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Solomon Islands

CHAPTER 174

BILLS OF SALE

Subsidiary Legislation

APPOINTMENT OF REGISTRAR
(Section 8 (1))

LN 140/1965

[7th September 1965]

The Registrar of the High Court has been appointed to be the Registrar for the purposes of the Bills of Sale Act.

CHAPTER 175

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“the time of the opening of the subscription lists” has the meaning assigned to it by subsection (1) of section 50.

(2) A person shall not be deemed to be within the meaning of any provision in this Act a person in accordance with whose directions or instructions the directors of a company are accustomed to act, by reason only that the directors of the company act on advice given by him in a professional capacity.

LN 46A of 1978

(3) References in this Act to a body corporate or to a corporation shall be construed as not including a corporation sole but as including a company incorporated outside Solomon Islands.

(4) Any provision of this Act overriding or interpreting a company's articles shall, except as provided by this Act apply in relation to articles in force at the commencement of this Act, as well as to articles coming into force thereafter, and shall apply also in relation to a company's memorandum as it applies in relation to its articles.

PART I

INCORPORATION OF COMPANIES AND MATTERS INCIDENTAL THERETO

Memorandum of Association

Mode of forming incorporated company

3.—(1) Any seven or more persons, or, where the company to be formed will be a private company, any two or more persons, associated for any lawful purposes may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company.

(2) Such a company may be either—

(a) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed “a company limited by shares”); or

(b) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed “a company limited by guarantee”).

Requirements with respect to memorandum

4.—(1) The memorandum of every company must state—
(a) the name of the company, with “limited” as the last word of the name;
(b) the objects of the company.

(2) The memorandum of a company whether limited by shares or by guarantee must state that the liability of its members is limited.

(3) The memorandum of a company limited by guarantee must also state that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(4) In the case of a company having a share capital—

(a) the memorandum must also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;

(b) no subscriber of the memorandum may take less than one share;

(c) each subscriber must write opposite to his name the number of shares he takes.

Stamp and signature of memorandum

5. The memorandum must bear the same stamp as if it were an agreement, and must be signed by each subscriber in the presence of at least one witness who must attest the signature.

Restriction on alteration of memorandum

6. A company may not alter the conditions contained in its memorandum except in the cases, in the mode and to the extent for which express provision is made in this Act.

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

7.—(1) Subject to the provisions of this section 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

(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.

(2) The alteration shall not take effect until, and except in so far as, it is confirmed on petition by the court.

(3) Before confirming the alteration the court must be satisfied—

(a) that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the court, be affected by the alteration; and

(b) that, with respect to every creditor who in the opinion of the court is entitled to object and who signifies his objection in manner directed by the court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has been determined, or has been secured to the satisfaction of the court:

Provided that the court, may, in the case of any person or class, for special reasons, dispense with the notice required by this section.

(4) The court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit.

(5) The court shall, in exercising its discretion under this section, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, 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 interest 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.

(6) An office copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within fifteen days from the date of the order, be delivered by the company to the registrar of companies, and he shall register the copy so delivered and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum as so altered shall be the memorandum of the company.

The court may by order at any time extend the time for the delivery of documents to the registrar under this section for such period as the court may think proper.

(7) If a company makes default in delivering to the registrar of companies any document required by this section to be delivered to him, the company shall be liable to a fine of twenty dollars for every day during which the default continues.

Articles of Association

8. There may in the case of a company limited by shares, and there shall in the case of a company limited by guarantee, be registered with the memorandum articles of association signed by the subscribers to the memorandum and prescribing rules for the company.

Articles
prescribing rules
for companies

9.—(1) In the case of a company limited by guarantee, the articles must state the number of members with which the company proposes to be registered.

Rules required in
case of company
limited by
guarantee

(2) Where a company limited by guarantee has increased the number of its members beyond the registered number, it shall, within fifteen days after the increase was resolved on or took place, give to the registrar of companies notice of the increase, and the registrar shall record the increase.

