years, the accounts of the company or business have only been made up in respect of four years, three years, two years, or one year, this Schedule shall have effect as if references to four years, three years, two years, 40 or one year, as the case may be, were substituted for references to five years.

THE HISTORY OF THE UNITED STATES

CHAPTER I

The first part of the history of the United States is the history of the colonies. The colonies were first settled by Englishmen in 1607. They were at first dependent on England for their supplies and protection. But as they grew in number and power, they began to assert their independence.

The second part of the history of the United States is the history of the Revolution. The colonies declared their independence from England in 1776. They fought a long and hard war to win their freedom.

The third part of the history of the United States is the history of the Constitution. The Constitution was written in 1787. It is the foundation of our government. It sets out the powers of the different branches of government and the rights of the people.

The fourth part of the history of the United States is the history of the Civil War. The Civil War was fought between 1861 and 1865. It was a war to end slavery and to preserve the Union.

The fifth part of the history of the United States is the history of Reconstruction. Reconstruction was the period after the Civil War when the Southern States were brought back into the Union. It was a time of great change and progress.

The sixth part of the history of the United States is the history of the present. The United States has become a great and powerful nation. It is a land of freedom and opportunity for all.

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 6 April, 1960.*

New South Wales



ANNO NONO

ELIZABETHÆ II REGINÆ

Act No. , 1960.

An Act to make provisions with respect to invitations to the public to deposit money with or to lend money to companies; to impose restrictions on the offer of certain interests in certain undertakings, schemes, and enterprises; for these and other purposes to amend the Companies Act, 1936, as amended by subsequent Acts; and for purposes connected therewith.

BE

99391 199—A

Companies (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. (1) This Act may be cited as the "Companies (Amendment) Act, 1960". Short title, citation and commencement.

(2) The Companies Act, 1936, as amended by subsequent Acts and by this Act, may be cited as the Companies Act, 1936-1960.

(3) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. The Companies Act, 1936, as amended by subsequent Acts, is amended— Amendment of Act No. 33, 1936.

(a) (i) by inserting next after the matter relating to Division 6 of Part VIII in section two the words and figures "DIVISION 6A.—*Other Interests*—ss. 173A-173J."; Sec. 2. (Division into Parts.)

(ii) by omitting from the matter relating to the Schedules in the same section the figures "1-13" and by inserting in lieu thereof the figures "1-14";

(b) (i) by inserting in subsection one of section six next after the definition of "Manager" the following new definition :— Sec. 6. (Interpretation.)

"Marketable securities" means any debentures funds stocks shares or bonds of any Government or of any local government authority or of any corporation or society and includes any right or option in respect of shares in any corporation.

(ii)

Companies (Amendment).

(ii) by omitting from the same subsection the definition of "Prospectus" and by inserting in lieu thereof the following definition :—

5 "Prospectus" means any prospectus notice
circular advertisement or other invitation
inviting applications or offers from the
public to subscribe for or purchase or
offering to the public for subscription or
10 purchase any shares in or debentures of
or any units of shares in or units of
debentures of a company or foreign
company or proposed company or pro-
posed foreign company.

15 (c) by inserting next after section one hundred and
thirty-seven the following new section :— New sec.
137A.

20 137A. (1) No invitation to the public to deposit
money with or to lend money to any company,
whether incorporated in the State or elsewhere, shall
be made unless a debenture is intended to be issued
in respect of every deposit or loan so made and a
debenture shall be issued in respect of every deposit
or loan so made. As to
invitations
to the
public to
deposit
money with
companies.
cf. No. 6455
Vic. s. 36.

25 (2) A company shall not in pursuance of
any such invitation accept from any person a deposit
or loan of money unless it is accompanied by a form
of application signed by such person and such
application was issued to such person with a
prospectus which complies in all respects with the
requirements of section one hundred and thirty-seven
30 of this Act.

(3) Nothing in this section shall require a
debenture or prospectus to be issued in connection
with any invitation to the public to deposit money
with a banking company.

35 (4) Where an invitation is made to the
public to deposit money with or lend money to any
company and such deposit or loan is not to be
secured by a charge over all or any of the company's
assets

Companies (Amendment).

5 assets the invitation shall state that the document to be issued acknowledging the deposit or loan of money made pursuant to the invitation is to be an unsecured note or an unsecured deposit note, as the case may be, and shall not state that such document is to be a debenture.

10 (5) Where any document is issued by a company (being one of a series of such documents) which either expressly or by implication acknowledges the indebtedness of the company in respect of money borrowed by it but is not secured by a charge over all or any of the company's assets the document shall be described on the face of it as an unsecured note or as an unsecured deposit note, as the case may be, and shall not be described on its face as a debenture.

15 (6) Every person who knowingly contravenes or permits or authorises the contravention of any of the provisions of this section shall be guilty of an offence.

20 Penalty : One thousand pounds.

(d) by omitting section one hundred and thirty-eight and by inserting in lieu thereof the following section :—

Subst. sec. 138.

138. (1) Every advertisement—

25 (a) offering, or calling attention to an offer or intended offer of, shares in or debentures of a company to the public for subscription or purchase, or

Certain advertisements deemed to be prospectuses.

30 (b) inviting or calling attention to an invitation or intended invitation to deposit money with or lend money to a company,

cf. No. 6455 Vic. s. 37 (4).

35 shall whether the company is incorporated in the State or elsewhere be deemed to be a prospectus issued by the person responsible for publishing or disseminating the advertisement (and all enactments and rules of law as to the contents of prospectuses and

Companies (Amendment).

and as to liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses shall apply and have effect accordingly) unless it contains no more information than the following :—

5

- (i) the number and description of the shares or debentures concerned or, as the case may be, particulars of the deposits with or loans to the company invited or intended to be invited by the company;
- (ii) the name and date of registration of the company and its paid up share capital;
- (iii) the general nature of the main business or proposed main business of the company;
- (iv) the names of the directors or proposed directors and of the brokers or underwriters to the issue;
- (v) the place at which copies of the full prospectus and forms of application for the shares or debentures may be obtained,

10

15

20

and states that applications for shares or debentures will proceed only on one of the forms of application referred to and attached to a printed copy of the prospectus.

25

(2) No statement that, or to the effect that, the advertisement is not a prospectus shall prevent the operation of this section.

30

(3) This section shall apply to advertisements published or disseminated in the State by newspaper broadcasting television cinematograph or any other means whatsoever.

35

(4) Nothing in this section shall require a prospectus to be issued in connection with any invitation or intended invitation to the public to deposit money with a banking company.

(e)

Companies (Amendment).

(e) by inserting next after section one hundred and seventy-two the following new section :— New
sec. 172A.

5 172A. (1) Every company, whether incorporated in the State or elsewhere, issuing debentures to the public for subscription in the State shall (except where a debenture is given by one instrument to not more than twenty-five persons without any right to subdivide their interests) make provision in the debentures or in a trust deed for the appointment of not less than two persons (the appointment of one or more but not all of whom may if the debentures or deed so provide be reserved to be made by the holders of the debentures) as trustees for the holders of the debentures. Trustees for
debenture
holders.
cf. No. 6455
Vic. s. 62.

15 (2) Such debentures or deed shall contain covenants by the company or, if it does not expressly contain such covenants, shall be deemed to contain covenants, to the following effect :—

20 (a) that the company will use its best endeavours to carry on and conduct its business in a proper and efficient manner ;

25 (b) that, to the same extent as if the trustees for the holders of the debentures or any auditor appointed by the trustees were directors of the company, it will—

 (i) make available for their inspection the whole of the books of account of the company ; and

30 (ii) give to them such information as they require with respect to all matters relating to the books of account of the company ; and

(c)

Companies (Amendment).

5 (c) that the company will, on the application of the holders of debentures of any class holding not less than one-fifth in nominal value of the issued debentures of that class delivered to its registered office, by giving notice—

10 (i) to each of the holders of the debentures (other than debentures payable to bearer) of that class at his address as specified in the register of debentures; and

(ii) by advertisement in a daily newspaper circulating generally throughout the State addressed to all holders of debentures of that class,

15 summon a meeting to consider the accounts and balance-sheet which were laid before the last preceding ordinary general meeting of the company and give to the trustees directions in relation to the exercise of their powers, such meeting to be held at a time and place specified in the notice and advertisement under the chairmanship of a trustee or such other person as is appointed in that behalf by the holders of debentures present at the meeting.

(3) Without the leave of the court—

30 (a) a director shareholder solicitor or auditor of the company or of any other company which has entered into any guarantee in respect of the principal debt or interest thereon or itself holds beneficially shares of the firstmentioned company; or

35 (b) a company which directly or indirectly controls or is controlled by the firstmentioned company,

shall not be appointed or act as a trustee.

(4)

Companies (Amendment).

(4) The company shall in writing furnish the trustees, whether or not any demand therefor has been made, with—

5 (a) particulars (within twenty-one days after the creation of any charge requiring registration under this Act) of such charge, and when the amount to be advanced is indeterminate
10 particulars (within seven days after the advance) of the amount or amounts in fact advanced :

15 Provided that when any such advances are merged in a current account with bankers or trade creditors it shall be sufficient for
20 particulars of the net amount outstanding in respect of any such advances to be furnished every three months ;

(b) particulars (within twenty-one days after
25 creation of the charge) of any charge created by the company, other than a charge created in the ordinary course of the business of the company.

(5) The court may on the application of
30 the trustees order a meeting (to be held and conducted in such manner as the court thinks fit, under the chairmanship of a trustee or such other person as the meeting appoints) of the holders of debentures of any class to be called to consider any matters in which they are concerned and advise the trustees thereon and may give such ancillary or consequential directions as it thinks fit.

(6) The trustees shall exercise diligence in
35 ascertaining whether or not the assets of the company which constitute or may constitute the security for the debentures are sufficient or are likely to become sufficient to discharge the principal debt and any interest thereon.

(7)

Companies (Amendment).

(7) Notwithstanding anything in any debenture or trust deed the security for any debentures which are irredeemable or redeemable only on the happening of a contingency or at an uncertain time shall be enforceable forthwith or at such time as the court directs if, on the application of a debenture holder (where there is no trustee for debenture holders) or the trustees, the court is satisfied that—

Enforce-
ability
of certain
debentures.

(a) at the time of the issue of the debentures the assets of the company which constituted or were intended to constitute the security therefor were sufficient or likely to become sufficient to discharge the principal debt and any interest thereon;

(b) the security, if realised under the circumstances existing at the time of the application, would be likely to bring not more than sixty per centum of the principal sum of moneys outstanding (regard being had to all prior charges, if any); and

(c) the assets covered by the security, on a fair valuation on the basis of a going concern, are worth less than the said principal sum and the company is not earning the interest payable on the principal sum or (where no definite rate of interest is payable) interest thereon at such rate as the court considers would be a fair rate to expect from a similar investment, after allowing a reasonable amount for depreciation,

but this subsection shall not affect any power to vary rights or accept any compromise or arrangement created by the terms of the debentures or under a compromise or arrangement between the company and creditors.

(8)

Companies (Amendment).

5 (8) The appointment of a company or the Public Trustee as sole trustee for debenture holders shall be sufficient compliance with the provisions of this section and the word "trustees" in this section includes a company or the Public Trustee so appointed as sole trustee for the debenture holders.

10 (9) If a company makes default in complying with any requirement of this section, the company, and every officer of the company who is in default, shall be guilty of an offence. Penalty for default.

Penalty : Fifty pounds for every day during which the default continues.

(f) by inserting next after section one hundred and seventy-three the following new Division :— New Division 6A.

15 DIVISION 6A.—*Other Interests.*

173A. In this Division unless the context or subject matter otherwise indicates or requires— OR Restriction in offer, &c., of certain interests in undertakings, &c. cf. No. 6455 Vic. s. 63 (1).

20 "Interest" means any right to participate, or interest whether enforceable or not and whether actual prospective or contingent,

(a) in any profits assets or realisation of any financial or business undertaking or scheme whether in the State or elsewhere;

25 (b) in any common enterprise whether in the State or elsewhere in which the holder of the right or interest is led to expect profits rent or interest from the efforts of the promoter or a third party; or

30 (c)

Companies (Amendment).

5 (c) in any investment contract—
whether or not the right or interest is
evidenced by a formal document or by an
interest in any physical asset but does not
include—

10 (i) any share in or debenture of a com-
pany or co-operative society registered
under the Co-operation, Community
Settlement, and Credit Act, 1923, as
amended by subsequent Acts;

(ii) any interest in or arising out of a
policy of life assurance;

(iii) any interest in a partnership agree-
ment; or

15 (iv) any prescribed right or interest.

20 “Investment contract” means any contract scheme
or arrangement which in substance and
irrespective of the form thereof involves the
investment of money in or under such circum-
stances that the investor acquires or may
acquire an interest in or right in respect of
property which under or in accordance with
the terms of investment will or may at the
option of the investor be used or employed
25 in common with any other interest in or right
in respect of property acquired in or under
like circumstances.

30 173B. No person except a public company or an
agent of a public company authorised in that behalf
under the seal of the company shall issue or offer
to the public for subscription or purchase or shall
invite the public to subscribe for or purchase any
interest.

Only
public
company
may issue
or offer
interest.
cf. No. 6455
Vic. s. 63
(2).

35 173c. (1) Before a company (whether itself or
by an agent so authorised) issues or offers to the
public for subscription or purchase or invites the
public to subscribe for or purchase any interest the
company

Company
to issue
statement.
cf. *Ibid.*
s. 63 (3).

Companies (Amendment).

5 company shall issue or cause to be issued a state-
ment in writing in connection therewith which
statement shall for all purposes be deemed to be a
prospectus issued by a company, and all provisions
of this Act and rules of law relating to prospectuses
or to the offering or to an intended offering of shares
for subscription or purchase to the public shall with
such adaptations as are necessary apply and have
effect accordingly as if such interest were shares
10 offered or intended to be offered to the public for
subscription or purchase and as if persons accepting
any offer or invitation in respect of or subscribing
for or purchasing any such interest were subscribers
for such shares.

15 (2) Such statement shall, in lieu of the
matters and reports specified in Schedule Eight to
this Act, set out the matters and reports specified in
Schedule Fourteen to this Act and where such
interest consists of anything other than rights or
20 interests in marketable securities of companies other
than those of the company issuing the statement, the
statement shall set out in addition such of the matters
and reports specified in Schedule Eight to this Act
as are required by the Registrar-General :

25 Provided that the Registrar-General may excuse
any such company from including in any such
statement such of the matters specified in Schedule
Fourteen to this Act as he thinks fit.

30 Except where any such interest consists only of
rights or interests in marketable securities of
companies other than those of the company issuing
the statement and the statement sets out the matters
and reports specified in Schedule Fourteen to this
Act, no such statement shall be issued unless the
35 Registrar-General has informed the company, by
notice in writing, that—

40 (a) he requires the statement to contain such of
the matters and reports specified in Schedule
Eight to this Act as are specified in the
notice; or

(b)

Companies (Amendment).

(b) he does not require the statement to contain any such matters or reports.

5 173D. A person shall not issue or offer to the public for subscription or purchase or invite the public to subscribe for or purchase any interest unless the person has in relation to the interest made provision in a deed (which deed and any amendment thereof has been approved for the purposes of this Division by the Registrar-General) for the appointment of a person or company as trustee for or as representative of the holders of such interests and for other matters as prescribed by this Division.

10

Company to make provision in deed for appointment of trustee. cf. No. 6455 Vic. s. 63 (4).

15 173E. (1) No appointment of such a trustee or representative shall be made for the purposes of this Division without the approval of the Minister.

Appointment to be approved by Minister. cf. *Ibid.* s. 63 (5).

20 (2) The first appointment of any such trustee or representative and all appointments to fill vacancies in the office shall be made with reasonable despatch, in default of which the person shall be deemed to have contravened the provisions of this Division.

25 (3) No such trustee or representative shall be removable except by the Minister, or by resignation or death, or by a majority decision of the holders of the interests to which the deed relates.

(4) Every such trustee or representative shall exercise all due diligence and vigilance in watching the rights and interests of holders of interests to which the deed relates.

30 (5) Every such trustee or representative shall keep proper books of account in relation to the interests to which the deed relates and shall annually post a statement of such accounts with the report of an auditor thereon to each holder of any such interests.

35

173F.

Companies (Amendment).

173F. (1) Every deed referred to in section 173D of this Act shall contain covenants by the company, or (if it does not expressly contain such covenants) shall be deemed to contain them, to the following effect, namely :—

Deed to contain or to be deemed to contain certain covenants.

cf. No. 6455
Vic. s. 63
(6).

- 5
- (a) that the company will use its best endeavours to carry on and conduct the business of the company in a proper and efficient manner and to ensure that any undertaking, scheme or enterprise to which the deed relates is carried on and conducted in a proper and efficient manner ;
- 10
- (b) that to the same extent as if the trustee or representative were a director of the company the company will—
- 15
- (i) make available to the trustee or representative, or to any auditor appointed by him, for inspection the whole of the books of the company whether kept at the registered office or elsewhere ; and
- 20
- (ii) give to the trustee or representative such oral or written information as he requires with respect to all matters relating to the undertaking, scheme or enterprise of the company or any property (whether acquired before or after the date of the deed) of the company or otherwise relating to the affairs thereof ;
- 25
- (c) that the company will make available or ensure that there is made available to the trustee or representative such details as he requires with respect to all matters relating to the undertaking, scheme or enterprise to which the deed relates ;
- 30
- (d) that the company will not exercise the right to vote in respect of any shares held by the trustee or representative at any election for directors of a company whose shares are so held
- 35
- 40

Companies (Amendment).

held without the consent of the holders of the interests concerned given at a meeting of those holders summoned in the same manner as a meeting may be summoned under paragraph (e) of this subsection for the purpose of authorising the exercise of the right in a particular case; and

(e) that the company will from time to time on the application, delivered to the company at its registered office, of not less than one-tenth in number of the holders of interests to which the deed relates—

(i) by giving notice at least seven days before the proposed meeting by letter through the post addressed to each of the holders of such interests at his last known address; and

(ii) by giving notice at least fourteen days before the proposed meeting by advertisement in a daily newspaper circulating generally throughout the State addressed to the holders of all such interests,

summon a meeting of such holders for the purpose of laying before the meeting the accounts and balance-sheet which were laid before the last preceding ordinary general meeting of the company or the last audited statement of accounts of the trustee or representative, and of the meeting giving to the trustee or representative such directions as the meeting thinks proper.

