

# **NORTHERN TERRITORY OF AUSTRALIA**

## **COMPANIES (ADMINISTRATION) ACT**

As in force at 1 July 1996

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# NORTHERN TERRITORY OF AUSTRALIA

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## COMPANIES (ADMINISTRATION) ACT

An Act to establish a Commissioner for Corporate Affairs, a Corporate Affairs Office and a Companies Auditors and Liquidators Disciplinary Board

### Part I Preliminary

#### 1 Short title

This Act may be cited as the *Companies (Administration) Act*.

#### 2 Commencement

This Act shall come into operation on 1 July 1986.

#### 3 Interpretation

In this Act, unless the contrary intention appears:

**Board** means the Companies Auditors and Liquidators Disciplinary Board established under Part III.

**Commissioner** means the Commissioner for Corporate Affairs appointed under section 4(1).

### Part II Commissioner for Corporate Affairs

#### 4 Commissioner for Corporate Affairs

- (1) The Minister may appoint a Commissioner for Corporate Affairs who shall be appointed and hold office under the *Public Sector Employment and Management Act*.
- (2) The Minister may also appoint such Deputy Commissioners or Assistant Commissioners for Corporate Affairs as are required to assist the Commissioner in the exercise of his powers and the performance of his functions.

- (3) The persons appointed under subsection (2) shall be persons appointed or employed under the *Public Sector Employment and Management Act*.

## **5 Corporate Affairs Office**

- (1) For the purposes of this Act, there shall be a Corporate Affairs Office.
- (2) The Corporate Affairs Office shall be under the charge and control of the Commissioner.
- (3) Persons appointed as officers or employees of the Corporate Affairs Office shall be persons appointed or employed under the *Public Sector Employment and Management Act*.

## **6 Corporate Affairs Commissioner to be body corporate**

- (1) The Commissioner for Corporate Affairs is hereby constituted as a corporation sole under the name of the "Commissioner for Corporate Affairs" and, by that name, has perpetual succession and a common seal and is capable of suing and being sued and of acquiring, holding, and disposing of real (including leasehold) and personal property.
- (2) In addition to the common seal of the Commissioner there shall be such duplicates of that seal as the Commissioner directs, and every document to which such duplicate seal is affixed shall be deemed to have the common seal of the Commissioner affixed to it.
- (3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Commissioner affixed to a document and shall assume that it was duly affixed.

## **7 Functions and powers of Commissioner and Deputy Commissioner**

- (1) The Commissioner shall have and may perform such functions and exercise such powers as are imposed or conferred on him by or under this Act or by or under any other Act or any law of the Commonwealth, a State of the Commonwealth, or another Territory.
- (2) The Deputy Commissioner, or, where there is more than one, the Deputy Commissioner nominated by the Minister, shall, during a vacancy in the office of Commissioner and so long as that vacancy continues, have and may exercise all the powers and perform all the functions of the Commissioner.

- (3) The Deputy Commissioner referred to in subsection (2) shall act as Deputy Commissioner in the name and on behalf of the Commissioner in case of illness, absence from duty or other temporary incapacity of the Commissioner.

## **8 Proceedings for offences**

- (1) The Commissioner may, with the written consent of the Attorney-General, take proceedings for an offence.
- (2) Nothing in subsection (1) applies to or affects the power of the Commissioner to take proceedings subject to and in accordance with the *Business Names Act*, the *Companies (Northern Territory) Code*, the *Securities Industry (Northern Territory) Code*, the *Companies (Acquisition of Shares) (Northern Territory) Code* or the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Northern Territory) Code*.

## **9 Delegation**

- (1) Except where otherwise provided by this or any other Act, the Commissioner may, by instrument in writing, delegate all or any of the Commissioner's powers, authorities, functions or duties (except this power of delegation) under this or any other Act to any person and those powers, authorities, functions or duties may be exercised or performed by that person accordingly.
- (2) An act or thing done in the performance of a function or the exercise of a power by a person to whom that function or that power has been delegated by the Commissioner under subsection (1) has the same force and effect as if it had been done by the Commissioner.
- (3) Where a person purports to perform a function or exercise a power conferred on the Commissioner by or under an Act or law, it is presumed, unless the contrary is proved, that the person is duly authorized as a delegate of the Commissioner.
- (4) The exercise or performance of any power, authority, function or duty by a delegate pursuant to subsection (1) shall not affect the exercise or performance of that power, authority, function or duty by the Commissioner.

