

ACT NO. XII OF 1895.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 21st March, 1895.)

An Act to give power to Companies to make certain alterations in the Instruments under which they are constituted, and to amend the Indian Companies Act, 1882.

WHEREAS it is expedient to give to companies power to alter the provisions of the instruments under which they are constituted in certain cases; and whereas it is also expedient to amend section 65 of the Indian Companies Act, 1882; It is hereby VI of 18 enacted as follows :—

Short title and commencement.

1. (1) This Act may be called the Indian Companies (*Memorandum of Association*) Act, 1895; and

(2) It shall come into force at once.

Sections 3 to 10 to be read with Act VI of 1882.

2. Sections 3 to 10 (both inclusive) shall be read with and taken as part of the Indian Companies Act, VI of 18 1882.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

(1) the expression “deed of settlement” includes any contract of copartnery or other instrument constituting or regulating a company and not being an Act of Parliament, a Royal Charter or Letters Patent; and

(2) the expression “High Court” means for the Town of Rangoon the Recorder and elsewhere the High Court as defined in the General Clauses Act, I of 1861 1868.

4. Subject

I of 1882.

4. Subject to the provisions of this Act, a company registered under the Indian Companies Act, 1882, may, by special resolution, alter the provisions of its memorandum of association or deed of settlement with respect to the objects of the company, so far as may be required for any of the purposes hereinafter specified, or alter the form of its constitution by substituting a memorandum and articles of association for a deed of settlement, either with or without any such alteration as aforesaid with respect to the objects of the company; but in no case shall any such alteration take effect until confirmed on petition by the High Court.

Power for company to alter objects or form of constitution subject to confirmation by High Court.

5. Before confirming any such alteration the High Court must be satisfied—

Particulars as to which Court must be satisfied before confirmation.

- (a) that sufficient notice has been given to every holder of debentures or debenture stock of the company, and every person 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 determined, or has been secured to the satisfaction of the Court :

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

6. An order confirming any such alteration may be made on such terms and subject to such conditions as to the Court may seem fit, and the Court may make such orders as to costs as it may deem proper.

Power of Court when confirming to impose terms and make order as to costs.

7. The High Court shall, in exercising its discretion under this Act, have regard to the rights and interests

Discretion conferred

on Court.

interests of the members of the company, or of any class of those members, as well as to the rights and interests of the creditors, and may, if it shall think 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 the Court may give such directions and make such orders as it may think expedient for the purpose of facilitating any such arrangement or carrying the same into effect:

Provided always that it shall not be lawful to expend any part of the capital of the company in any such purchase.

Ground on which Court may confirm a proposed alteration.

8. The High Court may confirm, either wholly or in part, any such alteration as aforesaid with respect to the objects of the company if it appears that the alteration is required in order to enable the company—

- (a) to change the place of the registered office of the company from one part of British India to another; or
- (b) to carry on its business more economically or more efficiently; or
- (c) to attain its main purpose by new or improved means; or
- (d) to enlarge or change the local area of its operations; or
- (e) to carry on some business or businesses which under existing circumstances may conveniently or advantageously be combined with the business of the company; or
- (f) to restrict or abandon any of the objects specified in the memorandum of association or deed of settlement.

Registration of order together with memorandum

9. (1) Where a company has altered the provisions of its memorandum of association or deed of settlement with respect to the place of its registered

office

office or to the objects of the company, or has altered the form of its constitution by substituting a memorandum and articles of association for a deed of settlement, and such alteration has been confirmed by the Court, a certified copy of the order confirming such alteration, together with a printed copy of the memorandum of association or deed of settlement so altered, or together with a printed copy of the substituted memorandum and articles of association (as the case may be), shall be delivered by the company to the Registrar of Joint Stock Companies within three months from the date of the order, and the Registrar shall register the same, and shall certify under his hand the registration thereof, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to such alteration and the confirmation thereof have been complied with.

as altered or substituted memorandum and articles, and consequences thereof.

(2) When any such alteration as aforesaid involves a transfer of the registered office to a part of British India other than that in which the office is at which the company is registered, a certified copy of the order confirming such change shall be delivered by the company to the Registrar of Joint Stock Companies in each of such parts, and each of such Registrars shall register the same, and shall certify under his hand the registration thereof, and the Registrar for the part from which such office is transferred shall send to the Registrar for the other part all documents relating to the company registered in his office.

(3) From the date of such registration (but subject to the provisions of this Act) the memorandum or deed of settlement so altered shall be the memorandum of association or deed of settlement of the company, or, as the case may be, such substituted memorandum and articles of association shall apply to the company in the same manner as if the company were a company registered under Part I of the Indian Companies Act, 1882, with such memorandum and articles of association, and the company's deed of settlement shall cease to apply to the company.

(4) For

e.

50 *Companies (Memorandum of Association)*. [ACT XII

(4) For every registration under this section there shall be payable to the Registrar of Joint Stock Companies a fee of five rupees.

Effect of failure to register within three months.

10. No such alteration as aforesaid shall have any operation until registration thereof has been duly effected under the last foregoing section, and, if such registration shall not have been effected within three months next after the date of the order of the Court confirming the alteration, such alteration and order and all proceedings connected therewith shall at the expiration of such period of three months become and be absolutely null and void :

Provided that the Court may, on sufficient cause shewn, revive the order on application made within a further period of one month.

Amendment of section 65 of Act VI of 1882.

11. In section 65 of the Indian Companies Act, 1882, for the words "in such language or languages" the second time they occur the words "in the English language" shall be substituted. VI of 1882