(2) Every such meeting shall be held at the time and place specified in the notice and advertisement under the chairmanship of the trustee or representative or a nominee of the trustee or representative approved by the Minister or of such other person as is appointed in that behalf by the holders of such interests present at the meeting, and shall

Companies (Amendment).

shall be conducted in accordance with the provisions of the deed or, insofar as the deed makes no provision, as directed by the chairman of the meeting.

(3) Every such deed and any amendment thereof shall be lodged by the company in the office of the Registrar-General within fourteen days after the execution of such deed or amendment.

173G. (1) Every company which either before or after the commencement of the Companies (Amendment) Act, 1960, has issued any interest shall—

Company to lodge return with Registrar-General.

(a) once at least in every calendar year, not more than sixty days after the date of the first or only ordinary general meeting of the company in that year, lodge with the Registrar-General—

(i) a return containing a list of all persons who on the day of the first or only ordinary general meeting of the year are holders of such interests showing their names and addresses and the extent of their holdings of such interests and if any such interest consists of a specific interest in any real or personal property a description of the property and its location; and

(ii) a copy of the lists and statements required by paragraph (b) of this subsection and by subsection two of this section, to be posted to the holders of such interests; and

(b) not less than seven days before the first or only ordinary general meeting of the year post to any holder of an interest who has requested the company to supply him with the documents hereinafter referred to a copy of—

(i) its balance-sheet;

(ii) its profit and loss account;

(iii)

Companies (Amendment).

- (iii) its directors' report;
- (iv) a summary of all purchases and sales of marketable securities by the company affecting such holders during the period to which the accounts relate;
- (v) a statement of the total amount of brokerage affecting such holders paid or charged by the company during the period to which the accounts relate and the proportion thereof paid to any stock or share broker who or any employee or nominee of whom is an officer of the company and the proportion retained by the company; and
- (vi) a list of all the investments of the company affecting such holders as at the date of the balance-sheet showing the names and quantities of such investments.

(2) There shall accompany every balance-sheet posted to a holder of an interest—

cf. Tas. Act No. 29, 1959, s. 62 (14).

- (a) a list of all marketable securities affecting such holders held by the trustee or representative appointed under section 173D of this Act as at the date to which the accounts are made up, showing the quantities of those securities and the basis on which they have been valued;
- (b) a list of all purchases and sales of marketable securities affecting such holders made by the trustee or representative, or by the company on behalf of the trustee or representative, during the period to which the accounts relate;

Companies (Amendment).

5 (c) a list of all the investments affecting such holders made by the trustee or representative, or by the company on behalf of the trustee or representative, showing the names and quantities of those investments; and

(d) such other statements and particulars (if any) affecting such holders as may be prescribed;

10 each of which shall be signed by the persons who signed the balance-sheet.

(3) Subject to the regulations any company which is required pursuant to this section to lodge with the Registrar-General a return of holders and which has its registered office at a place within three miles of the office of the Registrar-General need not lodge such return with the Registrar-General if such return is available without fee for inspection and copying by any person at the registered office of the company during the hours in which the registered office is accessible to the public. Exemption of certain companies.

173H. A person shall not be relieved from any liability to any holder of an interest by reason of any contravention of or failure to comply with any of the provisions of this Division. Default not to relieve company or person from liability.

25 173I. Any person who and any company which contravenes or fails to comply with any of the provisions of this Division or of any covenant of any deed under this Division and any person who is a director of such company shall be guilty of an offence. Penalty.

30 Penalty: Five hundred pounds or imprisonment for twelve months.

35 173J. This Division shall not apply in the case of the sale of any interest by a personal representative liquidator receiver or trustee in bankruptcy in the normal course of realisation of assets. Exceptions.

(g)

Companies (Amendment).

(g) (i) by inserting at the end of the proviso to sub-
 section two of section three hundred and
 forty-three the following word and new para-
 graph :—

Sec. 343.
 (Restrictions
 on offering
 of shares
 for
 subscription
 or
 purchase.)

5

; or

(d) where the offer relates to—

10

(i) an interest within the meaning of
 section 173A of this Act and is
 accompanied by a statement in
 writing as required by section
 173C; or

(ii) deposits or loans to a company of
 the kind referred to in subsection
 two of section 137A of this Act.

15

(ii) by inserting in subsection eight of the same
 section next before the definition of “Shares”
 the following new definition :—

“Purchase” includes barter or exchange.

20

(iii) by inserting in the same subsection after the
 word “damages,” the words “and also includes
 interests within the meaning of section 173A of
 this Act.”

(iv) by inserting at the end of the same subsection
 the following new paragraph :—

25

In subsection two of this section a reference
 to “an offer in writing” includes an offer by
 way of broadcasting, television or cinemato-
 graph and where an offer is made by way of
 broadcasting, television or cinematograph, the
 statement accompanying it referred to in that
 subsection shall be made by the same means as
 the offer is made instead of in writing.

30

(h) by inserting in Schedule Twelve next after the matter Sch. Twelve.
 relating to “Sec. 168.” the words :—

35

Sec. 173F.—As to lodging a deed or any amend-
 ment thereof.

(i)

Companies (Amendment).

(i) by inserting in Part II of Schedule Thirteen next Sch. after the matter relating to "Sec. 169 (5)." the Thirteen. words and symbols :—

5 Sec. 172A (3).—Application for leave to act as trustee.

Sec. 172A (5).—Application to call meeting.

Sec. 172A (7).—Application to enforce debentures.

(j) by inserting next after Schedule Thirteen the follow- New Sch. ing new Schedule :— Fourteen.

10 SCHEDULE FOURTEEN. Sec. 173c.
The Companies Act, 1936.

(a) Matters and reports required to be included in statement made pursuant to section 173c (2).

- 1. The date of the statement.
- 15 2. The date of and parties to the deed referred to in section 173D of this Act.
- 3. The date of and parties to any deed or instrument by which any of the provisions of the firstmentioned deed has been amended or abrogated.
- 20 4. The name of the trustee or representative under any such deed and the address of the trustee's or representative's registered office.
- 25 5. A summary of the provisions of the deed regulating the retirement, removal and replacement of the trustee or representative.
- 6. The name of the company referred to in section 173c of this Act (hereinafter called "the management company") and the address of its registered office.
- 30 7. A summary of the provisions of the deed regulating the retirement, removal and replacement of the management company.
- 8. The name and address of the auditor of the trust declared by the deed.
- 35 9. A summary of the provisions of the deed regulating the appointment, retirement, removal and replacement of such auditor.

Companies (Amendment).

10. The period of the trust declared by the deed and a summary of the provisions of the deed for the winding up of the trust on its termination.
- 5 11. The nature of the unit or sub-unit of interests issued or offered to the public for subscription or purchase and the description and number of the shares to which such interests attach.
- 10 12. The method of calculation provided by the deed of the greatest price at which the management company may sell any such unit or sub-unit of interest.
- 15 13. What obligations are imposed under the deed upon the management company to purchase from holders thereof the unit or sub-units of interests for which they have subscribed or which they have purchased, and a statement of the method provided by the deed for the calculation of the purchase price of such units or sub-units.
- 20 14. A summary of any provisions of the deed whereby investments made thereunder may be varied.
- 25 15. Full information regarding the remuneration of the trustee and the management company respectively and the manner in which under the provisions of the deed such remuneration is provided for and what (if any) charges are made in respect of such remuneration upon the sale of or subscription for a unit or sub-unit of interests under the deed and upon the distribution of income and capital thereunder.
- 30 16. Whether units or sub-units of interests are transferable by the holders thereof and, if so, a summary of the provisions of the deed regulating such transfer.
- 35 17. A summary of the provisions of the deed regulating the distribution to the holders of units or sub-units of interests of the income of the trust.
- 40 18. If any reference is made to the yield of income obtained or to be obtained by the holders of units or sub-units of interests, a statement as to whether and to what extent anything other than cash receipts by way of dividends, interest or bonuses has been taken into account in calculating the yield.
- 45 19. A summary of the provisions of the deed regulating the convening of meetings of holders of units or sub-units of interests.
20. The names and the date of commencement of operation of any other unit trusts conducted by the management company during the five years immediately preceding the date of the statement.

Companies (Amendment).

5 21. A statement that certificates shall be allotted by the trustee to purchasers of or subscribers for units or sub-units of interests purchased or subscribed for pursuant to this statement not more than six months from the date appearing in paragraph 1 hereof.

(b) Reports to be set out in statement.

22. A report by an accountant registered pursuant to the Public Accountants Registration Act, 1945-1958, who shall be named, setting out—

10 (1) in respect of the interests referred to in the deed—

15 (a) a statement setting out the number of distributions of income in respect of each unit or sub-unit of interests during the five years immediately preceding the date of the statement, the amount of each such distribution and to what extent each such distribution consisted of anything other than dividends, interests or bonuses and if so the nature and amount of such other components;

20 (b) a statement setting out the selling price and the purchase price respectively of such units or sub-units of interests on each of the dates upon which each distribution of income was made by the trustee;

25 (c) a statement setting out the selling price and the purchase price respectively of such units or sub-units of interests on the date immediately preceding the date of the statement;

30 (2) in respect of units or sub-units of interests referred to in the deeds relating to each of the other trusts (if any) conducted by the management company during the five years immediately preceding the date of the statement, similar information to that required in respect of subparagraph (1) hereof.

35 23. If in the case of a company which has been carrying on business, or of a business which has been carried on, for less than five years, the accounts of the company or business have only been made up in respect of four years, three years, two years, or one year, this Schedule shall have effect as if references to four years, three years, two years, or one year, as the case may be, were substituted for references to five years.

40

Company Statement

1. A statement of the company with its subsidiaries and branches in various parts of the world, including the United States, Canada, Mexico, Central and South America, Europe, Africa, Asia, and Australia.

2. A statement of the company's financial position and results of operations for the year ended December 31, 1991.

The present day of the world is a day of
struggle and of the struggle of the people
of the world for the sake of the world.

It is a day of the struggle of the people
of the world for the sake of the world.
It is a day of the struggle of the people
of the world for the sake of the world.

No. , 1960.

A BILL

To make provisions with respect to invitations to the public to deposit money with or to lend money to companies; to impose restrictions on the offer of certain interests in certain undertakings, schemes, and enterprises; for these and other purposes to amend the Companies Act, 1936, as amended by subsequent Acts; and for purposes connected therewith.

[MR. MANNIX;—24 March, 1960.]

BE

Companies (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. (1) This Act may be cited as the "Companies (Amendment) Act, 1960". Short title, citation and commencement.

(2) The Companies Act, 1936, as amended by subsequent Acts and by this Act, may be cited as the Companies Act, 1936-1960.

(3) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. The Companies Act, 1936, as amended by subsequent Acts, is amended— Amendment of Act No. 33, 1936.

(a) (i) by inserting next after the matter relating to Division 6 of Part VIII in section two the words and figures "DIVISION 6A.—*Other Interests*—ss. 173A-173J."; Sec. 2. (Division into Parts.)

20 (ii) by omitting from the matter relating to the Schedules in the same section the figures "1-13" and by inserting in lieu thereof the figures "1-14";

25 (b) (i) by inserting in subsection one of section six next after the definition of "Manager" the following new definition :— Sec. 6. (Interpretation.)

30 "Marketable securities" means any debentures funds stocks shares or bonds of any Government or of any local government authority or of any corporation or society and includes any right or option in respect of shares in any corporation. (ii)

Companies (Amendment).

(ii) by omitting from the same subsection the definition of "Prospectus" and by inserting in lieu thereof the following definition :—

5 "Prospectus" means any prospectus notice
circular advertisement or other invitation
inviting applications or offers from the
public to subscribe for or purchase or
offering to the public for subscription or
purchase any shares in or debentures of
10 or any units of shares in or units of
debentures of a company or foreign
company or proposed company or pro-
posed foreign company.

15 (c) by inserting next after section one hundred and
thirty-seven the following new section :— New sec.
137A.

20 137A. (1) No invitation to the public to deposit
money with or to lend money to any company,
whether incorporated in the State or elsewhere, shall
be made unless a debenture is intended to be issued
in respect of every deposit or loan so made and a
debenture shall be issued in respect of every deposit
or loan so made. As to
invitations
to the
public to
deposit
money with
companies.
cf. No. 6455
Vic. s. 36.

25 (2) A company shall not accept from any
person a deposit or loan of money unless it is
accompanied by a form of application signed by
such person and such application was issued to such
person with a prospectus which complies in all
respects with the requirements of section one
hundred and thirty-seven of this Act.

30 (3) Nothing in this section shall require a
debenture or prospectus to be issued in connection
with any invitation to the public to deposit money
with a banking company.

35 (4) Where an invitation is made to the
public to deposit money with or lend money to any
company and such deposit or loan is not to be
secured by a charge over all or any of the company's
assets

Companies (Amendment).

5 assets the invitation shall state that the document to be issued acknowledging the deposit or loan of money made pursuant to the invitation is to be an unsecured note or an unsecured deposit note, as the case may be, and shall not state that such document is to be a debenture.

10 (5) Where any document is issued by a company (being one of a series of such documents) which either expressly or by implication acknowledges the indebtedness of the company in respect of money borrowed by it but is not secured by a charge over all or any of the company's assets the document shall be described on the face of it as an unsecured note or as an unsecured deposit note, as the case may be, and shall not be described on its face as a debenture.

15 (6) Every person who knowingly contravenes or permits or authorises the contravention of any of the provisions of this section shall be guilty of an offence.

20 Penalty : One thousand pounds.

(d) by omitting section one hundred and thirty-eight and by inserting in lieu thereof the following section : — Subst. sec. 138.

25 138. (1) Every advertisement—
(a) offering, or calling attention to an offer or intended offer of, shares in or debentures of a company to the public for subscription or purchase, or
(b) writing or calling attention to an invitation or intended invitation to deposit money with or lend money to a company,
30

Certain advertisements deemed to be prospectuses. cf. No. 6455 Vic. s. 37 (4).

35 shall whether the company is incorporated in the State or elsewhere be deemed to be a prospectus issued by the person responsible for publishing or disseminating the advertisement (and all enactments and rules of law as to the contents of prospectuses and

Companies (Amendment).

and as to liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses shall apply and have effect accordingly) unless it contains no more information than the following :—

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- (i) the number and description of the shares or debentures concerned or, as the case may be, particulars of the deposits with or loans to the company invited or intended to be invited by the company ;
- (ii) the name and date of registration of the company and its paid up share capital ;
- (iii) the general nature of the main business or proposed main business of the company ;
- (iv) the names of the directors or proposed directors and of the brokers or underwriters to the issue ;
- (v) the place at which copies of the full prospectus and forms of application for the shares or debentures may be obtained,

and states that applications for shares or debentures will proceed only on one of the forms of application referred to and attached to a printed copy of the prospectus.

(2) No statement that, or to the effect that, the advertisement is not a prospectus shall prevent the operation of this section.

(3) This section shall apply to advertisements published or disseminated in the State by newspaper broadcasting television cinematograph or any other means whatsoever.

(4) Nothing in this section shall require a prospectus to be issued in connection with any invitation or intended invitation to the public to deposit money with a banking company.

(e)

Companies (Amendment).

(e) by inserting next after section one hundred and seventy-two the following new section :— New sec. 172A.

5 172A. (1) Every company, whether incorporated in the State or elsewhere, issuing debentures to the public for subscription in the State shall (except where a debenture is given by one instrument to not more than twenty-five persons without any right to subdivide their interests) make provision in the debentures or in a trust deed for the appointment of not less than two persons (the appointment of one or more but not all of whom may if the debentures or deed so provide be reserved to be made by the holders of the debentures) as trustees for the holders of the debentures. Trustees for debenture holders.
cf. No. 6455
Vic. s. 62.

15 (2) Such debentures or deed shall contain covenants by the company or, if it does not expressly contain such covenants, shall be deemed to contain covenants, to the following effect :—

20 (a) that the company will use its best endeavours to carry on and conduct its business in a proper and efficient manner ;

25 (b) that, to the same extent as if the trustees for the holders of the debentures or any auditor appointed by the trustees were directors of the company, it will—

 (i) make available for their inspection the whole of the books of account of the company ; and

30 (ii) give to them such information as they require with respect to all matters relating to the books of account of the company ; and

(c)

Companies (Amendment).

- 5 (c) that the company will, on the application of the holders of debentures of any class holding not less than one-fifth in nominal value of the issued debentures of that class delivered to its registered office, by giving notice—
- 10 (i) to each of the holders of the debentures (other than debentures payable to bearer) of that class at his address as specified in the register of debentures; and
- 15 (ii) by advertisement in a daily newspaper circulating generally throughout the State addressed to all holders of debentures of that class,
- 20 summon a meeting to consider the accounts and balance-sheet which were laid before the last preceding ordinary general meeting of the company and give to the trustees directions in relation to the exercise of their powers, such meeting to be held at a time and place specified in the notice and advertisement under the chairmanship of a trustee or such other person as is appointed in that behalf by the holders of debentures present
- 25 at the meeting.
- (3) Without the leave of the court—
- 30 (a) a director shareholder solicitor or auditor of the company or of any other company which has entered into any guarantee in respect of the principal debt or interest thereon or itself holds beneficially shares of the firstmentioned company; or
- 35 (b) a company which directly or indirectly controls or is controlled by the firstmentioned company,
- shall not be appointed or act as a trustee.

(4)

Companies (Amendment).

