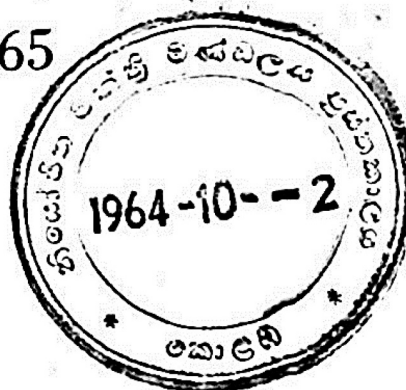


PARLIAMENT OF CEYLON

5th Session 1964-65



Companies (Amendment) Act, No. 15 of 1964

Date of Assent: September 19, 1964

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Companies (Amendment) Act, No. 15 of 1964

L. D.—O. 23/61.

AN ACT TO AMEND THE COMPANIES ORDINANCE.

Chapter 145,
Vol. VI,
page 57.

[Date of Assent: September 19, 1964]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Companies (Amendment) Act, No. 15 of 1964. Short title.

2. The Companies Ordinance, hereinafter referred to as the "principal enactment", is hereby amended by the substitution— Amendment of Chapter 145.

(a) for the words "the Director of Commerce", wherever those words occur collectively in the principal enactment, other than in section 363, of the words "the Registrar of Companies"; and

(b) for the word "Director", wherever that word refers to the Director of Commerce, of the words "Registrar of Companies".

3. (1) Section 6 of the principal enactment is hereby repealed and the following new section substituted therefor:— Replacement of section 6 of the principal enactment.

Mode in which and extent to which objects of company may be altered.

6. (1) A company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it—

(a) to carry on its business more economically or more efficiently; or

(b) to attain its main purpose by new or improved means; or

(c) to enlarge or change the local area of its operations; or

(d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or

(e) to restrict or abandon any of the objects specified in the memorandum; or

(f) to sell or dispose of the whole or any part of the undertaking of the company; or

(g) to amalgamate with any other company or body of persons:

Provided that if an application is made to the court in accordance with this section for the alteration to be cancelled, it shall not have effect except in so far as it is confirmed by the court.

(2) An application under this section may be made—

(a) by the holders of not less in the aggregate than fifteen *per centum* in nominal value of the company's issued share capital or any class thereof or, if the company is not limited by shares, not less than fifteen *per centum* of the company's members; or

(b) by the holders of not less than fifteen *per centum* of the company's debentures entitling the holders to object to alterations of its objects:

Provided that an application shall not be made by any person who has consented to or voted in favour of the alteration.

(3) An application under this section must be made within twenty-one days after the date on which the resolution altering the company's objects was passed, and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(4) On an application under this section the court may make an order confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members, and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement:

Provided that no part of the capital of the company shall be expended in any such purchase.

(5) The debentures entitling the holders to object to alterations of a company's objects shall be any debentures secured by a floating charge which were issued or first issued before such date as may be appointed by the Minister by Order published in the *Gazette*, or form part of the same series as any debentures so issued, and a special resolution altering a company's objects shall require the same notice to the holders of any such debentures as to members of the company. In default of any provisions regulating the giving of notice to any such debenture holders, the provisions of the company's articles regulating the giving of notice to members shall apply.

(6) In the case of a company which is, by virtue of a licence from the Registrar of Companies, exempt from the obligation to use the word "Limited" as part

of its name, a resolution altering the company's objects shall also require the same notice to the Registrar of Companies as to members of the company.

(7) Where a company passes a resolution altering its objects—

(a) if no application is made with respect thereto under this section, it shall within fifteen days from the end of the period for making such an application deliver to the Registrar of Companies a printed copy of its memorandum as altered; and

(b) if such an application is made it shall—

(i) forthwith give notice of that fact to the Registrar; and

(ii) within fifteen days from the date of any order cancelling or confirming the alteration, deliver to the Registrar a certified copy of the order and, in the case of an order confirming the alteration, a printed copy of the memorandum as altered.