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**10      Acting appointments**

- (1) The Minister may appoint a person to act as Deputy Commissioner or Assistant Commissioner:
- (a) during a vacancy in the office of a Deputy Commissioner or Assistant Commissioner, as the case may be, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when the Deputy Commissioner or Assistant Commissioner is absent from duty or from the Territory or is, for any other reason, unable to perform the functions of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

- (2) An appointment of a person under subsection (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.
- (3) Where a person is acting as Deputy Commissioner or Assistant Commissioner in accordance with this section and the office of Deputy Commissioner or Assistant Commissioner becomes vacant while that person is so acting, then, subject to subsection (2), that person may continue to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.
- (4) The Minister may at any time terminate the appointment of a person appointed to act in accordance with this section.
- (5) The appointment of a person under this section ceases to have effect if he resigns his appointment by writing signed by him and delivered to the Minister.
- (6) While a person is acting as Deputy Commissioner or Assistant Commissioner in accordance with this section, he shall perform all the functions, and may exercise all the powers, of the Deputy Commissioner or Assistant Commissioner, as the case requires and, for the purposes of section 7(2), shall be deemed to be the Deputy Commissioner to which the section applies.
- (7) The validity of anything done by a person purporting to act in accordance with this section shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

**11 Powers and functions of Deputy or Assistant Commissioner**

A Deputy Commissioner or an Assistant Commissioner may, subject to any directions given by the Commissioner, perform any function and exercise any power of the Commissioner.

**12 Notification of interests**

- (1) A Commissioner, or a person who is appointed for the purposes of this Act or of any other law of the Northern Territory that imposes or confers functions or powers on the Commissioner, or a person who is authorized to perform any function or exercise any power of the Commissioner under this Act or any other law in force in the Territory or perform any such function or exercise such power on behalf of the Commissioner, and who, in the course of his official duties or the performance of the function or exercise of the power, is required to consider any matter relating to:

- (a) a body corporate in the securities of which he has a relevant interest;
- (b) securities in which he has a relevant interest;
- (c) securities of the same class as securities in which he has a relevant interest;
- (d) a person or body:
  - (i) by whom or by which he is employed or has been employed at any time during the immediately preceding 3 years; or
  - (ii) with whom or with which he is associated; or
- (e) a body corporate that is related to a body corporate by which he is employed or has been employed at any time during the immediately preceding 3 years,

shall forthwith in writing inform the Commissioner or, in the case of the Commissioner, the Minister as to that matter and his interest or connection with that matter.

- (2) A person to whom subsection (1) applies who fails to comply with that subsection is guilty of an offence.

Penalty: \$5,000 or imprisonment for 12 months.

- (3) It is a defence to a prosecution for an offence against subsection (2) in respect of a failure by a person to inform the Commissioner or the Minister that that person is required to

consider a matter relating to a particular body corporate, a particular person, or particular securities if that person establishes that, at the time when he was required to consider the matter, he was not aware of a fact or matter the existence of which obliged him to inform the Commissioner or the Minister that he was required to consider the first-mentioned matter.

- (4) The question whether a person has a relevant interest in securities, whether a person is associated with a person or body, and whether 2 bodies corporate are related to each other for the purposes of this section shall be determined as prescribed under the *National Companies and Securities Commission Act 1979* of the Commonwealth for the purposes of section 49(4) of that Act.

### **13 Annual report**

- (1) As soon as practicable after 30 June, but not later than 31 December, in any year, the Commissioner shall deliver to the Minister a report on the operations of the Commissioner during the year ending with that 30 June.
- (2) The Minister shall lay the report or cause it to be laid before the Legislative Assembly as soon as practicable after its receipt by him.