(4) The company shall in writing furnish the trustees, whether or not any demand therefor has been made, with—

5 (a) particulars (within twenty-one days after the creation of any charge requiring registration under this Act) of such charge, and when the amount to be advanced is indeterminate
10 particulars (within seven days after the advance) of the amount or amounts in fact advanced :

15 Provided that when any such advances are merged in a current account with bankers or trade creditors it shall be sufficient for particulars of the net amount outstanding in respect of any such advances to be furnished every three months;

20 (b) particulars (within twenty-one days after creation of the charge) of any charge created by the company, other than a charge created in the ordinary course of the business of the company.

25 (5) The court may on the application of the trustees order a meeting (to be held and conducted in such manner as the court thinks fit, under the chairmanship of a trustee or such other person as the meeting appoints) of the holders of debentures of any class to be called to consider any matters in which they are concerned and advise the trustees thereon and may give such ancillary or consequential
30 directions as it thinks fit.

35 (6) The trustees shall exercise diligence in ascertaining whether or not the assets of the company which constitute or may constitute the security for the debentures are sufficient or are likely to become sufficient to discharge the principal debt and any interest thereon.

(7)

Companies (Amendment).

(7) Notwithstanding anything in any debenture or trust deed the security for any debentures which are irredeemable or redeemable only on the happening of a contingency or at an uncertain time shall be enforceable forthwith or at such time as the court directs if, on the application of a debenture holder (where there is no trustee for debenture holders) or the trustees, the court is satisfied that—

Enforce-ability of certain debentures.

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(a) at the time of the issue of the debentures the assets of the company which constituted or were intended to constitute the security therefor were sufficient or likely to become sufficient to discharge the principal debt and any interest thereon;

(b) the security, if realised under the circumstances existing at the time of the application, would be likely to bring not more than sixty per centum of the principal sum of moneys outstanding (regard being had to all prior charges, if any); and

(c) the assets covered by the security, on a fair valuation on the basis of a going concern, are worth less than the said principal sum and the company is not earning the interest payable on the principal sum or (where no definite rate of interest is payable) interest thereon at such rate as the court considers would be a fair rate to expect from a similar investment, after allowing a reasonable amount for depreciation,

but this subsection shall not affect any power to vary rights or accept any compromise or arrangement created by the terms of the debentures or under a compromise or arrangement between the company and creditors.

(8)

Companies (Amendment).

5 (8) The appointment of a company or the Public Trustee as sole trustee for debenture holders shall be sufficient compliance with the provisions of this section and the word "trustees" in this section includes a company or the Public Trustee so appointed as sole trustee for the debenture holders.

10 (9) If a company makes default in com- Penalty for
plying with any requirement of this section, the default.
company, and every officer of the company who is in
default, shall be guilty of an offence.

Penalty : Fifty pounds for every day during which
the default continues.

(f) by inserting next after section one hundred and New
seventy-three the following new Division : — Division 6A.

15 DIVISION 6A.—*Other Interests.*

20 173A. In this Division, unless the context or subject
matter otherwise indicates or requires, "Interest" Restriction
means any right to participate or interest, whether on offer,
enforceable or not and whether actual prospective &c., of
or contingent, interests in
undertakings, &c.
cf. No. 6455
Vic. s. 63
(1).

(a) in any profits assets or realisation of any
financial or business undertaking or scheme
whether in the State or elsewhere; or

25 (b) in any common enterprise whether in the
State or elsewhere in which the holder of the
right or interest is led to expect profits from
the efforts of the promoter or a third party
whether or not the right or interest is
30 evidenced by a formal document or from a
specific interest in any real or personal
property employed in the enterprise,

but

Companies (Amendment).

but does not include—

- 5 (i) any share in or debenture of a company or
co-operative society registered under the
Co-operation, Community Settlement, and
Credit Act, 1923, as amended by subsequent
Acts; or
- (ii) any interest in or arising out of a policy of
life assurance; or
- (iii) any interest in a partnership agreement; or
- 10 (iv) any prescribed right or interest.

15 173B. No person except a public company or an
agent of a public company authorised in that behalf
under the seal of the company shall issue or offer
to the public for subscription or purchase or shall
invite the public to subscribe for or purchase any
interest.

Only public company may issue or offer interest.
cf. No. 6455
Vic. s. 63
(2).

20 173C. (1) Before a company (whether itself or
by an agent so authorised) issues or offers to the
public for subscription or purchase or invites the
public to subscribe for or purchase any interest the
company shall issue or cause to be issued a state-
ment in writing in connection therewith which
statement shall for all purposes be deemed to be a
prospectus issued by a company, and all provisions
25 of this Act and rules of law relating to prospectuses
or to the offering or to an intended offering of shares
for subscription or purchase to the public shall with
such adaptations as are necessary apply and have
effect accordingly as if such interest were shares
30 offered or intended to be offered to the public for
subscription or purchase and as if persons accepting
any offer or invitation in respect of or subscribing
for or purchasing any such interest were subscribers
for such shares.

Company to issue statement.
cf. *Ibid.*
s. 63 (3).

(2)

Companies (Amendment).

5 (2) Such statement shall, in lieu of the matters and reports specified in Schedule Eight to this Act, set out the matters and reports specified in Schedule Fourteen to this Act and where such interest consists of anything other than rights or interests in marketable securities of companies other than those of the company issuing the statement, the statement shall set out in addition such of the matters and reports specified in Schedule Eight to this Act as are required by the Registrar-General :

10 Provided that the Registrar-General may excuse any such company from including in any such statement such of the matters specified in Schedule Fourteen to this Act as he thinks fit.

15 Except where any such interest consists only of rights or interests in marketable securities of companies other than those of the company issuing the statement and the statement sets out the matters and reports specified in Schedule Fourteen to this Act, no such statement shall be issued unless the Registrar-General has informed the company, by notice in writing, that—

25 (a) he requires the statement to contain such of the matters and reports specified in Schedule Eight to this Act as are specified in the notice; or

(b) he does not require the statement to contain any such matters or reports.

30 173D. A person shall not issue or offer to the public for subscription or purchase or invite the public to subscribe for or purchase any interest unless the person has in relation to the interest made provision in a deed (which deed and any amendment thereof has been approved for the purposes of this Division by the Registrar-General) for the appointment of a person or company as trustee for or as representative of the holders of such interests and for other matters as prescribed by this Division.

Company to make provision in deed for appointment of trustee. cf. No. 6455 Vic. s. 63 (4).

173E.

Companies (Amendment).

173E. (1) No appointment of such a trustee or representative shall be made for the purposes of this Division without the approval of the Minister.

Appointment to be approved by Minister.
cf. No. 6455
Vic. s. 63
(5).

5 (2) The first appointment of any such trustee or representative and all appointments to fill vacancies in the office shall be made with reasonable despatch, in default of which the person shall be deemed to have contravened the provisions of this Division.

10 (3) No such trustee or representative shall be removable except by the Minister, or by resignation or death, or by a majority decision of the holders of the interests to which the deed relates.

15 (4) Every such trustee or representative shall exercise all due diligence and vigilance in watching the rights and interests of holders of interests to which the deed relates.

20 (5) Every such trustee or representative shall keep proper books of account in relation to the interests to which the deed relates and shall annually post a statement of such accounts with the report of an auditor thereon to each holder of any such interests.

25 173F. (1) Every deed referred to in section 173D of this Act shall contain covenants by the company, or (if it does not expressly contain such covenants) shall be deemed to contain them, to the following effect, namely :—

Deed to contain or to be deemed to contain certain covenants.
cf. *Ibid.* s. 63 (6).

30 (a) that the company will use its best endeavours to carry on and conduct the business of the company in a proper and efficient manner and to ensure that any undertaking, scheme or enterprise to which the deed relates is carried on and conducted in a proper and efficient manner ;
35

(b)

Companies (Amendment).

- (b) that to the same extent as if the trustee or representative were a director of the company the company will—
- 5 (i) make available to the trustee or representative, or to any auditor appointed by him, for inspection the whole of the books of the company whether kept at the registered office or elsewhere; and
- 10 (ii) give to the trustee or representative such oral or written information as he requires with respect to all matters relating to the undertaking, scheme or enterprise of the company or any property
- 15 (whether acquired before or after the date of the deed) of the company or otherwise relating to the affairs thereof;
- 20 (c) that the company will make available or ensure that there is made available to the trustee or representative such details as he requires with respect to all matters relating to the undertaking, scheme or enterprise to which the deed relates;
- 25 (d) that the company will not exercise the right to vote in respect of any shares held by the trustee or representative at any election for directors of a company whose shares are so held without the consent of the holders of the interests concerned given at a meeting of those holders summoned in the same manner
- 30 as a meeting may be summoned under paragraph (e) of this subsection for the purpose of authorising the exercise of the right in a particular case; and
- 35 (e)

Companies (Amendment).

5 (e) that the company will from time to time on the application, delivered to the company at its registered office, of not less than one-tenth in number of the holders of interests to which the deed relates—

10 (i) by giving notice at least seven days before the proposed meeting by letter through the post addressed to each of the holders of such interests at his last known address; and

15 (ii) by giving notice at least fourteen days before the proposed meeting by advertisement in a daily newspaper circulating generally throughout the State addressed to the holders of all such interests,

20 summon a meeting of such holders for the purpose of laying before the meeting the accounts and balance-sheet which were laid before the last preceding ordinary general meeting of the company or the last audited statement of accounts of the trustee or representative, and of the meeting giving to the trustee or representative such directions as
25 the meeting thinks proper.

30 (2) Every such meeting shall be held at the time and place specified in the notice and advertisement under the chairmanship of the trustee or representative or a nominee of the trustee or representative approved by the Minister or of such other person as is appointed in that behalf by the holders of such interests present at the meeting, and shall be conducted in accordance with the provisions of the deed or, insofar as the deed makes no provision, as directed by the chairman of the meeting.

(3)

Companies (Amendment).

- (iii) its directors' report;
- 5 (iv) a summary of all purchases and sales of marketable securities by the company affecting such holders during the period to which the accounts relate;
- 10 (v) a statement of the total amount of brokerage affecting such holders paid or charged by the company during the period to which the accounts relate and the proportion thereof paid to any stock or share broker who or any employee or nominee of whom is an officer of the company and the proportion retained by the company; and
- 15 (vi) a list of all the investments of the company affecting such holders as at the date of the balance-sheet showing the names and quantities of such investments.

20 (2) There shall accompany every balance-sheet posted to a holder of an interest— cf. Tas. Act No. 29, 1959, s. 62 (14).

- 25 (a) a list of all marketable securities held by the trustee or representative appointed under section 173D of this Act as at the date to which the accounts are made up, showing the quantities of those securities and the basis on which they have been valued;
- 30 (b) a list of all purchases and sales of marketable securities made by the trustee or representative, or by the company on behalf of the trustee or representative, during the period to which the accounts relate;

Companies (Amendment).

5 (c) a list of all the investments made by the trustee or representative, or by the company on behalf of the trustee or representative, showing the names and quantities of those investments; and

(d) such other statements and particulars (if any) as may be prescribed; each of which shall be signed by the persons who signed the balance-sheet.

10 (3) Subject to the regulations any company which is required pursuant to this section to lodge with the Registrar-General a return of holders and which has its registered office at a place within three miles of the office of the Registrar-General need not lodge such return with the Registrar-General if such return is available without fee for inspection and copying by any person at the registered office of the company during the hours in which the registered office is accessible to the public. Exemption of certain companies.

20 173H. A person shall not be relieved from any liability to any holder of an interest by reason of any contravention of or failure to comply with any of the provisions of this Division. Default not to relieve company or person from liability.

25 173I. Any person who and any company which contravenes or fails to comply with any of the provisions of this Division or of any covenant of any deed under this Division and any person who is a director of such company shall be guilty of an offence. Penalty.

30 Penalty: Five hundred pounds or imprisonment for twelve months.

35 173J. This Division shall not apply in the case of the sale of any interest by a personal representative liquidator receiver or trustee in bankruptcy in the normal course of realisation of assets. Exceptions.

(g)

Companies (Amendment).

(g) (i) by inserting at the end of the proviso to sub-
section two of section three hundred and
forty-three the following word and new para-
graph :—

Sec. 343.
(Restrictions
on offering
of shares
for
subscription
or
purchase.)

5 ; or

(d) where the offer relates to—

10 (i) an interest within the meaning of
section 173A of this Act and is
accompanied by a statement in
writing as required by section
173C; or

(ii) deposits or loans to a company of
the kind referred to in subsection
two of section 137A of this Act.

15 (ii) by inserting in subsection eight of the same
section next before the definition of "Shares"
the following new definition :—

"Purchase" includes barter.

20 (iii) by inserting at the end of the same section the
following new paragraph :—

25 In subsection two of this section a reference
to "an offer in writing" includes an offer by
way of broadcasting, television or cinematograph and where an offer is made by way of
broadcasting, television or cinematograph, the
statement accompanying it referred to in that
subsection shall be made by the same means as
the offer is made instead of in writing.

30 (h) by inserting in Schedule Twelve next after the matter Sch. Twelve.
relating to "Sec. 168." the words :—

Sec. 173F.—As to lodging a deed or any amend-
ment thereof.

(i)

Companies (Amendment).

(i) by inserting in Part II of Schedule Thirteen next Sch. after the matter relating to "Sec. 169 (5)." the Thirteen. words and symbols :—

5 Sec. 172A (3).—Application for leave to act as trustee.

 Sec. 172A (5).—Application to call meeting.

 Sec. 172A (7).—Application to enforce debentures.

(j) by inserting next after Schedule Thirteen the follow- New Sch. ing new Schedule :— Fourteen. Sec. 173c.

10 SCHEDULE FOURTEEN.
 The Companies Act, 1936.

(a) Matters and reports required to be included in statement made pursuant to section 173c (2).

- 15 1. The date of the statement.
2. The date of and parties to the deed referred to in section 173d of this Act.
3. The date of and parties to any deed or instrument by which any of the provisions of the firstmentioned deed has been amended or abrogated.
- 20 4. The name of the trustee or representative under any such deed and the address of the trustee's or representative's registered office.
5. A summary of the provisions of the deed regulating the retirement, removal and replacement of the trustee or representative.
- 25 6. The name of the company referred to in section 173c of this Act (hereinafter called "the management company") and the address of its registered office.
7. A summary of the provisions of the deed regulating the retirement, removal and replacement of the management company.
- 30 8. The name and address of the auditor of the trust declared by the deed.
9. A summary of the provisions of the deed regulating the appointment, retirement, removal and replacement of such auditor.
- 35

Companies (Amendment).

10. The period of the trust declared by the deed and a summary of the provisions of the deed for the winding up of the trust on its termination.
- 5 11. The nature of the unit or sub-unit of interests issued or offered to the public for subscription or purchase and the description and number of the shares to which such interests attach.
- 10 12. The method of calculation provided by the deed of the greatest price at which the management company may sell any such unit or sub-unit of interest.
- 15 13. What obligations are imposed under the deed upon the management company to purchase from holders thereof the unit or sub-units of interests for which they have subscribed or which they have purchased, and a statement of the method provided by the deed for the calculation of the purchase price of such units or sub-units.
- 20 14. A summary of any provisions of the deed whereby investments made thereunder may be varied.
- 25 15. Full information regarding the remuneration of the trustee and the management company respectively and the manner in which under the provisions of the deed such remuneration is provided for and what (if any) charges are made in respect of such remuneration upon the sale of or subscription for a unit or sub-unit of interests under the deed and upon the distribution of income and capital thereunder.
- 30 16. Whether units or sub-units of interests are transferable by the holders thereof and, if so, a summary of the provisions of the deed regulating such transfer.
- 35 17. A summary of the provisions of the deed regulating the distribution to the holders of units or sub-units of interests of the income of the trust.
- 40 18. If any reference is made to the yield of income obtained or to be obtained by the holders of units or sub-units of interests, a statement as to whether and to what extent anything other than cash receipts by way of dividends, interest or bonuses has been taken into account in calculating the yield.
- 45 19. A summary of the provisions of the deed regulating the convening of meetings of holders of units or sub-units of interests.
20. The names and the date of commencement of operation of any other unit trusts conducted by the management company during the five years immediately preceding the date of the statement.

Companies (Amendment).

5 21. A statement that certificates shall be allotted by the trustee to purchasers of or subscribers for units or sub-units of interests purchased or subscribed for pursuant to this statement not more than six months from the date appearing in paragraph 1 hereof.

(b) Reports to be set out in statement.

22. A report by an accountant registered pursuant to the Public Accountants Registration Act, 1945-1958, who shall be named, setting out—

10 (1) in respect of the interests referred to in the deed—

15 (a) a statement setting out the number of distributions of income in respect of each unit or sub-unit of interests during the five years immediately preceding the date of the statement, the amount of each such distribution and to what extent each such distribution consisted of anything other than dividends, interests or bonuses and if so the nature and amount of such other components;

20 (b) a statement setting out the selling price and the purchase price respectively of such units or sub-units of interests on each of the dates upon which each distribution of income was made by the trustee;

25 (c) a statement setting out the selling price and the purchase price respectively of such units or sub-units of interests on the date immediately preceding the date of the statement;

30 (2) in respect of units or sub-units of interests referred to in the deeds relating to each of the other trusts (if any) conducted by the management company during the five years immediately preceding the date of the statement, similar information to that required in respect of subparagraph (1) hereof.

35 23. If in the case of a company which has been carrying on business, or of a business which has been carried on, for less than five years, the accounts of the company or business have only been made up in respect of four years, three years, two years, or one year, this Schedule shall have effect as if references to four years, three years, two years, or one year, as the case may be, were substituted for references to five years.

40

COMPANIES (AMENDMENT) BILL, 1960.

EXPLANATORY NOTE.