The court may by order at any time extend the time for the delivery of the documents to the Registrar under paragraph (b) of this sub-section for such period as the court may think proper.

(8) If a company makes default in giving notice or delivering any document to the Registrar of Companies as required by the last foregoing sub-section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine of one hundred rupees.

(9) The validity of an alteration of the provisions of a company's memorandum with respect to the objects of the company shall not be questioned on the ground that it was not authorized by sub-section (1) of this section, except in proceedings taken for the purpose (whether under this section or otherwise) before the expiration of twenty-one days after the date of the resolution in that behalf; and where any such proceedings are taken otherwise than under this section the two last foregoing sub-sections shall apply in relation thereto as if they had been taken under this section and as if an order declaring the alteration invalid were an order cancelling it and as if an order dismissing the proceedings were an order confirming the alteration.'

(2) The amendment made in the principal enactment by sub-section (1) of this section shall not apply in relation to a resolution for altering the provisions of a company's memorandum with respect to the objects of a company passed before the date of commencement of this Act, and accordingly the provisions of the principal enactment shall apply in relation to any such resolution as if that enactment had not been amended by that sub-section.

4. Section 18 of the principal enactment is hereby repealed and the following new section substituted therefor:—

Replacement of
section 18 of
the principal
enactment.

" Prohibition of
the registration
of companies by
undesirable
names.

18. No company shall be registered by a name which in the opinion of the Registrar of Companies is undesirable."

Amendment of
section 91 of
the principal
enactment.

5. Section 91 of the principal enactment is hereby amended—

- (a) by the renumbering of sub-section (3) of that section as sub-section (4); and
- (b) by the insertion, immediately after sub-section (2) of that section, of the following new sub-section :—

“(3) With the previous sanction of the Registrar of Companies, a company may, by special resolution, change the situation of its registered office to any district, whether or not it is a district specified in the memorandum of the company as the district in which such office is to be situated. Notice of such change shall be given in the prescribed form by the company to the Registrar within fourteen days of the date of the resolution. Where the Registrar refuses to give his sanction under this sub-section, the company may appeal against the refusal to the Permanent Secretary and the decision of the Permanent Secretary on such appeal shall be final.”.

Amendment of
section 94 of
the principal
enactment.

6. Section 94 of the principal enactment is hereby amended, in sub-section (1) of that section, by the substitution, in paragraph (a) of that sub-section, for the words “ addresses, and the occupations, if any,”, of the words “ addresses, and nationalities ”.

Amendment of
section 106 of
the principal
enactment.

7. Section 106 of the principal enactment is hereby amended, in sub-section (2) of that section, by the substitution, for the words “ addresses, and occupations ”, of the words “ addresses and nationalities ”.

Amendment of
section 108 of
the principal
enactment.

8. Section 108 of the principal enactment is hereby amended, in sub-section (3) of that section, by the substitution, for the words “ of the last balance sheet which has been audited by the company's auditors ”, of the words “ of the balance sheet which was, or should have been, in accordance with the provisions of section 121, laid before the company at the general meeting subsequent to which the annual return is required by sub-section (1) of this section to be made.”.

9. The following new section is hereby inserted immediately after section 136, and shall have effect as section 136A, of the principal enactment :—

Insertion of
new section
136A in the
principal
enactment

.. Registrar's
power to call
for information
and to inspect
books, registers
and documents.

136A. (1) The Registrar of Companies may, from time to time, by written notice, direct any company—

(a) to furnish before a date specified in the notice such information relating to the company as the Registrar may require for any purpose of this Ordinance or any other enactment affecting such company, or such information or explanation as the Registrar may require in respect of any particulars—

(i) which have or should have been stated in any return, declaration or other document furnished by the company, or

(ii) which should have been stated in any return or other document which should have, but actually has not, been furnished by the company,

as at the date or dates specified in the notice; and

(b) to produce before a date specified in the notice any book, register or other document kept or required to be kept by the company in connection with its business or transactions.

(2) If default is made in complying with any direction given by the Registrar of Companies under sub-section (1), the

company and every officer of the company who is in default shall be guilty of an offence and shall be liable to a default fine.”.