If default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

10.—(1) Articles of association may adopt all or any of the rules contained in Table A in the First Schedule.

Adoption and
application of

(2) In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the rules contained in Table A in the First Schedule, those rules shall, so far as applicable, be the rules of the company in the same manner and to the same extent as if they were contained in duly registered articles.

Printing, stamp
and signature of
articles

11. Articles must—

- (a) be printed;
- (b) be divided into paragraphs numbered consecutively;
- (c) bear the same stamp as if they were contained in an agreement;
- (d) be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature.

Alteration of
articles by
special resolution

12.—(1) Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles.

(2) Any alteration or addition so made in the articles shall, subject to the provisions of this Act, be as valid as if originally contained therein, and be subject in like manner to alteration by special resolution.

Form of Memorandum and Articles

13. The form of—

- (a) the memorandum of association of a company limited by shares;
 - (b) the memorandum and articles of association of a company limited by guarantee and not having a share capital;
 - (c) the memorandum and articles of association of a company limited by guarantee and having a share capital,
- shall be respectively in accordance with the forms set out in Tables B, C and D, in the First Schedule, or as near thereto as circumstances admit.

Statutory forms
of memorandum
and articles

First Schedule
Tables B, C and
D

Registration

14. The memorandum and the articles, if any, shall be delivered to the registrar of companies and the registrar shall retain and register them.

Registration of
memorandum
and articles

Certificate of
incorporation

15. On the registration of the memorandum of a company the registrar shall certify under his hand that the company is incorporated as a limited company.

Effect of
incorporation

16. From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

Conclusiveness
of certificate of
incorporation

17.—(1) A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under this Act.

(2) A statutory declaration by a practising advocate engaged in the formation of the company, or by a person named in the articles as a director or secretary of the company, of compliance with all or any of the said requirements shall be produced to the registrar, and the registrar may accept such a declaration as sufficient evidence of compliance.

Provisions with respect of Names of Companies

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

Undesirable
names
11 of 1966, s. 3
LN 46A of 1978

19.—(1) A company may be special resolution and with the approval of the Minister signified in writing change its name.

Change of name

(2) If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name is registered by a name which, in the opinion of the Minister is too like the name by which a company in existence is previously registered, the first-mentioned company may change its name with the sanction of the Minister and, if he so directs within six months of its being registered by that name, shall change it within a period of six weeks from the date of the direction or such longer period as the Minister may think fit to allow.

11 of 1966, s. 4
LN 46A of 1978

If a company makes default in complying with a direction under this subsection, it shall be liable to a fine of ten dollars for every day during which the default continues.

(3) Where a company changes its name under this section, the registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case.

(4) A change of name by a company under this section shall not affect any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

Power to
dispense with
"limited" in
name of
charitable and
other companies
LN 46A of 1978

20.—(1) Where it is proved to the satisfaction of the Minister that an association about to be formed as a company is to be formed for promoting commerce, art, science, religion, charity or any other useful object, and intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Minister may by licence direct that the association may be registered as a company with limited liability, without the addition of the word "limited" to its name, and the association may be registered accordingly and shall, on registration, enjoy all the privileges and, subject to the provisions of this section, be subject to all the obligations of limited companies.

(2) Where it is proved to the satisfaction of the Minister—

(a) that the objects of a company registered under this Act as a limited company are restricted to those specified in subsection (1) and to objects incidental or conducive thereto; and

(b) that by its constitution the company is required to apply its profits, if any, or other income in promoting its objects and is prohibited from paying any dividend to its members,

the Minister may be licence authorise the company to make by special resolution a change in its name including or consisting of the omission of the word "limited", and subsections (3) and (4) of section 19 shall apply to a change of name under this subsection as they apply to a change of name under that section.