THE objects of this Bill are—

- (a) to require debentures to be issued in respect of every unsecured deposit or loan made to a company and to prohibit companies from accepting deposits and loans of money otherwise than pursuant to an application with which was issued a prospectus ;
- (b) to deem certain advertisements offering shares or debentures for subscription or inviting the public to deposit or lend money to a company to be prospectuses ;
- (c) to require every company issuing debentures to make provision for the appointment of trustees for the debenture holders and to enlarge the rights of debenture holders ;
- (d) to provide that certain rights or interests, not being shares or debentures or interests in life policies or partnerships or prescribed rights or interests, may be issued only by public companies, and to require any company issuing any such interest to issue at the same time a statement in writing which is deemed to be a prospectus ;
- (e) to require any company issuing such interests—
 - (i) to make provision for the appointment of a trustee for or representative of the holders of such interests, any such appointment to be subject to the approval of the Minister,
 - (ii) to lodge annually with the Registrar-General and, upon request, to forward to the holders of such interests certain returns, lists, accounts and documents ;
- (f) to require offers of shares or debentures made by way of broadcasting, television or cinematograph to be accompanied by a statement, made in the same way, containing certain particulars ;
- (g) to make other amendments of a consequential or ancillary nature.

Companies (Amendment)

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Companies (Amendment) Act, 1960".

(2) The Companies Act, 1936, as amended by subsequent Acts and by this Act, may be cited as the Companies Act, 1936-1960.

(3) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

No. , 1960.

12 Acts, is amended—

A BILL

To make provisions with respect to invitations to the public to deposit money with or to lend money to companies; to impose restrictions on the offer of certain interests in certain undertakings, schemes, and enterprises; for these and other purposes to amend the Companies Act, 1936, as amended by subsequent Acts; and for purposes connected therewith.

[MR. MANNIX;—24 March, 1960.]

BE

199—A 99391 (ii)

Companies (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. (1) This Act may be cited as the "Companies (Amendment) Act, 1960".

Short title,
citation and
commence-
ment.

(2) The Companies Act, 1936, as amended by subsequent Acts and by this Act, may be cited as the Companies Act, 1936-1960.

(3) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. The Companies Act, 1936, as amended by subsequent Acts, is amended—

Amendment
of Act No.
33, 1936.

- (a) (i) by inserting next after the matter relating to Division 6 of Part VIII in section two the words and figures "DIVISION 6A.—*Other Interests*—ss. 173A-173J.";
- (ii) by omitting from the matter relating to the Schedules in the same section the figures "1-13" and by inserting in lieu thereof the figures "1-14";
- (b) (i) by inserting in subsection one of section six next after the definition of "Manager" the following new definition :—
- "Marketable securities" means any debentures funds stocks shares or bonds of any Government or of any local government authority or of any corporation or society and includes any right or option in respect of shares in any corporation
- (ii)

Sec. 2.
(Division
into Parts.)

Sec. 6.
(Inter-
pretation.)

Companies (Amendment).

(ii) by omitting from the same subsection the definition of "Prospectus" and by inserting in lieu thereof the following definition:—

5 "Prospectus" means any prospectus notice
circular advertisement or other invitation
inviting applications or offers from the
public to subscribe for or purchase or
10 offering to the public for subscription or
purchase any shares in or debentures of
or any units of shares in or units of
debentures of a company or foreign
company or proposed company or pro-
posed foreign company.

15 (c) by inserting next after section one hundred and
thirty-seven the following new section:— New sec.
137A.

20 137A. (1) No invitation to the public to deposit
money with or to lend money to any company,
whether incorporated in the State or elsewhere, shall
be made unless a debenture is intended to be issued
in respect of every deposit or loan so made and a
debenture shall be issued in respect of every deposit
or loan so made. As to
invitations
to the
public to
deposit
money with
companies.
cf. No. 6455
Vic. s. 36.

25 (2) A company shall not accept from any
person a deposit or loan of money unless it is
accompanied by a form of application signed by
such person and such application was issued to such
person with a prospectus which complies in all
respects with the requirements of section one
hundred and thirty-seven of this Act.

30 (3) Nothing in this section shall require a
debenture or prospectus to be issued in connection
with any invitation to the public to deposit money
with a banking company.

35 (4) Where an invitation is made to the
public to deposit money with or lend money to any
company and such deposit or loan is not to be
secured by a charge over all or any of the company's
assets

Companies (Amendment).

assets the invitation shall state that the document to be issued acknowledging the deposit or loan of money made pursuant to the invitation is to be an unsecured note or an unsecured deposit note, as the case may be, and shall not state that such document is to be a debenture.

(5) Where any document is issued by a company (being one of a series of such documents) which either expressly or by implication acknowledges the indebtedness of the company in respect of money borrowed by it but is not secured by a charge over all or any of the company's assets the document shall be described on the face of it as an unsecured note or as an unsecured deposit note, as the case may be, and shall not be described on its face as a debenture.

(6) Every person who knowingly contravenes or permits or authorises the contravention of any of the provisions of this section shall be guilty of an offence.

Penalty : One thousand pounds.

(d) by omitting section one hundred and thirty-eight and by inserting in lieu thereof the following section :—

138. (1) Every advertisement—

(a) offering, or calling attention to an offer or intended offer of, shares in or debentures of a company to the public for subscription or purchase, or

(b) writing or calling attention to an invitation or intended invitation to deposit money with or lend money to a company,

shall whether the company is incorporated in the State or elsewhere be deemed to be a prospectus issued by the person responsible for publishing or disseminating the advertisement (and all enactments and rules of law as to the contents of prospectuses and

Subst. sec. 138.

Certain advertisements deemed to be prospectuses. cf. No. 6455 Vic. s. 37 (4).

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Companies (Amendment).

and as to liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses shall apply and have effect accordingly) unless it contains no more information than the following:—

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(i) the number and description of the shares or debentures concerned or, as the case may be, particulars of the deposits with or loans to the company invited or intended to be invited by the company;

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(ii) the name and date of registration of the company and its paid up share capital;

(iii) the general nature of the main business or proposed main business of the company;

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(iv) the names of the directors or proposed directors and of the brokers or underwriters to the issue;

(v) the place at which copies of the full prospectus and forms of application for the shares or debentures may be obtained,

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and states that applications for shares or debentures will proceed only on one of the forms of application referred to and attached to a printed copy of the prospectus.

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(2) No statement that, or to the effect that, the advertisement is not a prospectus shall prevent the operation of this section.

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(3) This section shall apply to advertisements published or disseminated in the State by newspaper broadcasting television cinematograph or any other means whatsoever.

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(4) Nothing in this section shall require a prospectus to be issued in connection with any invitation or intended invitation to the public to deposit money with a banking company.

(c)

(e)

Companies (Amendment).

(e) by inserting next after section one hundred and seventy-two the following new section :—

New sec. 172A.

172A. (1) Every company, whether incorporated in the State or elsewhere, issuing debentures to the public for subscription in the State shall (except where a debenture is given by one instrument to not more than twenty-five persons without any right to subdivide their interests) make provision in the debentures or in a trust deed for the appointment of not less than two persons (the appointment of one or more but not all of whom may if the debentures or deed so provide be reserved to be made by the holders of the debentures) as trustees for the holders of the debentures.

Trustees for debenture holders. cf. No. 6455 Vic. s. 62.

(2) Such debentures or deed shall contain covenants by the company or, if it does not expressly contain such covenants, shall be deemed to contain covenants, to the following effect :—

(a) that the company will use its best endeavours to carry on and conduct its business in a proper and efficient manner ;

(b) that, to the same extent as if the trustees for the holders of the debentures or any auditor appointed by the trustees were directors of the company, it will—

(i) make available for their inspection the whole of the books of account of the company ; and

(ii) give to them such information as they require with respect to all matters relating to the books of account of the company ; and

(e)

(c)

Companies (Amendment).

(c) that the company will, on the application of the holders of debentures of any class holding not less than one-fifth in nominal value of the issued debentures of that class delivered to its registered office, by giving notice—

(i) to each of the holders of the debentures (other than debentures payable to bearer) of that class at his address as specified in the register of debentures; and

(ii) by advertisement in a daily newspaper circulating generally throughout the State addressed to all holders of debentures of that class,

summon a meeting to consider the accounts and balance-sheet which were laid before the last preceding ordinary general meeting of the company and give to the trustees directions in relation to the exercise of their powers, such meeting to be held at a time and place specified in the notice and advertisement under the chairmanship of a trustee or such other person as is appointed in that behalf by the holders of debentures present at the meeting.

(3) Without the leave of the court—

(a) a director shareholder solicitor or auditor of the company or of any other company which has entered into any guarantee in respect of the principal debt or interest thereon or itself holds beneficially shares of the firstmentioned company; or

(b) a company which directly or indirectly controls or is controlled by the firstmentioned company, shall not be appointed or act as a trustee.

(7) (4)

Companies (Amendment).

(4) The company shall in writing furnish the trustees, whether or not any demand therefor has been made, with—

5 (a) particulars (within twenty-one days after the creation of any charge requiring registration under this Act) of such charge, and when the amount to be advanced is indeterminate
10 particulars (within seven days after the advance) of the amount or amounts in fact advanced :

15 Provided that when any such advances are merged in a current account with bankers or trade creditors it shall be sufficient for
20 particulars of the net amount outstanding in respect of any such advances to be furnished every three months ;

(b) particulars (within twenty-one days after creation of the charge) of any charge created
25 by the company, other than a charge created in the ordinary course of the business of the company.

(5) The court may on the application of the trustees order a meeting (to be held and conducted in such manner as the court thinks fit, under
30 the chairmanship of a trustee or such other person as the meeting appoints) of the holders of debentures of any class to be called to consider any matters in which they are concerned and advise the trustees thereon and may give such ancillary or consequential directions as it thinks fit.

(6) The trustees shall exercise diligence in ascertaining whether or not the assets of the company which constitute or may constitute the security for the debentures are sufficient or are likely to become sufficient to discharge the principal debt and
35 any interest thereon.

(4)

(7)

Companies (Amendment).

(7) Notwithstanding anything in any debenture or trust deed the security for any debentures which are irredeemable or redeemable only on the happening of a contingency or at an uncertain time shall be enforceable forthwith or at such time as the court directs if, on the application of a debenture holder (where there is no trustee for debenture holders) or the trustees, the court is satisfied that—

(a) at the time of the issue of the debentures the assets of the company which constituted or were intended to constitute the security therefor were sufficient or likely to become sufficient to discharge the principal debt and any interest thereon;

(b) the security, if realised under the circumstances existing at the time of the application, would be likely to bring not more than sixty per centum of the principal sum of moneys outstanding (regard being had to all prior charges, if any); and

(c) the assets covered by the security, on a fair valuation on the basis of a going concern, are worth less than the said principal sum and the company is not earning the interest payable on the principal sum or (where no definite rate of interest is payable) interest thereon at such rate as the court considers would be a fair rate to expect from a similar investment, after allowing a reasonable amount for depreciation,

but this subsection shall not affect any power to vary rights or accept any compromise or arrangement created by the terms of the debentures or under a compromise or arrangement between the company and creditors.

(8)

Enforce-ability of certain debentures.

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Companies (Amendment)

(8) The appointment of a company or the Public Trustee as sole trustee for debenture holders shall be sufficient compliance with the provisions of this section and the word "trustees" in this section includes a company or the Public Trustee so appointed as sole trustee for the debenture holders.

(9) If a company makes default in complying with any requirement of this section, the company, and every officer of the company who is in default, shall be guilty of an offence.

Penalty: Fifty pounds for every day during which the default continues.

(f) by inserting next after section one hundred and seventy-three the following new Division:—

DIVISION 6A.—Other Interests.

173A. In this Division, unless the context or subject matter otherwise indicates or requires, "Interest" means any right to participate or interest, whether enforceable or not and whether actual prospective or contingent,

(a) in any profits assets or realisation of any financial or business undertaking or scheme whether in the State or elsewhere; or

(b) in any common enterprise whether in the State or elsewhere in which the holder of the right or interest is led to expect profits from the efforts of the promoter or a third party whether or not the right or interest is evidenced by a formal document or from a specific interest in any real or personal property employed in the enterprise,

(8) but

Penalty for default.

New Division 6A.

Restriction on offer, &c., of certain interests in undertakings, &c. cf. No. 6455 Vic. s. 63 (1).

Companies (Amendment).

but does not include—

- (i) any share in or debenture of a company or co-operative society registered under the Co-operation, Community Settlement, and Credit Act, 1923, as amended by subsequent Acts; or
- (ii) any interest in or arising out of a policy of life assurance; or
- (iii) any interest in a partnership agreement; or
- (iv) any prescribed right or interest.

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173B. No person except a public company or an agent of a public company authorised in that behalf under the seal of the company shall issue or offer to the public for subscription or purchase or shall invite the public to subscribe for or purchase any interest.

Only public company may issue or offer interest. cf. No. 6455 Vic. s. 63 (2).

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173C. (1) Before a company (whether itself or by an agent so authorised) issues or offers to the public for subscription or purchase or invites the public to subscribe for or purchase any interest the company shall issue or cause to be issued a statement in writing in connection therewith which statement shall for all purposes be deemed to be a prospectus issued by a company, and all provisions of this Act and rules of law relating to prospectuses or to the offering or to an intended offering of shares for subscription or purchase to the public shall with such adaptations as are necessary apply and have effect accordingly as if such interest were shares offered or intended to be offered to the public for subscription or purchase and as if persons accepting any offer or invitation in respect of or subscribing for or purchasing any such interest were subscribers for such shares.

Company to issue statement. cf. *Ibid.* s. 63 (3).

(2)

Companies (Amendment).

5 (2) Such statement shall, in lieu of the matters and reports specified in Schedule Eight to this Act, set out the matters and reports specified in Schedule Fourteen to this Act and where such interest consists of anything other than rights or interests in marketable securities of companies other than those of the company issuing the statement, the statement shall set out in addition such of the matters and reports specified in Schedule Eight to this Act as are required by the Registrar-General :

10 Provided that the Registrar-General may excuse any such company from including in any such statement such of the matters specified in Schedule Fourteen to this Act as he thinks fit.

15 Except where any such interest consists only of rights or interests in marketable securities of companies other than those of the company issuing the statement and the statement sets out the matters and reports specified in Schedule Fourteen to this Act, no such statement shall be issued unless the Registrar-General has informed the company, by notice in writing, that—

- 20 (a) he requires the statement to contain such of the matters and reports specified in Schedule Eight to this Act as are specified in the notice; or
- 25 (b) he does not require the statement to contain any such matters or reports.

30 173D. A person shall not issue or offer to the public for subscription or purchase or invite the public to subscribe for or purchase any interest unless the person has in relation to the interest made provision in a deed (which deed and any amendment thereof has been approved for the purposes of this Division by the Registrar-General) for the appointment of a person or company as trustee for or as representative of the holders of such interests and for other matters as prescribed by this Division.

Company to make provision in deed for appointment of trustee. cf. No. 6455 Vic. s. 63 (4).

Companies (Amendment).

173E. (1) No appointment of such a trustee or representative shall be made for the purposes of this Division without the approval of the Minister.

Appointment to be approved by Minister.

5 (2) The first appointment of any such trustee or representative and all appointments to fill vacancies in the office shall be made with reasonable despatch, in default of which the person shall be deemed to have contravened the provisions of this Division.

cf. No. 6455 Vic. s. 63 (5).

10 (3) No such trustee or representative shall be removable except by the Minister, or by resignation or death, or by a majority decision of the holders of the interests to which the deed relates.

15 (4) Every such trustee or representative shall exercise all due diligence and vigilance in watching the rights and interests of holders of interests to which the deed relates.

20 (5) Every such trustee or representative shall keep proper books of account in relation to the interests to which the deed relates and shall annually post a statement of such accounts with the report of an auditor thereon to each holder of any such interests.

25 173F. (1) Every deed referred to in section 173D of this Act shall contain covenants by the company, or (if it does not expressly contain such covenants) shall be deemed to contain them, to the following effect, namely :—

Deed to contain or to be deemed to contain certain covenants.

30 (a) that the company will use its best endeavours to carry on and conduct the business of the company in a proper and efficient manner and to ensure that any undertaking, scheme or enterprise to which the deed relates is carried on and conducted in a proper and efficient manner;

cf. Ibid. s. 63 (6).

35 (b)

Companies (Amendment).

(b) that to the same extent as if the trustee or representative were a director of the company the company will—

(i) make available to the trustee or representative, or to any auditor appointed by him, for inspection the whole of the books of the company whether kept at the registered office or elsewhere; and

(ii) give to the trustee or representative such oral or written information as he requires with respect to all matters relating to the undertaking, scheme or enterprise of the company or any property (whether acquired before or after the date of the deed) of the company or otherwise relating to the affairs thereof;

(c) that the company will make available or ensure that there is made available to the trustee or representative such details as he requires with respect to all matters relating to the undertaking, scheme or enterprise to which the deed relates;

(d) that the company will not exercise the right to vote in respect of any shares held by the trustee or representative at any election for directors of a company whose shares are so held without the consent of the holders of the interests concerned given at a meeting of those holders summoned in the same manner as a meeting may be summoned under paragraph (e) of this subsection for the purpose of authorising the exercise of the right in a particular case; and

(e)

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Companies (Amendment).

(e) that the company will from time to time on the application, delivered to the company at its registered office, of not less than one-tenth in number of the holders of interests to which the deed relates—

(i) by giving notice at least seven days before the proposed meeting by letter through the post addressed to each of the holders of such interests at his last known address; and

(ii) by giving notice at least fourteen days before the proposed meeting by advertisement in a daily newspaper circulating generally throughout the State addressed to the holders of all such interests,

summon a meeting of such holders for the purpose of laying before the meeting the accounts and balance-sheet which were laid before the last preceding ordinary general meeting of the company or the last audited statement of accounts of the trustee or representative, and of the meeting giving to the trustee or representative such directions as the meeting thinks proper.

(2) Every such meeting shall be held at the time and place specified in the notice and advertisement under the chairmanship of the trustee or representative or a nominee of the trustee or representative approved by the Minister or of such other person as is appointed in that behalf by the holders of such interests present at the meeting, and shall be conducted in accordance with the provisions of the deed or, insofar as the deed makes no provision, as directed by the chairman of the meeting.

