

Judicial (1895) Department.

ORDINARY PRINTED.

G.O., No. 102.

DATED 17 Jan. 1895.

INDEXED.

[Despatch Abstract.]

BILLS - LEGISLATIVE

Communicating to certain officers, for a very early expression of their opinion, Bill 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, with statement of objects and reasons.

BACK PAPERS.

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17TH JANUARY 1895, No. 102, JUDICIAL.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—the following paper:—

From J. M. MACPHERSON, Esq., Officiating Secretary to the Government of India, Legislative Department, to the Chief Secretary to the Government of Madras, dated Calcutta, 11th January 1895, No. 77.

I am directed to forward herewith forty copies of the papers noted on the margin, and to request that the Governor in Council will favour the Government of India in this department with an expression of his opinion on the provisions of the Bill, and with the opinions of the Hon'ble the Judges of the High Court

and of such selected officers and other persons as the Governor in Council may think fit to consult on the subject.

2. I am also to request that the Bill and Statement may be published in the *Fort St. George Gazette* in English and in such other languages as the Governor in Council may deem proper, and that the dates of publication of both may be communicated in your reply.

3. The reply to this letter should be sent in by the 20th February next.

ORDER—dated 17th January 1895, No. 102, Judicial.

Communicated to the Hon'ble the Judges of the High Court, the Hon'ble the Advocate-General, the Chamber of Commerce, Madras, the Madras Trades Association, and the Registrar of Joint Stock Companies, with the request that they will favour Government with their opinion on the subject at a very early date.

2. The Bill and Statement will be published in the *Fort St. George Gazette* in English and all the vernaculars (except Hindustani), and the Superintendent, Government Press, will be requested to report the dates of publication.

(True Extract.)

Ag. Chief Secretary.

To the Hon'ble the Chief Justice, with C.L.
 " Government Solicitor.
 " Chairman, Chamber of Commerce, Madras.
 " Madras Trades Association.
 " Registrar of Joint Stock Companies.
 " Superintendent, Government Press.
 " Translators to Government (except Hindustani).
 Gazette.

Exd. A. Raitt.

Issued
Recd. Encl.

G.O., 17th Jan. 1895, No. 102.

JANUARY.

Bills—Legislative.

Communicating to certain officers, for a very early expression of their opinion, a Bill 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, with Statement of Objects and Reasons.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to apply the provisions of the Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict., c. 62), to Indian companies. That Act confers upon a company registered under the Companies Acts power, within limits and subject to confirmation by the Court, to alter its objects as defined in its memorandum of association. It also allows of the substitution of a memorandum and articles of association for the deed of settlement in the case of companies which have been legally formed and incorporated in that way. At present a company registered under our Companies Act (VI of 1882) can only alter its memorandum of association to the very limited extent permitted by section 12 of that Act. To attain any extension or modification of its objects, however reasonable, a winding up and re-construction is the only course which it can adopt. Nor is there at present any provision in the Indian law corresponding to the second part of the Statute above-mentioned.

2. As it seems desirable that Indian companies should be placed on an equality with English companies in both the above respects, the present Bill has been prepared. It simply reproduces the provisions of the Statute, the only change being that it substitutes, for the provision subjecting a company failing to register any document as required by the Statute to a penalty of ten pounds for every day of such default, a provision declaring that no such alteration as is provided for in the Bill shall have any operation until duly registered, and that, if such registration shall not have been effected within three months of the date of the order of the Court confirming the alteration, such alteration and order and all proceedings connected therewith shall become null and void.

3. The opportunity has been taken to provide by the Bill for an amendment in section 65 of the Act, which, as it at present stands, requires a company to have its name mentioned in the vernacular as well as in English in all documents published or signed by or on behalf of the company. The necessity for this procedure has now ceased, and accordingly section 11 of the Bill proposes to require a company's name to be mentioned in English only in such documents in future.

The 9th January, 1895.

J. WESTLAND.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

ANNEXURE

To

Bill 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.

(Statement of Objects and Reasons.)

A
BILL

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 enacted as follows:— VI of 1882.

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

(2) It shall come into force at once.

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

[53 & 54
Vict., c. 62,
s. 3 (2).] 3. In this Act, unless there is something repugnant in the subject or context,—

[Ib., s. 3 (3).] (1) the expression "deed of settlement" includes any contract of copartnership 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 "the Court" means the High Court.

[Ib., s. 1 (1).] 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 Court. VI of 1882.

[Ib., s. 1 (2).] 5. Before confirming any such alteration the Court must be satisfied—

(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

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LEGISLATIVE DEPARTMENT.

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(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 [Ib., s. 1 (3).]

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

7. The Court shall, in exercising its discretion [Ib., s. 1 (4).]

Discretion conferred on Court. regard to the rights and 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.

8. The Court may confirm, either wholly or in part, any such alteration [Ib., s. 1 (5).]

Ground on which Court may confirm a proposed 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 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 or businesses 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 of association or deed of settlement.

9. (1) Where a company has altered the provisions of its memorandum [Ib. s. 2, (1).]

Registration of order together with memorandum as altered or substituted memorandum and articles, and consequences thereof. of association or deed of settlement with respect 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, an office 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 fifteen days 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.

(2) 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. VI of 1882.

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.

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. Amendment of section 65 of Act VI of 1882. VI of 1882.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

A
BILL
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.

(Sir James Westland.)

FROM

J. M. Macpherson, Esquire,
Offy. Secretary to the Government of India,
Legislative Department,

TO

THE CHIEF SECRETARY TO THE GOVERNMENT OF

Madras.

Calcutta, the 14th January 1895.

SIR,

I AM directed to forward herewith *forty* copies of the papers noted on the margin, and to request that the Governor in Council will favour the Government of India in this Department with an expression of his opinion on the provisions of the Bill, and with the opinions of the Hon'ble the Judges of the High Court and of such selected officers and other persons as the Governor in Council may think fit to consult on the subject.

2. I am also to request that the Bill and Statement may be published in the *Fort St. George* Gazette in English, and in such other languages as the Governor in Council may deem proper, and that the dates of publication of both may be communicated in your reply.

3. The reply to this letter should be sent in by the *20th February* next.

I have the honour to be,

SIR,

Your obedient Servant,

J. M. Macpherson
Offy. Secretary to the Government of India,
Legislative Department.

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Please see query
in addresses.

First copy sent to Press.

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Despatched in print.

READ AGAIN G.O. No.
189

DATED

CURRENT No.

ENCLOSURE TO G. No.

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LETTER OF GOVERNMENT.

STATEMENT WITH DIVID.

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