(3) A licence by the Minister under this section may be granted on such conditions and subject to such rules as the

Minister thinks fit, and those conditions and rules shall be binding on the body to which the licence is granted, and, where the grant is under subsection (1), shall, if the Minister so directs, be inserted in the memorandum and articles, or in one of those documents.

(4) A body to which a licence is granted under this section shall be excepted from the provisions of this Act relating to the use of the word "limited" as any part of its name, the publishing of its name and the sending of lists of members to the registrar of companies.

(5) A licence under this section may at any time be revoked by the Minister, and upon revocation the registrar shall enter the word "limited" at the end of the name upon the register of the body to which it was granted, and the body shall cease to enjoy the exemptions and privileges or, as the case may be, the exemptions granted by this section:

Provided that, before a licence is so revoked, the Minister shall give to the body notice in writing of his intention, and shall afford it an opportunity of being heard in opposition to the revocation.

(6) Where a body in respect of which a licence under this section is in force alters the provisions of its memorandum with respect to its objects, the Minister may, unless he sees fit to revoke the licence, vary the licence by making it subject to such conditions and rules as the Minister thinks fit, in lieu of or in addition to the conditions and rules, if any, to which the licence was formerly subject.

(7) Where a licence granted under this section to a body the name of which contains the words "Chamber of Commerce" is revoked, the body shall, within a period of six weeks from the date of revocation or such longer period as the Minister may think fit to allow, change its name to a name which does not contain those words, and—

(a) the notice to be given under the proviso to subsection (5) to that body shall include a statement of the effect of the foregoing provisions of this subsection; and

(b) subsections (3) and (4) of section 19 shall apply to a change of name under this subsection as they apply to a change of name under that section.

If the body makes default in complying with the requirements of this subsection, it shall be liable to a fine of one hundred dollars for every day during which the default continues.

General Provisions with respect to Memorandum and Articles

Effect of memorandum and articles

21.—(1) Subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member to observe all the provisions of the memorandum and of the articles.

(2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

Provision as to memorandum and articles of companies limited by guarantee

22.—(1) In the case of a company limited by guarantee and not having a share capital, and registered after the commencement of this Act, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

(2) For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution of a company limited by guarantee and registered on or after the date aforesaid, purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

Alterations in memorandum or articles increasing liability to contribute to share capital not to bind existing members without consent

23. Notwithstanding anything in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum or articles after the date on which he became a member, if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company:

Provided that this section shall not apply in any case where the member agrees in writing, either before or after the alteration is made, to be bound thereby.

Power to alter conditions in memorandum which could have been contained in articles

24.—(1) Subject to the provisions of sections 23 and 202, any condition contained in a company's memorandum which could lawfully have been contained in articles of association instead of in the memorandum may, subject to the provisions of this sec-

tion, be altered by the company by special resolution. The alteration should not take effect until, and except in so far as, it is confirmed on petition by the court.

(2) This section shall not apply where the memorandum itself provides for or prohibits the alteration of all or any of the said conditions, and shall not authorise any variation or abrogation of the special rights of any class of members.

(3) Subsections (3), (4), (5), (6) and (7) of section 7 shall apply in relation to any alteration and to any petition made under this section as they apply in relation to alterations and to petitions made under that section.

Copies of memorandum and articles to be given to members

25.—(1) A company shall, on being so required by any member, send to him a copy of the memorandum and of the articles, if any, subject to payment of ten cents or such less sum as the company may prescribe.

(2) If a company makes default in complying with this section the company and every officer of the company who is in default shall be liable for each offence to a fine of two dollars.

Issued copies of memorandum to embody alterations

26.—(1) Where an alteration is made in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.

(2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum which are not in accordance with the alteration, it shall be liable to a fine of two dollars for each copy so issued, and every officer of the company who is in default shall be liable to the like penalty.

Membership of Company

Definition of member

27.—(1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

Membership of holding company

28.—(1) Except in cases hereinafter in this section mentioned, a body corporate cannot be a member of a company