(iii) (3)

Companies (Amendment).

(3) Every such deed and any amendment thereof shall be lodged by the company in the office of the Registrar-General within fourteen days after the execution of such deed or amendment.

5 173G. (1) Every company which either before or after the commencement of the Companies (Amendment) Act, 1960, has issued any interest shall— Company to lodge return with Registrar-General.

10 (a) once at least in every calendar year, not more than sixty days after the date of the first or only ordinary general meeting of the company in that year, lodge with the Registrar-General—

15 (i) a return containing a list of all persons who on the day of the first or only ordinary general meeting of the year are holders of such interests showing their names and addresses and the extent of their holdings of such interests and if any such interest consists of a specific interest in any real or personal property a description of the property and its location; and

20 (ii) a copy of the lists and statements required by paragraph (b) of this subsection and by subsection two of this section, to be posted to the holders of such interests; and

25 (b) not less than seven days before the first or only ordinary general meeting of the year post to any holder of an interest who has requested the company to supply him with the documents hereinafter referred to a copy of—

30 (i) its balance-sheet;

35 (ii) its profit and loss account;

(iii)

Companies (Amendment).

- (iii) its directors' report;
- 5 (iv) a summary of all purchases and sales of marketable securities by the company affecting such holders during the period to which the accounts relate;
- 10 (v) a statement of the total amount of brokerage affecting such holders paid or charged by the company during the period to which the accounts relate and the proportion thereof paid to any stock or share broker who or any employee or nominee of whom is an officer of the company and the proportion retained by the company; and
- 15 (vi) a list of all the investments of the company affecting such holders as at the date of the balance-sheet showing the names and quantities of such investments.

20 (2) There shall accompany every balance-sheet posted to a holder of an interest— cf. Tas. Act No. 29, 1959, s. 62 (14).

- 25 (a) a list of all marketable securities held by the trustee or representative appointed under section 173D of this Act as at the date to which the accounts are made up, showing the quantities of those securities and the basis on which they have been valued;
- 30 (b) a list of all purchases and sales of marketable securities made by the trustee or representative, or by the company on behalf of the trustee or representative, during the period to which the accounts relate;

Companies (Amendment).

5 (c) a list of all the investments made by the trustee or representative, or by the company on behalf of the trustee or representative, showing the names and quantities of those investments; and

(d) such other statements and particulars (if any) as may be prescribed; each of which shall be signed by the persons who signed the balance-sheet.

10 (3) Subject to the regulations any company which is required pursuant to this section to lodge with the Registrar-General a return of holders and which has its registered office at a place within three miles of the office of the Registrar-General need not
15 lodge such return with the Registrar-General if such return is available without fee for inspection and copying by any person at the registered office of the company during the hours in which the registered office is accessible to the public. Exemption of certain companies.

20 173H. A person shall not be relieved from any liability to any holder of an interest by reason of any contravention of or failure to comply with any of the provisions of this Division. Default not to relieve company or person from liability.

25 173I. Any person who and any company which contravenes or fails to comply with any of the provisions of this Division or of any covenant of any deed under this Division and any person who is a director of such company shall be guilty of an offence. Penalty.

30 Penalty: Five hundred pounds or imprisonment for twelve months.

35 173J. This Division shall not apply in the case of the sale of any interest by a personal representative liquidator receiver or trustee in bankruptcy in the normal course of realisation of assets. Exceptions.

(g)

Companies (Amendment).

(g) (i) by inserting at the end of the proviso to sub-section two of section three hundred and forty-three the following word and new paragraph :—

Sec. 343.
(Restrictions on offering of shares for subscription or purchase.)

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; or

(d) where the offer relates to—

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(i) an interest within the meaning of section 173A of this Act and is accompanied by a statement in writing as required by section 173C; or

(ii) deposits or loans to a company of the kind referred to in subsection two of section 137A of this Act.

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(ii) by inserting in subsection eight of the same section next before the definition of "Shares" the following new definition :—

"Purchase" includes barter.

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(iii) by inserting at the end of the same section the following new paragraph :—

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In subsection two of this section a reference to "an offer in writing" includes an offer by way of broadcasting, television or cinematograph and where an offer is made by way of broadcasting, television or cinematograph, the statement accompanying it referred to in that subsection shall be made by the same means as the offer is made instead of in writing.

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(h) by inserting in Schedule Twelve next after the matter relating to "Sec. 168." the words :—

Sch. Twelve.

Sec. 173F.—As to lodging a deed or any amendment thereof.

(i)

Companies (Amendment).

- (i) by inserting in Part II of Schedule Thirteen next Sch. Thirteen.
after the matter relating to "Sec. 169 (5)." the
words and symbols :—

5 Sec. 172A (3).—Application for leave to act as trustee.

 Sec. 172A (5).—Application to call meeting.

 Sec. 172A (7).—Application to enforce debentures.

- (j) by inserting next after Schedule Thirteen the follow- New Sch. Fourteen.
ing new Schedule :— Sec. 173c.

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SCHEDULE FOURTEEN.
The Companies Act, 1936.

- (a) Matters and reports required to be included in statement made pursuant to section 173c (2).

1. The date of the statement.
- 15 2. The date of and parties to the deed referred to in section 173D of this Act.
3. The date of and parties to any deed or instrument by which any of the provisions of the firstmentioned deed has been amended or abrogated.
- 20 4. The name of the trustee or representative under any such deed and the address of the trustee's or representative's registered office.
5. A summary of the provisions of the deed regulating the retirement, removal and replacement of the trustee or representative.
- 25 6. The name of the company referred to in section 173c of this Act (hereinafter called "the management company") and the address of its registered office.
7. A summary of the provisions of the deed regulating the retirement, removal and replacement of the management company.
- 30 8. The name and address of the auditor of the trust declared by the deed.
9. A summary of the provisions of the deed regulating the appointment, retirement, removal and replacement of such auditor.
- 35

Companies (Amendment).

10. The period of the trust declared by the deed and a summary of the provisions of the deed for the winding up of the trust on its termination.
- 5 11. The nature of the unit or sub-unit of interests issued or offered to the public for subscription or purchase and the description and number of the shares to which such interests attach.
- 10 12. The method of calculation provided by the deed of the greatest price at which the management company may sell any such unit or sub-unit of interest.
- 15 13. What obligations are imposed under the deed upon the management company to purchase from holders thereof the unit or sub-units of interests for which they have subscribed or which they have purchased, and a statement of the method provided by the deed for the calculation of the purchase price of such units or sub-units.
- 20 14. A summary of any provisions of the deed whereby investments made thereunder may be varied.
- 25 15. Full information regarding the remuneration of the trustee and the management company respectively and the manner in which under the provisions of the deed such remuneration is provided for and what (if any) charges are made in respect of such remuneration upon the sale of or subscription for a unit or sub-unit of interests under the deed and upon the distribution of income and capital thereunder.
- 30 16. Whether units or sub-units of interests are transferable by the holders thereof and, if so, a summary of the provisions of the deed regulating such transfer.
- 35 17. A summary of the provisions of the deed regulating the distribution to the holders of units or sub-units of interests of the income of the trust.
- 40 18. If any reference is made to the yield of income obtained or to be obtained by the holders of units or sub-units of interests, a statement as to whether and to what extent anything other than cash receipts by way of dividends, interest or bonuses has been taken into account in calculating the yield.
- 45 19. A summary of the provisions of the deed regulating the convening of meetings of holders of units or sub-units of interests.
20. The names and the date of commencement of operation of any other unit trusts conducted by the management company during the five years immediately preceding the date of the statement.

Companies (Amendment).

5 21. A statement that certificates shall be allotted by the trustee to purchasers of or subscribers for units or sub-units of interests purchased or subscribed for pursuant to this statement not more than six months from the date appearing in paragraph 1 hereof.

(b) Reports to be set out in statement.

10 22. A report by an accountant registered pursuant to the Public Accountants Registration Act, 1945-1958, who shall be named, setting out—

10 (1) in respect of the interests referred to in the deed—

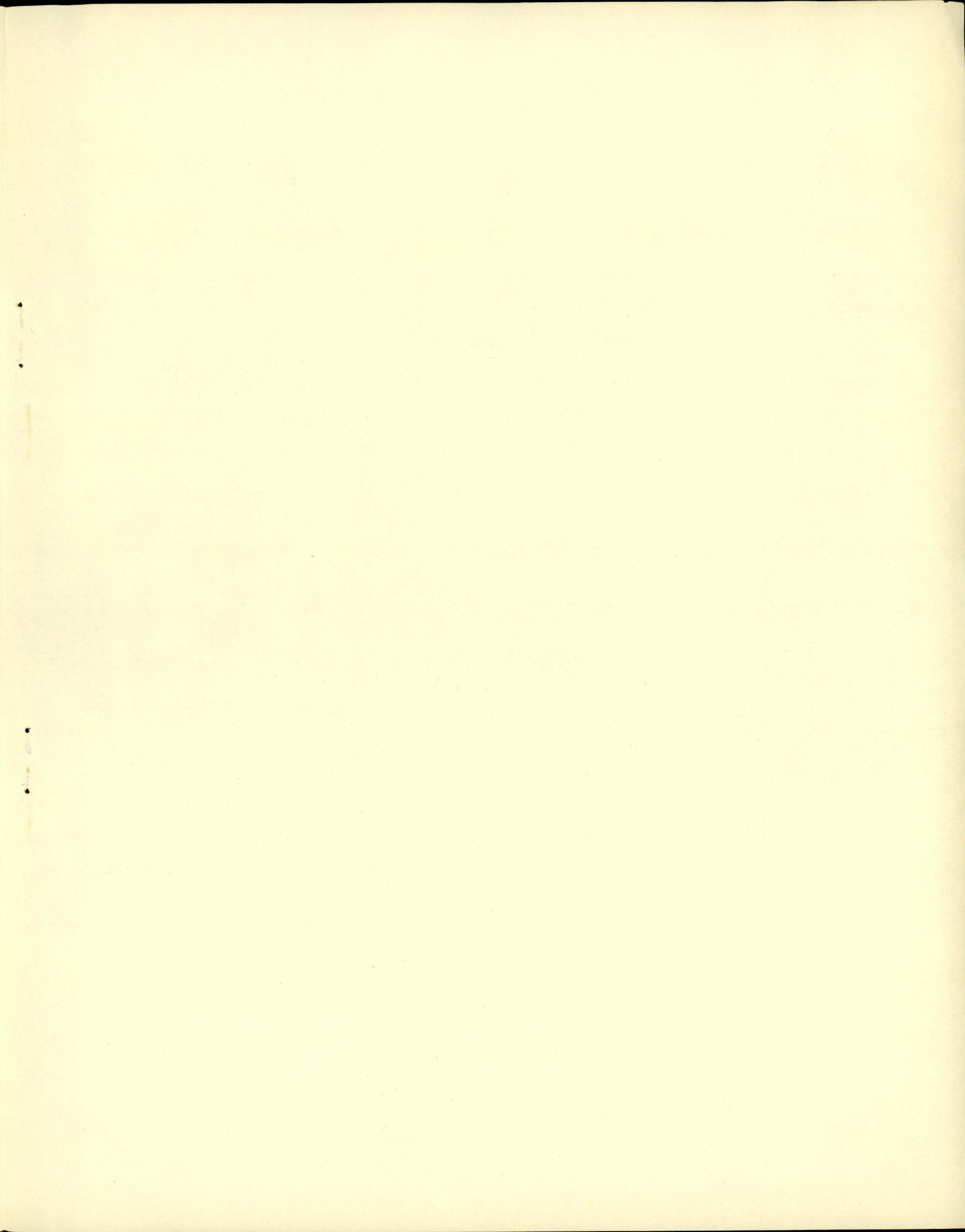
15 (a) a statement setting out the number of distributions of income in respect of each unit or sub-unit of interests during the five years immediately preceding the date of the statement, the amount of each such distribution and to what extent each such distribution consisted of anything other than dividends, interests or bonuses and if so the nature and amount of such other components ;

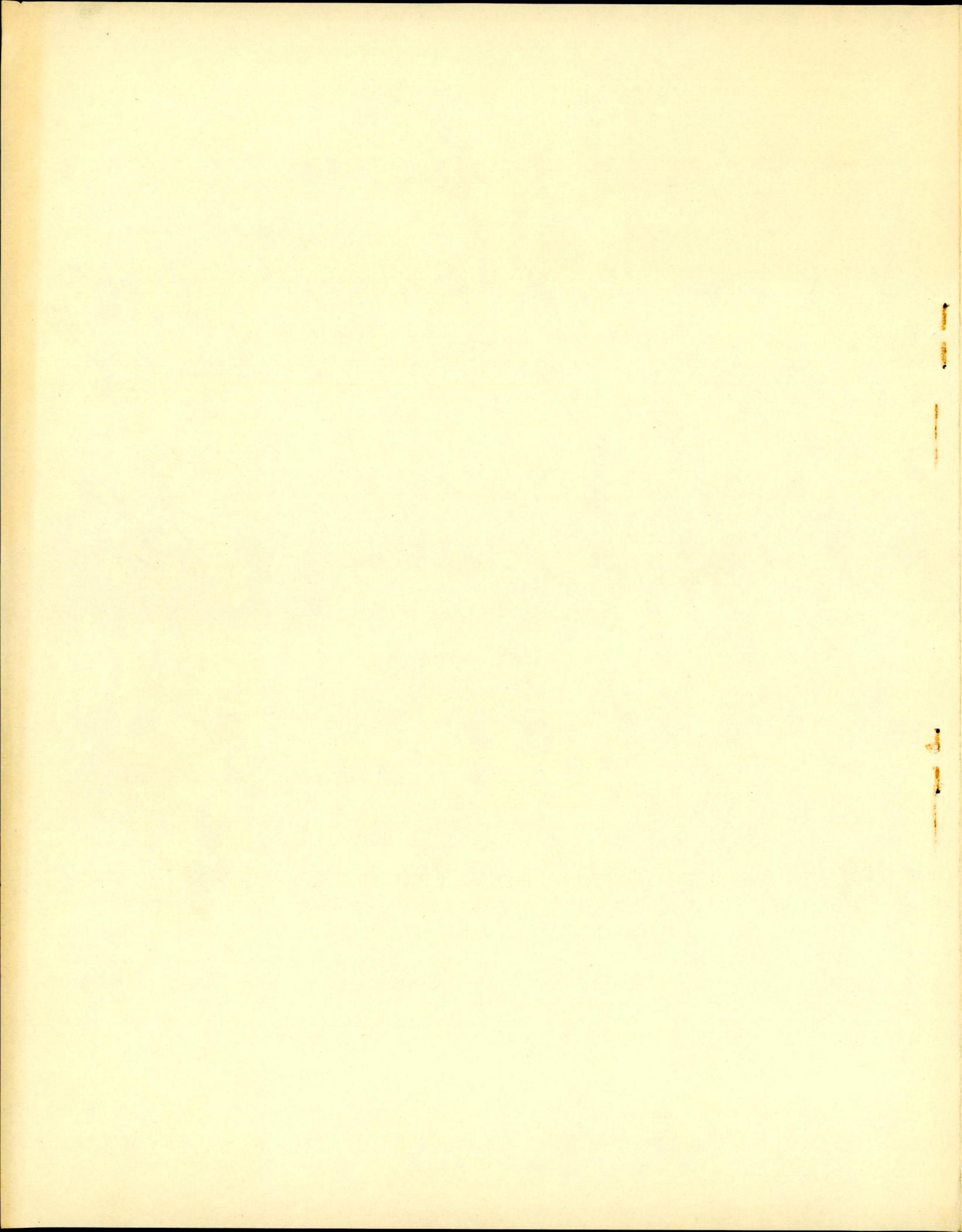
20 (b) a statement setting out the selling price and the purchase price respectively of such units or sub-units of interests on each of the dates upon which each distribution of income was made by the trustee ;

25 (c) a statement setting out the selling price and the purchase price respectively of such units or sub-units of interests on the date immediately preceding the date of the statement ;

30 (2) in respect of units or sub-units of interests referred to in the deeds relating to each of the other trusts (if any) conducted by the management company during the five years immediately preceding the date of the statement, similar information to that required in respect of subparagraph (1) hereof.

35 23. If in the case of a company which has been carrying on business, or of a business which has been carried on, for less than five years, the accounts of the company or business have only been made up in respect of four years, three years, two years, or one year, this Schedule shall have effect as if references to four years, three years, two years, 40 or one year, as the case may be, were substituted for references to five years.





New South Wales



ANNO NONO

ELIZABETHÆ II REGINÆ

Act No. 31, 1960.

An Act to make provisions with respect to invitations to the public to deposit money with or to lend money to companies; to impose restrictions on the offer of certain interests in certain undertakings, schemes, and enterprises; for these and other purposes to amend the Companies Act, 1936, as amended by subsequent Acts; and for purposes connected therewith. [Assented to, 28th April, 1960.]

BE

Companies (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title,
citation and
commence-
ment.

1. (1) This Act may be cited as the "Companies (Amendment) Act, 1960".

(2) The Companies Act, 1936, as amended by subsequent Acts and by this Act, may be cited as the Companies Act, 1936-1960.

(3) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment
of Act No.
33, 1936.

2. The Companies Act, 1936, as amended by subsequent Acts, is amended—

Sec. 2.
(Division
into Parts.)

(a) (i) by inserting next after the matter relating to Division 6 of Part VIII in section two the words and figures "DIVISION 6A.—*Other Interests*—ss. 173A-173J.";

(ii) by omitting from the matter relating to the Schedules in the same section the figures "1-13" and by inserting in lieu thereof the figures "1-14";

Sec. 6.
(Inter-
pretation.)

(b) (i) by inserting in subsection one of section six next after the definition of "Manager" the following new definition :—

"Marketable securities" means any debentures funds stocks shares or bonds of any Government or of any local government authority or of any corporation or society and includes any right or option in respect of shares in any corporation.