Insertion of
new section
141A in the
principal
enactment.

10. The following new section is hereby inserted immediately after section 141, and shall have effect as section 141A, of the principal enactment:—

“ Power to
restrain persons
convicted of
certain offences
from managing
companies.

141A. (1) Where a person is convicted of any offence in connection with the promotion, formation or management of a company, the court convicting such person may, in addition to imposing any punishment provided for such offence by this Ordinance, make an order that—

(a) that person shall be removed from the office of director; or

(b) that person shall be suspended for a specific period from the office of director,

and the court may, whether or not in addition to an order under paragraph (a) or paragraph (b), make an order that that person shall not, without the leave of the court, be a director of or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company for such period not exceeding five years as may be specified in such order.

(2) If any person acts in contravention of an order made under this section, he shall be guilty of an offence and shall, in respect of each offence, be liable to a fine not exceeding five thousand rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.”.

11. The following new heading and the following new sections are hereby inserted immediately after section 153, and the new sections shall have effect as sections 153A to 153I, of the principal enactment:—

Insertion of new heading and new sections 153A to 153I in the principal enactment.

“ PREVENTION OF OPPRESSION AND MISMANAGEMENT.

Alternative remedy to winding up in cases of oppression.

153A. (1) Any member or members of a company having a complaint that the affairs of the company are being conducted in a manner oppressive to any member or members (including the member or members with such complaint) may apply to the District Court of the district in which the registered office of the company is situate for an order under this section, if such member has or such members have a right so to apply in accordance with the provisions of section 153C.

(2) If, on any application under subsection (1), the court is of opinion—

(a) that the affairs of the company are being conducted in a manner oppressive to any member or members, and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it is just and equitable that the company should be wound up,

the court may, with a view to remedying the matters complained of, make such order as it thinks fit.

Alternative remedy to winding up in cases of mismanagement.

153B. (1) Any member or members of a company having a complaint—

(a) that the affairs of the company are being conducted in a manner prejudicial to the interests of the company; or

(b) that a material change (not being a change brought about by, or in the interests of, any creditors including debenture holders, or any class of shareholders, of the company) has taken place in the management or control of the company whether by an alteration in its board of directors, or of its agent or secretary, or in the constitution or control of the firm or body corporate acting as its agent or secretary, or in the ownership of the company shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to the interests of the company,

may apply to the District Court of the district in which the registered office of the company is situate for an order under this section, if such member has or such members have a right so to apply in accordance with the provisions of section 153c.

(2) If, on any application under subsection (1), the court is of opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid, the court may, with a view to remedying or preventing the matters complained of or apprehended, make such order as it thinks fit.

Who may
apply to
court.

153c. (1) The following member or members of a company shall have the right to apply under sections 153A and 153B:—

(a) in the case of a company having a share capital, not less than ten *per centum* of the total number of its members or the holders of not less than the aggregate of ten *per centum* in the nominal value of the company's issued share capital provided that the applicant or applicants have paid all calls and other sums due on their shares;

(b) in the case of a company not having a share capital, not less than twenty *per centum* of the company's members.

(2) For the purposes of sub-section (1), where any shares are held by two or more persons jointly they shall be counted only as one member.

(3) Where several members of a company are entitled to make an application in accordance with the provisions of sub-section (1), any one or more of them having obtained the consent in writing of the remaining members may make the application on behalf and for the benefit of all of them.

Power of court
to act under
section 153A
or 153B during
winding-up
proceedings.

153D. Notwithstanding the provisions of Part V of this Ordinance, at any stage of the winding-up proceedings in respect of a company, where a court is of the opinion that to wind up the company would be prejudicial to the interests of a member of the company, it shall be lawful for the court to act under section 153A or 153B in like manner as if an application has been made to court under either of those two sections.

Powers of court
on application
under the
foregoing
sections.