### **14 Savings and transitional provisions**

- (1) In this section, ***Principal Act*** means the *Companies Act*.
- (2) A reference to the Registrar of Companies or to a Deputy Registrar of Companies in any Act, other than the Principal Act, or in any instrument or other document, that is in force or that has effect at the commencement of this section, shall, on and after that commencement, be deemed to be a reference to the Commissioner for Corporate Affairs or to a Deputy Commissioner for Corporate Affairs.
- (3) All acts, matters and things done or omitted to be done by, or done or suffered in relation to, the Registrar of Companies before the commencement of this section, shall, on and after that commencement, have the same force and effect as if they had been done or omitted to be done by, or done or suffered in relation to, the Commissioner.
- (4) Where, immediately before the commencement of this section, property was vested in the Registrar of Companies by reason of the operation of section 310 of the *Companies Act*, the property, on that commencement, vests by force of this section in the Commissioner.



- (5) Any legal or other proceedings taken by or against the Registrar of Companies before the commencement of this section and pending at that commencement may be continued by or against the Commissioner.
- (6) A reference to the Companies Office in any Act, or in any instrument or other document that is in force or that has effect at the commencement of this section, shall, on and after that commencement, be read as a reference to the Corporate Affairs Office.

## **Part III                      Companies Auditors and Liquidators Disciplinary Board**

### **15                      Constitution of Board**

- (1) For the purposes of the *Companies (Northern Territory) Code* there is hereby established the Companies Auditors and Liquidators Disciplinary Board, which shall perform the functions and may exercise the powers conferred on it under Division 2 of Part II of that Code.
- (2) The Board shall be appointed by the Minister and consist of 3 members of whom:
  - (a) one shall be a duly qualified legal practitioner of not less than 5 years standing who shall be the Chairman of the Board;
  - (b) one shall be selected from a panel of 3 names nominated by the Council of The Institute of Chartered Accountants in Australia (Northern Territory Branch); and
  - (c) one shall be selected from a panel of 3 names nominated by the Northern Territory Divisional Council of the Australian Society of Accountants.
- (3) The Minister may, either concurrently with the appointment of a member to the Board or at any time thereafter, appoint a deputy for the member.
- (4) A deputy may act in place of the member to whom he is appointed deputy while that member is prevented by illness, absence, or other sufficient cause from performing the duties of his office, but an appointment as deputy may at any time be revoked by the Minister.
- (5) A deputy appointed to act for the member whose appointment was made in accordance with subsection (2)(b) or (c) shall be appointed by the Minister after consultation with the Council of The Institute of Chartered Accountants in Australia (Northern Territory Branch) or,

as the case may require, the Northern Territory Divisional Council of the Australian Society of Accountants.

- (6) A person appointed to be the deputy of the Chairman of the Board shall be a duly qualified legal practitioner of not less than 5 years standing.
- (7) The deputy of a member of the Board is, when acting as such, a member of the Board, and, in the case of the deputy of the Chairman of the Board, is the Chairman of the Board.
- (8) The appointment of a deputy and any act done by him as such shall not be questioned on the ground that the occasion for the appointment or for the exercise of his powers or the performance of his functions had not arisen or had ceased.

#### **16 Term of office**

- (1) A member of the Board shall hold office for such time not exceeding 3 years as is fixed by the terms of his appointment, and shall be eligible for reappointment.
- (2) The term of office of a member of the Board may be terminated by the Minister for neglect of duty, misconduct or incompetence proved to the satisfaction of the Minister.

#### **17 Vacation of office**

A member of the Board shall be deemed to have vacated his office:

- (a) if, without leave of the Board, he is absent from 3 consecutive meetings of the Board;
- (b) if he becomes an insolvent under administration within the meaning of the *Companies (Northern Territory) Code*;
- (c) if he is found guilty of an offence involving fraud or dishonesty punishable on a finding of guilt by imprisonment for 3 months or more;
- (d) if he becomes incapable by reason of mental infirmity of managing his affairs;
- (e) if his appointment is terminated by the Minister under section 16(2); or
- (f) if he resigns or dies.