(ii)

Companies (Amendment).

- (ii) by omitting from the same subsection the definition of "Prospectus" and by inserting in lieu thereof the following definition :—

"Prospectus" means any prospectus notice circular advertisement or other invitation inviting applications or offers from the public to subscribe for or purchase or offering to the public for subscription or purchase any shares in or debentures of or any units of shares in or units of debentures of a company or foreign company or proposed company or proposed foreign company.

- (c) (i) by omitting from paragraph (b) of subsection one of section one hundred and sixteen the word "and";
- (ii) by inserting at the end of the same subsection the following word and new paragraphs :—

Sec. 116.
(Investigation of affairs of company by inspectors.)

; and

- (d) in the case of a company which either before or after the commencement of the Companies (Amendment) Act, 1960, issued any interest within the meaning of section 173A of this Act, where the Governor is satisfied that it is necessary for the protection of the holders of such interests, or any of them, that the affairs of the company should be investigated under this Division.

The provisions of paragraph (d) of this subsection shall apply mutatis mutandis to a foreign company.

- (iii) by omitting from subsection two of the same section the words "The application" and by inserting in lieu thereof the words "An application under paragraph (a), (b) or (c) of subsection one of this section";

(d)

Companies (Amendment).

Sec. 117.
(Proceedings
on report
by inspec-
tors.)

(d) by inserting in subsection two of section one hundred and seventeen after the word "under" the words "paragraph (a), (b) or (c) of subsection one of";

New sec.
137A.

(e) by inserting next after section one hundred and thirty-seven the following new section :—

As to
invitations
to the
public to
deposit
money with
companies.
cf. No. 6455
Vic. s. 36.

137A. (1) No invitation to the public to deposit money with or to lend money to any company, whether incorporated in the State or elsewhere, shall be made unless a debenture is intended to be issued in respect of every deposit or loan so made and a debenture shall be issued in respect of every deposit or loan so made.

(2) A company shall not in pursuance of any such invitation accept from any person a deposit or loan of money unless it is accompanied by a form of application signed by such person and such application was issued to such person with a prospectus which complies in all respects with the requirements of section one hundred and thirty-seven of this Act.

(3) Nothing in this section shall require a debenture or prospectus to be issued in connection with any invitation to the public to deposit money with a banking company.

(4) Where an invitation is made to the public to deposit money with or lend money to any company and such deposit or loan is not to be secured by a charge over all or any of the company's assets the invitation shall state that the document to be issued acknowledging the deposit or loan of money made pursuant to the invitation is to be an unsecured note or an unsecured deposit note, as the case may be, and shall not state that such document is to be a debenture.

(5)

Companies (Amendment).

(5) Where any document is issued by a company (being one of a series of such documents) which either expressly or by implication acknowledges the indebtedness of the company in respect of money borrowed by it but is not secured by a charge over all or any of the company's assets the document shall be described on the face of it as an unsecured note or as an unsecured deposit note, as the case may be, and shall not be described on its face as a debenture.

(6) Every person who knowingly contravenes or permits or authorises the contravention of any of the provisions of this section shall be guilty of an offence.

Penalty : One thousand pounds.

(f) by omitting section one hundred and thirty-eight and by inserting in lieu thereof the following section :—

Subst.
sec. 138.

138. (1) Every advertisement—

(a) offering, or calling attention to an offer or intended offer of, shares in or debentures of a company to the public for subscription or purchase, or

Certain advertisements deemed to be prospectuses. cf. No. 6455 Vic. s. 37 (4).

(b) inviting or calling attention to an invitation or intended invitation to the public to deposit money with or lend money to a company,

shall whether the company is incorporated in the State or elsewhere be deemed to be a prospectus issued by the person responsible for publishing or disseminating the advertisement (and all enactments and rules of law as to the contents of prospectuses and

Companies (Amendment).

and as to liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses shall apply and have effect accordingly) unless it contains no more information than the following :—

- (i) the number and description of the shares or debentures concerned or, as the case may be, particulars of the deposits with or loans to the company invited or intended to be invited by the company;
- (ii) the name and date of registration of the company and its paid up share capital;
- (iii) the general nature of the main business or proposed main business of the company;
- (iv) the names of the directors or proposed directors and of the brokers or underwriters to the issue;
- (v) the place at which copies of the full prospectus and forms of application for the shares or debentures, or relating to the deposits or loans invited to be made with or to the company, may be obtained,

and states that any such application will proceed only on one of the forms of application referred to and attached to a printed copy of the prospectus.

(2) No statement that, or to the effect that, the advertisement is not a prospectus shall prevent the operation of this section.

(3) This section shall apply to advertisements published or disseminated in the State by newspaper broadcasting television cinematograph or any other means whatsoever.

(4) Nothing in this section shall require a prospectus to be issued in connection with any invitation or intended invitation to the public to deposit money with a banking company.

(g)

Companies (Amendment).

- (g) by inserting next after section one hundred and seventy-two the following new section :— New
sec. 172A.

172A. (1) Every company, whether incorporated in the State or elsewhere, issuing debentures to the public for subscription in the State shall (except where a debenture is given by one instrument to not more than twenty-five persons without any right to subdivide their interests) make provision in the debentures or in a trust deed for the appointment of not less than two persons (the appointment of one or more but not all of whom may if the debentures or deed so provide be reserved to be made by the holders of the debentures) as trustees for the holders of the debentures. Trustees for
debenture
holders.
cf. No. 6455
Vic. s. 62.

(2) Such debentures or deed shall contain covenants by the company or, if it does not expressly contain such covenants, shall be deemed to contain covenants, to the following effect :—

- (a) that the company will use its best endeavours to carry on and conduct its business in a proper and efficient manner;
- (b) that, to the same extent as if the trustees for the holders of the debentures or any auditor appointed by the trustees were directors of the company, it will—
 - (i) make available for their inspection the whole of the books of account of the company; and
 - (ii) give to them such information as they require with respect to all matters relating to the books of account of the company; and

(c)

Companies (Amendment).

(c) that the company will, on the application of the holders of debentures of any class holding not less than one-fifth in nominal value of the issued debentures of that class delivered to its registered office, by giving notice—

(i) to each of the holders of the debentures (other than debentures payable to bearer) of that class at his address as specified in the register of debentures; and

(ii) by advertisement in a daily newspaper circulating generally throughout the State addressed to all holders of debentures of that class,

summon a meeting to consider the accounts and balance-sheet which were laid before the last preceding ordinary general meeting of the company and give to the trustees directions in relation to the exercise of their powers, such meeting to be held at a time and place specified in the notice and advertisement under the chairmanship of a trustee or such other person as is appointed in that behalf by the holders of debentures present at the meeting.

(3) Without the leave of the court—

(a) a director shareholder solicitor or auditor of the company or of any other company which has entered into any guarantee in respect of the principal debt or interest thereon or itself holds beneficially shares of the firstmentioned company; or

(b) a company which directly or indirectly controls or is controlled by the firstmentioned company,

shall not be appointed or act as a trustee.

(4)

Companies (Amendment).

(4) The company shall in writing furnish the trustees, whether or not any demand therefor has been made, with—

- (a) particulars (within twenty-one days after the creation of any charge requiring registration under this Act) of such charge, and when the amount to be advanced is indeterminate particulars (within seven days after the advance) of the amount or amounts in fact advanced :

Provided that when any such advances are merged in a current account with bankers or trade creditors it shall be sufficient for particulars of the net amount outstanding in respect of any such advances to be furnished every three months ;

- (b) particulars (within twenty-one days after creation of the charge) of any charge created by the company, other than a charge created in the ordinary course of the business of the company.

(5) The court may on the application of the trustees order a meeting (to be held and conducted in such manner as the court thinks fit, under the chairmanship of a trustee or such other person as the meeting appoints) of the holders of debentures of any class to be called to consider any matters in which they are concerned and advise the trustees thereon and may give such ancillary or consequential directions as it thinks fit.

(6) The trustees shall exercise diligence in ascertaining whether or not the assets of the company which constitute or may constitute the security for the debentures are sufficient or are likely to become sufficient to discharge the principal debt and any interest thereon.

(7)

Companies (Amendment).

Enforce-
ability
of certain
debentures.

(7) Notwithstanding anything in any debenture or trust deed the security for any debentures which are irredeemable or redeemable only on the happening of a contingency or at an uncertain time shall be enforceable forthwith or at such time as the court directs if, on the application of a debenture holder (where there is no trustee for debenture holders) or the trustees, the court is satisfied that—

- (a) at the time of the issue of the debentures the assets of the company which constituted or were intended to constitute the security therefor were sufficient or likely to become sufficient to discharge the principal debt and any interest thereon;
- (b) the security, if realised under the circumstances existing at the time of the application, would be likely to bring not more than sixty per centum of the principal sum of moneys outstanding (regard being had to all prior charges, if any); and
- (c) the assets covered by the security, on a fair valuation on the basis of a going concern, are worth less than the said principal sum and the company is not earning the interest payable on the principal sum or (where no definite rate of interest is payable) interest thereon at such rate as the court considers would be a fair rate to expect from a similar investment, after allowing a reasonable amount for depreciation,

but this subsection shall not affect any power to vary rights or accept any compromise or arrangement created by the terms of the debentures or under a compromise or arrangement between the company and creditors.

Companies (Amendment).

(8) The appointment of a company or the Public Trustee as sole trustee for debenture holders shall be sufficient compliance with the provisions of this section and the word "trustees" in this section includes a company or the Public Trustee so appointed as sole trustee for the debenture holders.

(9) If a company makes default in complying with any requirement of this section, the company, and every officer of the company who is in default, shall be guilty of an offence. Penalty for default.

Penalty : Fifty pounds for every day during which the default continues.

(h) by inserting next after section one hundred and seventy-three the following new Division : — New Division 6A.

DIVISION 6A.—*Other Interests.*

173A. In this Division unless the context or subject matter otherwise indicates or requires— Restriction in offer, &c., of certain interests in undertakings, &c. cf. No. 6455 Vic. s. 63 (1).

"Interest" means any right to participate, or interest whether enforceable or not and whether actual prospective or contingent,

(a) in any profits assets or realisation of any financial or business undertaking or scheme whether in the State or elsewhere;

(b) in any common enterprise whether in the State or elsewhere in which the holder of the right or interest is led to expect profits rent or interest from the efforts of the promoter or a third party; or

(c)

Companies (Amendment).

(c) in any investment contract—

whether or not the right or interest is evidenced by a formal document or by an interest in any physical asset but does not include—

- (i) any share in or debenture of a company or co-operative society registered under the Co-operation, Community Settlement, and Credit Act, 1923, as amended by subsequent Acts;
- (ii) any interest in or arising out of a policy of life assurance;
- (iii) any interest in a partnership agreement; or
- (iv) any prescribed right or interest.

“Investment contract” means any contract scheme or arrangement which in substance and irrespective of the form thereof involves the investment of money in or under such circumstances that the investor acquires or may acquire an interest in or right in respect of property which under or in accordance with the terms of investment will or may at the option of the investor be used or employed in common with any other interest in or right in respect of property acquired in or under like circumstances.

Only public company may issue or offer interest.

cf. No. 6455
Vic. s. 63
(2).

Company to issue statement.
cf. *Ibid.*
s. 63 (3).

173B. No person except a public company or an agent of a public company authorised in that behalf under the seal of the company shall issue or offer to the public for subscription or purchase or shall invite the public to subscribe for or purchase any interest.

173C. (1) Before a company (whether itself or by an agent so authorised) issues or offers to the public for subscription or purchase or invites the public to subscribe for or purchase any interest the company

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company shall issue or cause to be issued a statement in writing in connection therewith which statement shall for all purposes be deemed to be a prospectus issued by a company, and all provisions of this Act and rules of law relating to prospectuses or to the offering or to an intended offering of shares for subscription or purchase to the public shall with such adaptations as are necessary apply and have effect accordingly as if such interest were shares offered or intended to be offered to the public for subscription or purchase and as if persons accepting any offer or invitation in respect of or subscribing for or purchasing any such interest were subscribers for such shares.

(2) Such statement shall, in lieu of the matters and reports specified in Schedule Eight to this Act, set out the matters and reports specified in Schedule Fourteen to this Act and where such interest consists of anything other than rights or interests in marketable securities of companies other than those of the company issuing the statement, the statement shall set out in addition such of the matters and reports specified in Schedule Eight to this Act as are required by the Registrar-General :

Provided that the Registrar-General may excuse any such company from including in any such statement such of the matters specified in Schedule Fourteen to this Act as he thinks fit.

Except where any such interest consists only of rights or interests in marketable securities of companies other than those of the company issuing the statement and the statement sets out the matters and reports specified in Schedule Fourteen to this Act, no such statement shall be issued unless the Registrar-General has informed the company, by notice in writing, that—

(a) he requires the statement to contain such of the matters and reports specified in Schedule Eight to this Act as are specified in the notice; or

(b)

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(b) he does not require the statement to contain any such matters or reports.

Company to make provision in deed for appointment of trustee.
cf. No. 6455
Vic. s. 63
(4).

173D. A person shall not issue or offer to the public for subscription or purchase or invite the public to subscribe for or purchase any interest unless the person has in relation to the interest made provision in a deed (which deed and any amendment thereof has been approved for the purposes of this Division by the Registrar-General) for the appointment of a person or company as trustee for or as representative of the holders of such interests and for other matters as prescribed by this Division.

Appointment to be approved by Minister.
cf. *Ibid.*
s. 63 (5).

173E. (1) No appointment of such a trustee or representative shall be made for the purposes of this Division without the approval of the Minister.

(2) The first appointment of any such trustee or representative and all appointments to fill vacancies in the office shall be made with reasonable despatch, in default of which the person shall be deemed to have contravened the provisions of this Division.

(3) No such trustee or representative shall be removable except by the Minister, or by resignation or death, or by a majority decision of the holders of the interests to which the deed relates.

(4) Every such trustee or representative shall exercise all due diligence and vigilance in watching the rights and interests of holders of interests to which the deed relates.

(5) Every such trustee or representative shall keep proper books of account in relation to the interests to which the deed relates and shall annually post a statement of such accounts with the report of an auditor thereon to each holder of any such interests.

173F.

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173F. (1) Every deed referred to in section 173D of this Act shall contain covenants by the company, or (if it does not expressly contain such covenants) shall be deemed to contain them, to the following effect, namely :—

Deed to contain or to be deemed to contain certain covenants.
cf. No. 6455
Vic. s. 63
(6).

- (a) that the company will use its best endeavours to carry on and conduct the business of the company in a proper and efficient manner and to ensure that any undertaking, scheme or enterprise to which the deed relates is carried on and conducted in a proper and efficient manner ;
- (b) that to the same extent as if the trustee or representative were a director of the company the company will—
 - (i) make available to the trustee or representative, or to any auditor appointed by him, for inspection the whole of the books of the company whether kept at the registered office or elsewhere ; and
 - (ii) give to the trustee or representative such oral or written information as he requires with respect to all matters relating to the undertaking, scheme or enterprise of the company or any property (whether acquired before or after the date of the deed) of the company or otherwise relating to the affairs thereof ;
- (c) that the company will make available or ensure that there is made available to the trustee or representative such details as he requires with respect to all matters relating to the undertaking, scheme or enterprise to which the deed relates ;
- (d) that the company will not exercise the right to vote in respect of any shares held by the trustee or representative at any election for directors of a company whose shares are so held

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held without the consent of the holders of the interests concerned given at a meeting of those holders summoned in the same manner as a meeting may be summoned under paragraph (e) of this subsection for the purpose of authorising the exercise of the right in a particular case; and

(e) that the company will from time to time on the application, delivered to the company at its registered office, of not less than one-tenth in number of the holders of interests to which the deed relates—

(i) by giving notice at least seven days before the proposed meeting by letter through the post addressed to each of the holders of such interests at his last known address; and

(ii) by giving notice at least fourteen days before the proposed meeting by advertisement in a daily newspaper circulating generally throughout the State addressed to the holders of all such interests,

summon a meeting of such holders for the purpose of laying before the meeting the accounts and balance-sheet which were laid before the last preceding ordinary general meeting of the company or the last audited statement of accounts of the trustee or representative, and of the meeting giving to the trustee or representative such directions as the meeting thinks proper.

(2) Every such meeting shall be held at the time and place specified in the notice and advertisement under the chairmanship of the trustee or representative or a nominee of the trustee or representative approved by the Minister or of such other person as is appointed in that behalf by the holders of such interests present at the meeting, and shall

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shall be conducted in accordance with the provisions of the deed or, insofar as the deed makes no provision, as directed by the chairman of the meeting.

(3) Every such deed and any amendment thereof shall be lodged by the company in the office of the Registrar-General within fourteen days after the execution of such deed or amendment.

173G. (1) Every company which either before or after the commencement of the Companies (Amendment) Act, 1960, has issued any interest shall— Company to lodge return with Registrar-General.

(a) once at least in every calendar year, not more than sixty days after the date of the first or only ordinary general meeting of the company in that year, lodge with the Registrar-General—

(i) a return containing a list of all persons who on the day of the first or only ordinary general meeting of the year are holders of such interests showing their names and addresses and the extent of their holdings of such interests and if any such interest consists of a specific interest in any real or personal property a description of the property and its location; and

(ii) a copy of the lists and statements required by paragraph (b) of this subsection and by subsection two of this section, to be posted to the holders of such interests; and

(b) not less than seven days before the first or only ordinary general meeting of the year post to any holder of an interest who has requested the company to supply him with the documents hereinafter referred to a copy of—

(i) its balance-sheet;

(ii) its profit and loss account;

(iii)

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- (iii) its directors' report;
- (iv) a summary of all purchases and sales of marketable securities by the company affecting such holders during the period to which the accounts relate;
- (v) a statement of the total amount of brokerage affecting such holders paid or charged by the company during the period to which the accounts relate and the proportion thereof paid to any stock or share broker who or any employee or nominee of whom is an officer of the company and the proportion retained by the company; and
- (vi) a list of all the investments of the company affecting such holders as at the date of the balance-sheet showing the names and quantities of such investments.

cf. Fas. Act
No. 29,
1959, s. 62
(14).