153E. Without prejudice to the generality of the powers of the court under section 153A or 153B, any order under either of those sections may provide for—

- (a) the regulation of the conduct of the company's affairs in future;
- (b) the purchase of the shares or interests of any members of the company by other members thereof or by the company;
- (c) in the case of a purchase of shares by the company as aforesaid, the consequent reduction of its share capital;
- (d) the termination, setting aside or modification of any agreement, howsoever arrived at, between the company on the one hand, and any of the following persons, on the other, namely:—
 - (i) the managing director,
 - (ii) any other director,
 - (iii) the board of directors,
 - (iv) the agent or secretary, or
 - (v) the manager,

upon such terms and conditions as may, in the opinion of the court, be just and equitable in all the circumstances of the case;

- (e) the termination, setting aside or modification of any agreement between the company and any person not referred to in paragraph (d), but always so that no such agreement shall be terminated, set

aside or modified except after due notice to the party concerned and after obtaining his consent;

(f) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application, or the commencement of winding-up proceedings, as the case may be, which would, if made or done by or against an individual, be deemed in a case of his insolvency to be a fraudulent preference; and

(g) any other matter for which in the opinion of the court it is just and equitable that provision should be made.

Interim order
by court.

153F. Pending the making by it of a final order under section 153A or 153B, the court may, on the application of any party to the proceedings, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable.

Effect of
alteration of
memorandum or
articles of
company by
order under
section 153A
or 153B.

153G. (1) Where an order under section 153A or 153B makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Ordinance, the company shall not have power, except to the extent, if any, permitted in the order, to make without the leave of the court, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.

(2) Subject to the provisions of subsection (1), the alterations made by the order shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the

provisions of this Ordinance; and the said provisions shall apply accordingly to the memorandum or articles as so altered.

(3) A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within fifteen days after the making thereof, be filed by the company with the Registrar of Companies who shall register the same.

(4) If default is made in complying with the provisions of sub-section (3), the company, and every officer of the company who is in default, shall be guilty of an offence and shall be liable to a fine not exceeding one hundred rupees for every day during which the default continues.

Addition of
respondents to
application
under section
153A or 153B.

153H. If the managing director or any other director, the agent or secretary or the manager, of a company, or any other person who has not been impleaded as a respondent to any application under section 153A or 153B applies to be added as a respondent thereto, the court shall, if it is satisfied that there is sufficient cause for doing so, direct that he may be added as a respondent accordingly.

Consequences
of termination
or modification
of certain
agreements.

153I. (1) Where an order of a court made under section 153A or 153B terminates, sets aside, or modifies an agreement such as is referred to in paragraphs (d) or (e) of section 153E—

(a) the order shall not give rise to any claim whatsoever against the company by any person for damages or for compensation for loss of office or in any other respect, either in pursuance of the agreement or otherwise; and

(b) no managing director or other director, agent, secretary or manager whose agreement is

so terminated or set aside and no person who, at the date of the order terminating or setting aside the agreement was, or subsequently becomes, an associate of such agent or secretary shall, for a period of five years from the date of the order terminating the agreement, without the leave of the court, be appointed, or act, as the managing director or other director, agent, secretary, or manager of the company.

(2) (a) Any person who knowingly acts as a managing director or other director, agent or secretary or manager of a company in contravention of paragraph (b) of sub-section (1) shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding five thousand rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.

(b) In the case of any offence under this section committed by a body of persons—

(i) where the body of persons is a body corporate, every director and officer of that body corporate shall be deemed to be guilty of that offence, and

(ii) where the body of persons is a firm, every partner of the firm shall be deemed to be guilty of that offence:

Provided that no such person shall be deemed to be guilty of an offence under this section, if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence."

Replacement
of section 290
of the principal
enactment.

12. Section 290 of the principal enactment is hereby repealed and the following new section substituted therefor:—

“Registration
of documents,
copies of
documents,
notices, etc.

290. (1) The Registrar may, subject to the provisions of sub-sections (2) and (3), accept and register, or record or file—

(a) any document which is by any provision of this Ordinance required or authorized to be registered or recorded by, or filed with, the Registrar; and

(b) any document or copy of a document, and any return or notice, which is by any such provision required or authorized to be sent, forwarded, given, delivered, produced or in any way notified to the Registrar.