**18 Proceedings of Board**

- (1) All business of the Board shall be conducted by a quorum of at least 2 members.
- (2) The Board shall meet at such times and places and shall conduct its business in such manner as it determines from time to time.
- (3) The Chairman of the Board shall preside at all meetings of the Board at which he is present, and in his absence from any meeting his deputy (if any) appointed pursuant to section 15(3) shall preside, but in the absence of both the Chairman and his deputy from any meeting the members present shall elect from their number a member who shall preside at the meeting.
- (4) The person who presides at a meeting of the Board shall have a deliberative vote and, in the event of an equality of votes, a casting vote.
- (5) A proceeding of the Board shall not be invalidated by reason of a defect in the appointment of a member or a deputy of a member or by reason of a vacancy in the membership of the Board.

**19 Disclosure of interest**

- (1) A member of the Board who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.
- (2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Board, and the member shall not, unless the Minister or the Board otherwise determines:
  - (a) be present during any deliberation of the Board with respect to that matter; or
  - (b) take part in any decision of the Board with respect to that matter.
- (3) For the purpose of the making of a determination by the Board under subsection (2) in relation to a member who has made a disclosure under subsection (1), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not:
  - (a) be present during any deliberation of the Board for the purpose of making the determination; or

- (b) take part in the making of the determination by the Board.

**20 Termination of appointment with respect to disclosure of interest**

The Minister shall terminate the appointment of a member where a member fails, without reasonable excuse, to comply with the requirements of section 19.

**21 Savings and transitional provisions**

- (1) A person who, immediately before the commencement of this Act, was a member of the Companies Auditors Board constituted under the *Companies Act* shall be deemed to be a member of the Companies Auditors and Liquidators Disciplinary Board constituted by this Act and to have been appointed to hold office for the period expiring on the date on which the period for which he was appointed under the *Companies Act* would have expired.
- (2) A person who, immediately before the commencement of this Act, was the deputy of a member of the Companies Auditors Board constituted under the *Companies Act* shall be deemed to be the deputy of that member of the Companies Auditors and Liquidators Disciplinary Board constituted under this Act and to have been appointed to hold office for the period expiring on the date on which the period for which that member was appointed under the *Companies Act* would have expired.
- (3) Notwithstanding the repeal of sections 8 and 9 of the *Companies Act* by section 23, the Companies Auditors Board established by those sections continues in existence for such period as is necessary for that Board to complete any proceedings or business that it had commenced but not completed before the repeal of those sections, and that Board has, for the purposes of completing that proceeding or business, all the powers that it would have had if those sections had not been repealed.

**Part IV Miscellaneous**

**22 Regulations**

The Administrator may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**23        Repeal**

Sections 8 and 9 of the *Companies Act* are repealed.

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## ENDNOTES

**1****KEY**

Key to abbreviations

amd = amended  
 app = appendix  
 bl = by-law  
 ch = Chapter  
 cl = clause  
 div = Division  
 exp = expires/expired  
 f = forms  
 Gaz = Gazette  
 hdg = heading  
 ins = inserted  
 lt = long title  
 nc = not commenced

od = order  
 om = omitted  
 pt = Part  
 r = regulation/rule  
 rem = remainder  
 renum = renumbered  
 rep = repealed  
 s = section  
 sch = Schedule  
 sdiv = Subdivision  
 SL = Subordinate Legislation  
 sub = substituted

**2****LIST OF LEGISLATION*****Companies (Administration) Act 1986 (Act No. 17, 1986)***

Assent date	30 June 1986
Commenced	1 July 1986 (s 2)

***Statute Law Revision Act (No. 2) 1987 (Act No. 59, 1987)***

Assent date	31 December 1987
Commenced	31 December 1987

***Public Sector Employment and Management (Consequential Amendments) Act 1993 (Act No. 28, 1993)***

Assent date	30 June 1993
Commenced	1 July 1993 (s 2, s 2 <i>Public Sector Employment and Management Act 1993</i> (Act No. 11, 1993) and Gaz S53, 29 June 1993)

***Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)***

Assent date	17 April 1996
Commenced	1 July 1996 (s 2, s 2 <i>Sentencing Act 1995</i> (Act No. 39, 1995) and Gaz S15, 13 June 1996)

**3****LIST OF AMENDMENTS**

ss 4 – 5	amd No. 28, 1993, s 3
s 15	amd No. 59, 1987, s 5
s 17	amd No. 17, 1996, s 6