(2) There shall accompany every balance-sheet posted to a holder of an interest—

- (a) a list of all marketable securities affecting such holders held by the trustee or representative appointed under section 173D of this Act as at the date to which the accounts are made up, showing the quantities of those securities and the basis on which they have been valued;
- (b) a list of all purchases and sales of marketable securities affecting such holders made by the trustee or representative, or by the company on behalf of the trustee or representative, during the period to which the accounts relate;

(c)

Companies (Amendment).

(c) a list of all the investments affecting such holders made by the trustee or representative, or by the company on behalf of the trustee or representative, showing the names and quantities of those investments; and

(d) such other statements and particulars (if any) affecting such holders as may be prescribed;

each of which shall be signed by the persons who signed the balance-sheet.

(3) Subject to the regulations any company which is required pursuant to this section to lodge with the Registrar-General a return of holders and which has its registered office at a place within three miles of the office of the Registrar-General need not lodge such return with the Registrar-General if such return is available without fee for inspection and copying by any person at the registered office of the company during the hours in which the registered office is accessible to the public. Exemption of certain companies.

173H. A person shall not be relieved from any liability to any holder of an interest by reason of any contravention of or failure to comply with any of the provisions of this Division. Default not to relieve company or person from liability.

173I. Any person who and any company which contravenes or fails to comply with any of the provisions of this Division or of any covenant of any deed under this Division and any person who is a director of such company shall be guilty of an offence. Penalty.

Penalty: Five hundred pounds or imprisonment for twelve months.

173J. This Division shall not apply in the case of the sale of any interest by a personal representative liquidator receiver or trustee in bankruptcy in the normal course of realisation of assets. Exceptions.

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Sec. 343.
(Restrictions
on offering
of shares
for
subscription
or
purchase.)

(i) (i) by inserting at the end of the proviso to subsection two of section three hundred and forty-three the following word and new paragraph :—

; or

(d) where the offer relates to—

(i) an interest within the meaning of section 173A of this Act and is accompanied by a statement in writing as required by section 173C; or

(ii) deposits or loans to a company of the kind referred to in subsection two of section 137A of this Act.

(ii) by inserting in subsection eight of the same section next before the definition of "Shares" the following new definition :—

"Purchase" includes barter or exchange.

(iii) by inserting in the same subsection after the word "damages," the words "and also includes interests within the meaning of section 173A of this Act,".

(iv) by inserting at the end of the same subsection the following new paragraph :—

In subsection two of this section a reference to "an offer in writing" includes an offer by way of broadcasting, television or cinematograph and where an offer is made by way of broadcasting, television or cinematograph, the statement accompanying it referred to in that subsection shall be made by the same means as the offer is made instead of in writing.

Sch. Twelve.

(j) by inserting in Schedule Twelve next after the matter relating to "Sec. 168." the words :—

Sec. 173F.—As to lodging a deed or any amendment thereof.

(k)

Companies (Amendment).

(k) by inserting in Part II of Schedule Thirteen next after the matter relating to "Sec. 169 (5)." the words and symbols :—

Sec. 172A (3).—Application for leave to act as trustee.

Sec. 172A (5).—Application to call meeting.

Sec. 172A (7).—Application to enforce debentures.

(l) by inserting next after Schedule Thirteen the following new Schedule :—

SCHEDULE FOURTEEN.

The Companies Act, 1936.

(a) Matters and reports required to be included in statement made pursuant to section 173c (2).

1. The date of the statement.
2. The date of and parties to the deed referred to in section 173d of this Act.
3. The date of and parties to any deed or instrument by which any of the provisions of the firstmentioned deed has been amended or abrogated.
4. The name of the trustee or representative under any such deed and the address of the trustee's or representative's registered office.
5. A summary of the provisions of the deed regulating the retirement, removal and replacement of the trustee or representative.
6. The name of the company referred to in section 173c of this Act (hereinafter called "the management company") and the address of its registered office.
7. A summary of the provisions of the deed regulating the retirement, removal and replacement of the management company.
8. The name and address of the auditor of the trust declared by the deed.
9. A summary of the provisions of the deed regulating the appointment, retirement, removal and replacement of such auditor.

10.

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10. The period of the trust declared by the deed and a summary of the provisions of the deed for the winding up of the trust on its termination.

11. The nature of the unit or sub-unit of interests issued or offered to the public for subscription or purchase and the description and number of the shares to which such interests attach.

12. The method of calculation provided by the deed of the greatest price at which the management company may sell any such unit or sub-unit of interest.

13. What obligations are imposed under the deed upon the management company to purchase from holders thereof the unit or sub-units of interests for which they have subscribed or which they have purchased, and a statement of the method provided by the deed for the calculation of the purchase price of such units or sub-units.

14. A summary of any provisions of the deed whereby investments made thereunder may be varied.

15. Full information regarding the remuneration of the trustee and the management company respectively and the manner in which under the provisions of the deed such remuneration is provided for and what (if any) charges are made in respect of such remuneration upon the sale of or subscription for a unit or sub-unit of interests under the deed and upon the distribution of income and capital thereunder.

16. Whether units or sub-units of interests are transferable by the holders thereof and, if so, a summary of the provisions of the deed regulating such transfer.

17. A summary of the provisions of the deed regulating the distribution to the holders of units or sub-units of interests of the income of the trust.

18. If any reference is made to the yield of income obtained or to be obtained by the holders of units or sub-units of interests, a statement as to whether and to what extent anything other than cash receipts by way of dividends, interest or bonuses has been taken into account in calculating the yield.

19. A summary of the provisions of the deed regulating the convening of meetings of holders of units or sub-units of interests.

20. The names and the date of commencement of operation of any other unit trusts conducted by the management company during the five years immediately preceding the date of the statement.

Companies (Amendment).

21. A statement that certificates shall be allotted by the trustee to purchasers of or subscribers for units or sub-units of interests purchased or subscribed for pursuant to this statement not more than six months from the date appearing in paragraph 1 hereof.

(b) Reports to be set out in statement.

22. A report by an accountant registered pursuant to the Public Accountants Registration Act, 1945-1958, who shall be named, setting out—

(1) in respect of the interests referred to in the deed—

(a) a statement setting out the number of distributions of income in respect of each unit or sub-unit of interests during the five years immediately preceding the date of the statement, the amount of each such distribution and to what extent each such distribution consisted of anything other than dividends, interests or bonuses and if so the nature and amount of such other components ;

(b) a statement setting out the selling price and the purchase price respectively of such units or sub-units of interests on each of the dates upon which each distribution of income was made by the trustee ;

(c) a statement setting out the selling price and the purchase price respectively of such units or sub-units of interests on the date immediately preceding the date of the statement ;

(2) in respect of units or sub-units of interests referred to in the deeds relating to each of the other trusts (if any) conducted by the management company during the five years immediately preceding the date of the statement, similar information to that required in respect of subparagraph (1) hereof.

23. If in the case of a company which has been carrying on business, or of a business which has been carried on, for less than five years, the accounts of the company or business have only been made up in respect of four years, three years, two years, or one year, this Schedule shall have effect as if references to four years, three years, two years, or one year, as the case may be, were substituted for references to five years.

By Authority:

V. C. N. BLIGHT, Government Printer, Sydney, 1960

Companies (Amendment).

21. A statement that certificates shall be allotted by the trustee to purchasers of or subscribers for units or shares of interest purchased or subscribed for pursuant to this statement not more than six months from the date appearing in paragraph 1 hereof.

(b) Reports to be set out in statement.

22. A report by an accountant registered pursuant to the Public Accountants Registration Act 1957 (1957) who shall be named, setting out—

(1) in respect of the interests referred to in the deed—

(a) a statement setting out the number of units or shares of interest in respect of each unit or share of interest during the five years immediately preceding the date of the statement, the amount of each such distribution and to what extent each such distribution consisted of or included other than dividends, interest or bonus and if to the name and amount of such other components;

(b) a statement setting out the selling price and the purchase price respectively of each unit or share of interest on each of the dates upon which each distribution of income was made by the trustee;

(c) a statement setting out the selling price and the purchase price respectively of each unit or share of interest on the date immediately preceding the date of the statement;

(2) in respect of units or shares of interest referred to in the deeds relating to each of the other trusts administered by the management company during the five years immediately preceding the date of the statement, such information as that required in respect of paragraph (1) hereof.

23. It is in the case of a company which has been carrying on business or of a business which has been carried on for less than five years, the accounts of the company or business have only been made up in respect of four years, three years, two years or one year, this Schedule shall have effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.

By Authority:

V. C. N. BLIGHT, Government Printer, Sydney, 1960.

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 13 April, 1960, A.M.*

New South Wales



ANNO NONO

ELIZABETHÆ II REGINÆ

Act No. 31, 1960.

An Act to make provisions with respect to invitations to the public to deposit money with or to lend money to companies; to impose restrictions on the offer of certain interests in certain undertakings, schemes, and enterprises; for these and other purposes to amend the Companies Act, 1936, as amended by subsequent Acts; and for purposes connected therewith. [Assented to, 28th April, 1960.]

BE

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

HOWARD T. FOWLES,
Chairman of Committees of the Legislative Assembly.

Companies (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title,
citation and
commence-
ment.

1. (1) This Act may be cited as the "Companies (Amendment) Act, 1960".

(2) The Companies Act, 1936, as amended by subsequent Acts and by this Act, may be cited as the Companies Act, 1936-1960.

(3) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment
of Act No.
33, 1936.

2. The Companies Act, 1936, as amended by subsequent Acts, is amended—

Sec. 2.
(Division
into Parts.)

(a) (i) by inserting next after the matter relating to Division 6 of Part VIII in section two the words and figures "DIVISION 6A.—*Other Interests*—ss. 173A-173J.";

(ii) by omitting from the matter relating to the Schedules in the same section the figures "1-13" and by inserting in lieu thereof the figures "1-14";

Sec. 6.
(Inter-
pretation.)

(b) (i) by inserting in subsection one of section six next after the definition of "Manager" the following new definition :—

"Marketable securities" means any debentures funds stocks shares or bonds of any Government or of any local government authority or of any corporation or society and includes any right or option in respect of shares in any corporation.

(ii)

Companies (Amendment).

- (ii) by omitting from the same subsection the definition of "Prospectus" and by inserting in lieu thereof the following definition :—

"Prospectus" means any prospectus notice circular advertisement or other invitation inviting applications or offers from the public to subscribe for or purchase or offering to the public for subscription or purchase any shares in or debentures of or any units of shares in or units of debentures of a company or foreign company or proposed company or proposed foreign company.

- (c) (i) by omitting from paragraph (b) of subsection one of section one hundred and sixteen the word "and";
- (ii) by inserting at the end of the same subsection the following word and new paragraphs :—

Sec. 116.
(Investigation of affairs of company by inspectors.)

; and

- (d) in the case of a company which either before or after the commencement of the Companies (Amendment) Act, 1960, issued any interest within the meaning of section 173A of this Act, where the Governor is satisfied that it is necessary for the protection of the holders of such interests, or any of them, that the affairs of the company should be investigated under this Division.

The provisions of paragraph (d) of this subsection shall apply mutatis mutandis to a foreign company.

- (iii) by omitting from subsection two of the same section the words "The application" and by inserting in lieu thereof the words "An application under paragraph (a), (b) or (c) of subsection one of this section";

(d)

Companies (Amendment).

Sec. 117.
(Proceedings
on report
by inspec-
tors.)

(d) by inserting in subsection two of section one hundred and seventeen after the word "under" the words "paragraph (a), (b) or (c) of subsection one of";

New sec.
137A.

(e) by inserting next after section one hundred and thirty-seven the following new section :—

As to
invitations
to the
public to
deposit
money with
companies.
cf. No. 6455
Vic. s. 36.

137A. (1) No invitation to the public to deposit money with or to lend money to any company, whether incorporated in the State or elsewhere, shall be made unless a debenture is intended to be issued in respect of every deposit or loan so made and a debenture shall be issued in respect of every deposit or loan so made.

(2) A company shall not in pursuance of any such invitation accept from any person a deposit or loan of money unless it is accompanied by a form of application signed by such person and such application was issued to such person with a prospectus which complies in all respects with the requirements of section one hundred and thirty-seven of this Act.

(3) Nothing in this section shall require a debenture or prospectus to be issued in connection with any invitation to the public to deposit money with a banking company.

(4) Where an invitation is made to the public to deposit money with or lend money to any company and such deposit or loan is not to be secured by a charge over all or any of the company's assets the invitation shall state that the document to be issued acknowledging the deposit or loan of money made pursuant to the invitation is to be an unsecured note or an unsecured deposit note, as the case may be, and shall not state that such document is to be a debenture.

(5)

Companies (Amendment).

(5) Where any document is issued by a company (being one of a series of such documents) which either expressly or by implication acknowledges the indebtedness of the company in respect of money borrowed by it but is not secured by a charge over all or any of the company's assets the document shall be described on the face of it as an unsecured note or as an unsecured deposit note, as the case may be, and shall not be described on its face as a debenture.

(6) Every person who knowingly contravenes or permits or authorises the contravention of any of the provisions of this section shall be guilty of an offence.

Penalty : One thousand pounds.

- (f) by omitting section one hundred and thirty-eight and by inserting in lieu thereof the following section :— Subst. sec. 138.

138. (1) Every advertisement—

(a) offering, or calling attention to an offer or intended offer of, shares in or debentures of a company to the public for subscription or purchase, or

Certain advertisements deemed to be prospectuses. cf. No. 6455 Vic. s. 37 (4).

(b) inviting or calling attention to an invitation or intended invitation to the public to deposit money with or lend money to a company,

shall whether the company is incorporated in the State or elsewhere be deemed to be a prospectus issued by the person responsible for publishing or disseminating the advertisement (and all enactments and rules of law as to the contents of prospectuses and

Companies (Amendment).

and as to liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses shall apply and have effect accordingly) unless it contains no more information than the following :—

- (i) the number and description of the shares or debentures concerned or, as the case may be, particulars of the deposits with or loans to the company invited or intended to be invited by the company ;
- (ii) the name and date of registration of the company and its paid up share capital ;
- (iii) the general nature of the main business or proposed main business of the company ;
- (iv) the names of the directors or proposed directors and of the brokers or underwriters to the issue ;
- (v) the place at which copies of the full prospectus and forms of application for the shares or debentures, or relating to the deposits or loans invited to be made with or to the company, may be obtained,

and states that any such application will proceed only on one of the forms of application referred to and attached to a printed copy of the prospectus.

(2) No statement that, or to the effect that, the advertisement is not a prospectus shall prevent the operation of this section.

(3) This section shall apply to advertisements published or disseminated in the State by newspaper broadcasting television cinematograph or any other means whatsoever.

(4) Nothing in this section shall require a prospectus to be issued in connection with any invitation or intended invitation to the public to deposit money with a banking company.

(g)

Companies (Amendment).

(g) by inserting next after section one hundred and seventy-two the following new section :— New
sec. 172A.

172A. (1) Every company, whether incorporated in the State or elsewhere, issuing debentures to the public for subscription in the State shall (except where a debenture is given by one instrument to not more than twenty-five persons without any right to subdivide their interests) make provision in the debentures or in a trust deed for the appointment of not less than two persons (the appointment of one or more but not all of whom may if the debentures or deed so provide be reserved to be made by the holders of the debentures) as trustees for the holders of the debentures. Trustees for
debenture
holders.
cf. No. 6455
Vic. s. 62.

(2) Such debentures or deed shall contain covenants by the company or, if it does not expressly contain such covenants, shall be deemed to contain covenants, to the following effect :—

- (a) that the company will use its best endeavours to carry on and conduct its business in a proper and efficient manner;
- (b) that, to the same extent as if the trustees for the holders of the debentures or any auditor appointed by the trustees were directors of the company, it will—
 - (i) make available for their inspection the whole of the books of account of the company; and
 - (ii) give to them such information as they require with respect to all matters relating to the books of account of the company; and

(c)

Companies (Amendment).

(c) that the company will, on the application of the holders of debentures of any class holding not less than one-fifth in nominal value of the issued debentures of that class delivered to its registered office, by giving notice—

(i) to each of the holders of the debentures (other than debentures payable to bearer) of that class at his address as specified in the register of debentures; and

(ii) by advertisement in a daily newspaper circulating generally throughout the State addressed to all holders of debentures of that class,

summon a meeting to consider the accounts and balance-sheet which were laid before the last preceding ordinary general meeting of the company and give to the trustees directions in relation to the exercise of their powers, such meeting to be held at a time and place specified in the notice and advertisement under the chairmanship of a trustee or such other person as is appointed in that behalf by the holders of debentures present at the meeting.

(3) Without the leave of the court—

(a) a director shareholder solicitor or auditor of the company or of any other company which has entered into any guarantee in respect of the principal debt or interest thereon or itself holds beneficially shares of the firstmentioned company; or

(b) a company which directly or indirectly controls or is controlled by the firstmentioned company,

shall not be appointed or act as a trustee.

(4)

Companies (Amendment).

(4) The company shall in writing furnish the trustees, whether or not any demand therefor has been made, with—

- (a) particulars (within twenty-one days after the creation of any charge requiring registration under this Act) of such charge, and when the amount to be advanced is indeterminate particulars (within seven days after the advance) of the amount or amounts in fact advanced :

Provided that when any such advances are merged in a current account with bankers or trade creditors it shall be sufficient for particulars of the net amount outstanding in respect of any such advances to be furnished every three months;

- (b) particulars (within twenty-one days after creation of the charge) of any charge created by the company, other than a charge created in the ordinary course of the business of the company.

(5) The court may on the application of the trustees order a meeting (to be held and conducted in such manner as the court thinks fit, under the chairmanship of a trustee or such other person as the meeting appoints) of the holders of debentures of any class to be called to consider any matters in which they are concerned and advise the trustees thereon and may give such ancillary or consequential directions as it thinks fit.