(2) Where the Registrar is not satisfied that any document or copy of a document or any return or notice is in order or in compliance with the provisions of this Ordinance, it shall be lawful for him to refuse to register, record or file such document, copy of a document, return or notice except on an order of the court.

(3) Where no special provision is made for the payment of a fee in respect of any registration, recording or filing of any document, copy of a document, return or notice, the fees mentioned in the Table set out in the Ninth Schedule shall be paid to the Registrar in respect of such registration, recording or filing, the fee for filing being deemed to be the same as the fee for making a record of any fact.”.

Amendment of
section 293 of
the principal
enactment.

13. Section 293 of the principal enactment is hereby amended as follows:—

(1) in sub-section (1) of that section—

(a) by the substitution, for the words “prescribed fees, not exceeding fifty cents for each inspection,” of the words “prescribed fees.”; and

(b) by the substitution, for all the words from "prescribed fee, not exceeding two rupees" to "certified copy or extract:", of the words "prescribed fees: "; and

(2) by the repeal of sub-section (3) of that section.

14. Section 346 of the principal enactment is hereby amended—

Amendment of section 346 of the principal enactment.

(a) in sub-section (1) of that section, by the insertion, immediately after paragraph (a) of that sub-section, of the following new paragraph:—

"(aa) a person, by name or by office, to be or to act as the Deputy Registrar of Companies;"; and

(b) in sub-section (2) of that section, by the substitution, for the words "as an Assistant Registrar of Companies", of the words "as the Deputy Registrar of Companies or an Assistant Registrar of Companies".

15. Section 352 of the principal enactment is hereby amended, in sub-section (1) of that section, by the substitution, for the words "instead of instituting proceedings in court", of the words "instead of instituting proceedings in court or, where such proceedings have already been instituted, instead of continuing such proceedings".

Amendment of section 352 of the principal enactment.

16. Section 357 of the principal enactment is hereby repealed and the following new section substituted therefor:—

Replacement of section 357 of the principal enactment.

"Service of documents on company.

357. A document may be served on a company—

(a) by leaving it at or sending it by post to the registered office of the company; or

(b) by delivering it, or sending it by post, to any director, secretary, manager or other officer of the company; or

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(c) if for any reason it cannot be served on such director, secretary, manager or other officer, by delivering it, or sending it by post, to any member of the company."

17. The following new sections are hereby inserted immediately after section 360, and shall have effect as sections 360A and 360B, of the principal enactment:—

Insertion of new sections 360A and 360B in the principal enactment.

"Recovery of expenses and fees.

360A. If any expenses or fees payable to the Registrar of Companies under this Ordinance are not paid by the person liable to pay the same upon demand, such default may be reported to a Magistrate, and the amount thereof shall be recovered in the same way as if it were a fine imposed by such Magistrate.

Proceedings in actions by a member or members against a company to be by way of summary procedure.

360B. (1) Where an action is instituted against any company by any person in his capacity as a holder of shares in such company, the proceedings in such action shall be taken by way of summary procedure and, for the purpose of enabling such proceedings to be so taken, section 8 of the Civil Procedure Code shall have effect as if for the words "by this Ordinance" occurring therein, there were substituted the words "by this Ordinance or by the Companies Ordinance".

(2) Notwithstanding anything to the contrary in any written law, the petition presented in court in any action referred to in sub-section (1), and the written objections, if any, of the respondent, shall be stamped to the value of ten rupees, but no further stamps shall be required for any other document in the same legal proceedings."

18. Section 363 of the principal enactment is hereby amended by the omission of the definition of "Director of Commerce".

Amendment of section 363 of the principal enactment.

19. The Twelfth Schedule to the principal enactment is hereby amended by the substitution, for the item " The particulars as to directors and indebtedness of the company. s. 106 (3) (n) & (o) ", of the new item " The particulars as to directors and indebtedness of the company. s. 106 (3) (m) & (n) ".

Amendment of
the Twelfth
Schedule to
the principal
enactment.