(6) The trustees shall exercise diligence in ascertaining whether or not the assets of the company which constitute or may constitute the security for the debentures are sufficient or are likely to become sufficient to discharge the principal debt and any interest thereon.

(7)

Companies (Amendment).

Enforce-
ability
of certain
debentures.

(7) Notwithstanding anything in any debenture or trust deed the security for any debentures which are irredeemable or redeemable only on the happening of a contingency or at an uncertain time shall be enforceable forthwith or at such time as the court directs if, on the application of a debenture holder (where there is no trustee for debenture holders) or the trustees, the court is satisfied that—

- (a) at the time of the issue of the debentures the assets of the company which constituted or were intended to constitute the security therefor were sufficient or likely to become sufficient to discharge the principal debt and any interest thereon;
- (b) the security, if realised under the circumstances existing at the time of the application, would be likely to bring not more than sixty per centum of the principal sum of moneys outstanding (regard being had to all prior charges, if any); and
- (c) the assets covered by the security, on a fair valuation on the basis of a going concern, are worth less than the said principal sum and the company is not earning the interest payable on the principal sum or (where no definite rate of interest is payable) interest thereon at such rate as the court considers would be a fair rate to expect from a similar investment, after allowing a reasonable amount for depreciation,

but this subsection shall not affect any power to vary rights or accept any compromise or arrangement created by the terms of the debentures or under a compromise or arrangement between the company and creditors.

(8)

Companies (Amendment).

(8) The appointment of a company or the Public Trustee as sole trustee for debenture holders shall be sufficient compliance with the provisions of this section and the word "trustees" in this section includes a company or the Public Trustee so appointed as sole trustee for the debenture holders.

(9) If a company makes default in complying with any requirement of this section, the company, and every officer of the company who is in default, shall be guilty of an offence. Penalty for default.

Penalty : Fifty pounds for every day during which the default continues.

(h) by inserting next after section one hundred and seventy-three the following new Division : — New Division 6A.

DIVISION 6A.—*Other Interests.*

173A. In this Division unless the context or subject matter otherwise indicates or requires— Restriction in offer, &c., of certain interests in undertakings, &c.

"Interest" means any right to participate, or interest whether enforceable or not and whether actual prospective or contingent, cf. No. 6455 Vic. s. 63 (1).

(a) in any profits assets or realisation of any financial or business undertaking or scheme whether in the State or elsewhere;

(b) in any common enterprise whether in the State or elsewhere in which the holder of the right or interest is led to expect profits rent or interest from the efforts of the promoter or a third party; or

(c)

Companies (Amendment).

(c) in any investment contract—
whether or not the right or interest is evidenced by a formal document or by an interest in any physical asset but does not include—

- (i) any share in or debenture of a company or co-operative society registered under the Co-operation, Community Settlement, and Credit Act, 1923, as amended by subsequent Acts;
- (ii) any interest in or arising out of a policy of life assurance;
- (iii) any interest in a partnership agreement; or
- (iv) any prescribed right or interest.

“Investment contract” means any contract scheme or arrangement which in substance and irrespective of the form thereof involves the investment of money in or under such circumstances that the investor acquires or may acquire an interest in or right in respect of property which under or in accordance with the terms of investment will or may at the option of the investor be used or employed in common with any other interest in or right in respect of property acquired in or under like circumstances.

173B. No person except a public company or an agent of a public company authorised in that behalf under the seal of the company shall issue or offer to the public for subscription or purchase or shall invite the public to subscribe for or purchase any interest.

173C. (1) Before a company (whether itself or by an agent so authorised) issues or offers to the public for subscription or purchase or invites the public to subscribe for or purchase any interest the company

Only public company may issue or offer interest.
cf. No. 6455
Vic. s. 63
(2).

Company to issue statement.
cf. *Ibid.*
s. 63 (3).

Companies (Amendment).

company shall issue or cause to be issued a statement in writing in connection therewith which statement shall for all purposes be deemed to be a prospectus issued by a company, and all provisions of this Act and rules of law relating to prospectuses or to the offering or to an intended offering of shares for subscription or purchase to the public shall with such adaptations as are necessary apply and have effect accordingly as if such interest were shares offered or intended to be offered to the public for subscription or purchase and as if persons accepting any offer or invitation in respect of or subscribing for or purchasing any such interest were subscribers for such shares.

(2) Such statement shall, in lieu of the matters and reports specified in Schedule Eight to this Act, set out the matters and reports specified in Schedule Fourteen to this Act and where such interest consists of anything other than rights or interests in marketable securities of companies other than those of the company issuing the statement, the statement shall set out in addition such of the matters and reports specified in Schedule Eight to this Act as are required by the Registrar-General :

Provided that the Registrar-General may excuse any such company from including in any such statement such of the matters specified in Schedule Fourteen to this Act as he thinks fit.

Except where any such interest consists only of rights or interests in marketable securities of companies other than those of the company issuing the statement and the statement sets out the matters and reports specified in Schedule Fourteen to this Act, no such statement shall be issued unless the Registrar-General has informed the company, by notice in writing, that—

- (a) he requires the statement to contain such of the matters and reports specified in Schedule Eight to this Act as are specified in the notice; or

(b)

Companies (Amendment).

(b) he does not require the statement to contain any such matters or reports.

Company to make provision in deed for appointment of trustee.
cf. No. 6455
Vic. s. 63
(4).

173D. A person shall not issue or offer to the public for subscription or purchase or invite the public to subscribe for or purchase any interest unless the person has in relation to the interest made provision in a deed (which deed and any amendment thereof has been approved for the purposes of this Division by the Registrar-General) for the appointment of a person or company as trustee for or as representative of the holders of such interests and for other matters as prescribed by this Division.

Appointment to be approved by Minister.
cf. *Ibid.*
s. 63 (5).

173E. (1) No appointment of such a trustee or representative shall be made for the purposes of this Division without the approval of the Minister.

(2) The first appointment of any such trustee or representative and all appointments to fill vacancies in the office shall be made with reasonable despatch, in default of which the person shall be deemed to have contravened the provisions of this Division.

(3) No such trustee or representative shall be removable except by the Minister, or by resignation or death, or by a majority decision of the holders of the interests to which the deed relates.

(4) Every such trustee or representative shall exercise all due diligence and vigilance in watching the rights and interests of holders of interests to which the deed relates.

(5) Every such trustee or representative shall keep proper books of account in relation to the interests to which the deed relates and shall annually post a statement of such accounts with the report of an auditor thereon to each holder of any such interests.

173F.

Companies (Amendment).

173F. (1) Every deed referred to in section 173D of this Act shall contain covenants by the company, or (if it does not expressly contain such covenants) shall be deemed to contain them, to the following effect, namely :—

Deed to contain or to be deemed to contain certain covenants.

cf. No. 6455
Vic. s. 63
(6).

- (a) that the company will use its best endeavours to carry on and conduct the business of the company in a proper and efficient manner and to ensure that any undertaking, scheme or enterprise to which the deed relates is carried on and conducted in a proper and efficient manner;
- (b) that to the same extent as if the trustee or representative were a director of the company the company will—
 - (i) make available to the trustee or representative, or to any auditor appointed by him, for inspection the whole of the books of the company whether kept at the registered office or elsewhere; and
 - (ii) give to the trustee or representative such oral or written information as he requires with respect to all matters relating to the undertaking, scheme or enterprise of the company or any property (whether acquired before or after the date of the deed) of the company or otherwise relating to the affairs thereof;
- (c) that the company will make available or ensure that there is made available to the trustee or representative such details as he requires with respect to all matters relating to the undertaking, scheme or enterprise to which the deed relates;
- (d) that the company will not exercise the right to vote in respect of any shares held by the trustee or representative at any election for directors of a company whose shares are so held

Companies (Amendment).

held without the consent of the holders of the interests concerned given at a meeting of those holders summoned in the same manner as a meeting may be summoned under paragraph (e) of this subsection for the purpose of authorising the exercise of the right in a particular case; and

- (e) that the company will from time to time on the application, delivered to the company at its registered office, of not less than one-tenth in number of the holders of interests to which the deed relates—
- (i) by giving notice at least seven days before the proposed meeting by letter through the post addressed to each of the holders of such interests at his last known address; and
 - (ii) by giving notice at least fourteen days before the proposed meeting by advertisement in a daily newspaper circulating generally throughout the State addressed to the holders of all such interests,

summon a meeting of such holders for the purpose of laying before the meeting the accounts and balance-sheet which were laid before the last preceding ordinary general meeting of the company or the last audited statement of accounts of the trustee or representative, and of the meeting giving to the trustee or representative such directions as the meeting thinks proper.

(2) Every such meeting shall be held at the time and place specified in the notice and advertisement under the chairmanship of the trustee or representative or a nominee of the trustee or representative approved by the Minister or of such other person as is appointed in that behalf by the holders of such interests present at the meeting, and shall

Companies (Amendment).

shall be conducted in accordance with the provisions of the deed or, insofar as the deed makes no provision, as directed by the chairman of the meeting.

(3) Every such deed and any amendment thereof shall be lodged by the company in the office of the Registrar-General within fourteen days after the execution of such deed or amendment.

173G. (1) Every company which either before or after the commencement of the Companies (Amendment) Act, 1960, has issued any interest shall—

Company to
lodge
return with
Registrar-
General.

(a) once at least in every calendar year, not more than sixty days after the date of the first or only ordinary general meeting of the company in that year, lodge with the Registrar-General—

(i) a return containing a list of all persons who on the day of the first or only ordinary general meeting of the year are holders of such interests showing their names and addresses and the extent of their holdings of such interests and if any such interest consists of a specific interest in any real or personal property a description of the property and its location; and

(ii) a copy of the lists and statements required by paragraph (b) of this subsection and by subsection two of this section, to be posted to the holders of such interests; and

(b) not less than seven days before the first or only ordinary general meeting of the year post to any holder of an interest who has requested the company to supply him with the documents hereinafter referred to a copy of—

(i) its balance-sheet;
(ii) its profit and loss account;

(iii)

Companies (Amendment).

- (iii) its directors' report;
- (iv) a summary of all purchases and sales of marketable securities by the company affecting such holders during the period to which the accounts relate;
- (v) a statement of the total amount of brokerage affecting such holders paid or charged by the company during the period to which the accounts relate and the proportion thereof paid to any stock or share broker who or any employee or nominee of whom is an officer of the company and the proportion retained by the company; and
- (vi) a list of all the investments of the company affecting such holders as at the date of the balance-sheet showing the names and quantities of such investments.

cf. Tas. Act
No. 29,
1959, s. 62
(14).

(2) There shall accompany every balance-sheet posted to a holder of an interest—

- (a) a list of all marketable securities affecting such holders held by the trustee or representative appointed under section 173D of this Act as at the date to which the accounts are made up, showing the quantities of those securities and the basis on which they have been valued;
- (b) a list of all purchases and sales of marketable securities affecting such holders made by the trustee or representative, or by the company on behalf of the trustee or representative, during the period to which the accounts relate;

(c)

Companies (Amendment).

(c) a list of all the investments affecting such holders made by the trustee or representative, or by the company on behalf of the trustee or representative, showing the names and quantities of those investments; and

(d) such other statements and particulars (if any) affecting such holders as may be prescribed;

each of which shall be signed by the persons who signed the balance-sheet.

(3) Subject to the regulations any company which is required pursuant to this section to lodge with the Registrar-General a return of holders and which has its registered office at a place within three miles of the office of the Registrar-General need not lodge such return with the Registrar-General if such return is available without fee for inspection and copying by any person at the registered office of the company during the hours in which the registered office is accessible to the public.

Exemption
of certain
companies.

173H. A person shall not be relieved from any liability to any holder of an interest by reason of any contravention of or failure to comply with any of the provisions of this Division.

Default
not to
relieve
company
or person
from
liability.

173I. Any person who and any company which contravenes or fails to comply with any of the provisions of this Division or of any covenant of any deed under this Division and any person who is a director of such company shall be guilty of an offence.

Penalty.

Penalty: Five hundred pounds or imprisonment for twelve months.

173J. This Division shall not apply in the case of the sale of any interest by a personal representative liquidator receiver or trustee in bankruptcy in the normal course of realisation of assets.

Exceptions.

(i)

Companies (Amendment).

Sec. 343.
(Restrictions
on offering
of shares
for
subscription
or
purchase.)

(i) (i) by inserting at the end of the proviso to subsection two of section three hundred and forty-three the following word and new paragraph :—

; or

(d) where the offer relates to—

(i) an interest within the meaning of section 173A of this Act and is accompanied by a statement in writing as required by section 173C; or

(ii) deposits or loans to a company of the kind referred to in subsection two of section 137A of this Act.

(ii) by inserting in subsection eight of the same section next before the definition of "Shares" the following new definition :—

"Purchase" includes barter or exchange.

(iii) by inserting in the same subsection after the word "damages," the words "and also includes interests within the meaning of section 173A of this Act,".

(iv) by inserting at the end of the same subsection the following new paragraph :—

In subsection two of this section a reference to "an offer in writing" includes an offer by way of broadcasting, television or cinematograph and where an offer is made by way of broadcasting, television or cinematograph, the statement accompanying it referred to in that subsection shall be made by the same means as the offer is made instead of in writing.

Sch. Twelve.

(j) by inserting in Schedule Twelve next after the matter relating to "Sec. 168." the words :—

Sec. 173F.—As to lodging a deed or any amendment thereof.

(k)

Companies (Amendment).

- (k) by inserting in Part II of Schedule Thirteen next Sch. after the matter relating to "Sec. 169 (5)." the Thirteen. words and symbols :—

Sec. 172A (3).—Application for leave to act as trustee.

Sec. 172A (5).—Application to call meeting.

Sec. 172A (7).—Application to enforce debentures.

- (l) by inserting next after Schedule Thirteen the follow- New Sch. ing new Schedule :— Fourteen.

SCHEDULE FOURTEEN.
The Companies Act, 1936.

Sec. 173c.

- (a) Matters and reports required to be included in statement made pursuant to section 173c (2).

1. The date of the statement.
2. The date of and parties to the deed referred to in section 173d of this Act.
3. The date of and parties to any deed or instrument by which any of the provisions of the firstmentioned deed has been amended or abrogated.
4. The name of the trustee or representative under any such deed and the address of the trustee's or representative's registered office.
5. A summary of the provisions of the deed regulating the retirement, removal and replacement of the trustee or representative.
6. The name of the company referred to in section 173c of this Act (hereinafter called "the management company") and the address of its registered office.
7. A summary of the provisions of the deed regulating the retirement, removal and replacement of the management company.
8. The name and address of the auditor of the trust declared by the deed.
9. A summary of the provisions of the deed regulating the appointment, retirement, removal and replacement of such auditor.
- 10.

Companies (Amendment).

10. The period of the trust declared by the deed and a summary of the provisions of the deed for the winding up of the trust on its termination.

11. The nature of the unit or sub-unit of interests issued or offered to the public for subscription or purchase and the description and number of the shares to which such interests attach.

12. The method of calculation provided by the deed of the greatest price at which the management company may sell any such unit or sub-unit of interest.

13. What obligations are imposed under the deed upon the management company to purchase from holders thereof the unit or sub-units of interests for which they have subscribed or which they have purchased, and a statement of the method provided by the deed for the calculation of the purchase price of such units or sub-units.

14. A summary of any provisions of the deed whereby investments made thereunder may be varied.

15. Full information regarding the remuneration of the trustee and the management company respectively and the manner in which under the provisions of the deed such remuneration is provided for and what (if any) charges are made in respect of such remuneration upon the sale of or subscription for a unit or sub-unit of interests under the deed and upon the distribution of income and capital thereunder.

16. Whether units or sub-units of interests are transferable by the holders thereof and, if so, a summary of the provisions of the deed regulating such transfer.

17. A summary of the provisions of the deed regulating the distribution to the holders of units or sub-units of interests of the income of the trust.

18. If any reference is made to the yield of income obtained or to be obtained by the holders of units or sub-units of interests, a statement as to whether and to what extent anything other than cash receipts by way of dividends, interest or bonuses has been taken into account in calculating the yield.

19. A summary of the provisions of the deed regulating the convening of meetings of holders of units or sub-units of interests.

20. The names and the date of commencement of operation of any other unit trusts conducted by the management company during the five years immediately preceding the date of the statement.

Companies (Amendment).

21. A statement that certificates shall be allotted by the trustee to purchasers of or subscribers for units or sub-units of interests purchased or subscribed for pursuant to this statement not more than six months from the date appearing in paragraph 1 hereof.

(b) Reports to be set out in statement.

22. A report by an accountant registered pursuant to the Public Accountants Registration Act, 1945-1958, who shall be named, setting out—

(1) in respect of the interests referred to in the deed—

(a) a statement setting out the number of distributions of income in respect of each unit or sub-unit of interests during the five years immediately preceding the date of the statement, the amount of each such distribution and to what extent each such distribution consisted of anything other than dividends, interests or bonuses and if so the nature and amount of such other components ;

(b) a statement setting out the selling price and the purchase price respectively of such units or sub-units of interests on each of the dates upon which each distribution of income was made by the trustee ;

(c) a statement setting out the selling price and the purchase price respectively of such units or sub-units of interests on the date immediately preceding the date of the statement ;

(2) in respect of units or sub-units of interests referred to in the deeds relating to each of the other trusts (if any) conducted by the management company during the five years immediately preceding the date of the statement, similar information to that required in respect of subparagraph (1) hereof.

23. If in the case of a company which has been carrying on business, or of a business which has been carried on, for less than five years, the accounts of the company or business have only been made up in respect of four years, three years, two years, or one year, this Schedule shall have effect as if references to four years, three years, two years, or one year, as the case may be, were substituted for references to five years.

In the name and on behalf of Her Majesty I assent to this Act.

E. W. WOODWARD,

Governor.

*Government House,
Sydney, 28th April, 1960.*

