

1923

12EA

KENYA

330

C O  
42797  
REC  
REV 28 AUG 23

DATE

vs. *Booy Northcotts* 1164

26th. July 1923

CIRCULATION:—

*Chamberlain*  
*Barclay*

SUBJECT

THE COMPANIES (AMENDT.) ORDGE. NO. 14 OF 1923

U.S. of S.

*C. S. Quibode*

Enclosed copies together with legal report.

U.S. of S.

U.S. of S.

City of State

Send copies to Library

Previous Paper

*66*  
*27170*

MINUTES

*Handwritten initials*  
*29/8/23*

For the Principal Ordinance see  
47892/21.

The sections in this amending  
Ordinance which require scrutiny  
are 7, 14, and 15.

As to 7 and 15 we shall have  
to ask B/T <sup>if they have any</sup> ~~for their~~ views. I think  
As to section 14, the Ordinance  
repeals Section 287 (a) of the Principal  
Ordinance. After consulting B/T  
(on 29/8/23) we had given a  
lead in the opposite direction, but  
the Special Committee which have  
been considering the bill have

*Handwritten note:*  
I have a copy of the Bill of 1923...  
I suggest that it should be...  
I think it should be...

Subsequent Paper

*46123*

Observe on Sections 1 and 15  
of the Ordinance, or on any  
of the other provisions of the Ordinance

which may be necessary

to be made

I am not aware of the time  
when reported in 1908, as well  
as when it was not offered as  
objection of other consideration they  
proceeded with the repeal of s 24(b),  
it does not think that any useful  
purposes will be served by pursuing  
the subject. How do I think  
we need handle the 13/4 as to  
ss. 7 & 15. These <sup>provisions</sup> ~~are~~ of these  
sections are due to local conditions  
& do not involve any novel  
principle. It is in my  
safety? sanction L.F.

J.H.

4/10/22

I am bound to say  
that I still prefer to consult



As of Trade - esp. in view  
of the previous correspondence.  
If we might put  
it in the hands  
of the... perhaps  
to send copy to  
... in ...  
... that ... does  
... propose to advise  
... Dallas, but  
will await Ad's reply  
... Ad desire  
to see my book in the  
... - then ...  
...  
... include ...  
...  
we enclosed copy of  
...  
from which it will be  
seen that ... Gov.  
that if ...  
it was desired to proceed  
as proposed in ...  
... and ...  
... of ...

all  
5 7 13

G. G. 6.8.27  
above

KENYA.  
NO. 1184.



GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

26th July, 1923.

42797  
REC'D  
REV. 28 AUG 23

My Lord Duke,

Finance.  
Statement.  
Table.

With reference to Your Grace's despatch No. 346 of the 6th March last, I have the honour to transmit herewith two authenticated and ten printed copies of "The Companies Amendment Ordinance, 1923", together with a Statement of Objects and Reasons and Comparative Table prepared by the <sup>Acting</sup> Attorney General.

2. This Ordinance passed its 3rd reading in Legislative Council on the 28th of May and on the 20th of June I assented to it in the name of His Majesty.

I have the honour to be,

My Lord Duke,

Your Grace's most devoted  
and most obedient servant,

*J. A. G. ...*  
ACTING GOVERNOR.

FRANCE  
THE DUKE OF DEVONSHIRE, K.G., P.C., G.C.M.G., G.C.V.O.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET, LONDON, S.W.

KENYA.

No. 1184.



GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

26th July, 1923.

42797  
REC'D  
REU 28 AUG 23

My Lord Duke,

175  
814

With reference to Your Grace's despatch No. 345 of the 6th March last, I have the honour to transmit herewith two authenticated and ten printed copies of "The Companies Amendment Ordinance, 1923", together with a Statement of Objects and Reasons and Comparative Table prepared by the <sup>Acting</sup> Attorney General.

2. This Ordinance passed its 3rd reading in Legislative Council on the 28th of May and on the 20th of June I assented to it in the name of His Majesty.

I have the honour to be,

My Lord Duke,

Your Grace's most devoted  
and most obedient servant,

*J. A. ...*  
ACTING GOV. GENL.

ance.  
ment.  
ble.

GRACE  
DUKE OF DEVONSHIRE, K.G., F.C., G.C.M.G., G.C.V.O.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET, LONDON, S.W.

THE COMPANIES AMENDMENT ORDINANCE, 1923.STATEMENT OF OBJECTS AND REASONS.

The object of the Ordinance is to correct a few omissions and typographical errors in the Companies Ordinance, 1921.

The principal amendments are the repeal of Section 291 (2) of the Principal Ordinance and the addition of a new Section 15 to afford relief to shareholders who failed to file a sufficient contract under Section 28 of the applied Indian Companies Act, 1882. The reasons for these amendments are fully set out in the Comparative Table of Sections.

Dairobi,

24th June, 1923.

Sd. IVON L. O. GOWER

AG. ATTORNEY-GENERAL.

THE COMPANIES AMENDMENT ORDINANCE, 1923.COMPARATIVE TABLE OF SECTIONS.

Section	Remarks
1.	Short title.
2 & 3.	<p>The Companies Ordinance, 1921, was drafted before the passing of the Currency Interpretation Ordinance, 1922. In the former the expressions "pounds", "florins" and "cents of a florin" frequently occur. Sections 2 and 3 of the latter Ordinance only operate to convert "florins" and "cents of florins" into "shillings" and "cents of shillings" in cases where the Ordinance was in force on the 1st January, 1922, and 31st December, 1922, respectively. The Companies Ordinance, 1921, was not applied until the 1st April, 1923, and hence the conversion was not effective and Sections 2 and 3 are necessary. It is otherwise in respect of references to "pounds" since Section 6 of the Currency Ordinance is not limited in its application as to time.</p>
4.	<p>To correct an obvious slip in the drafting of Section 101 of the Principal Ordinance which closely follows Section 101 of the Indian Companies Act, 1913, and is composed of eight sub-sections while our Ordinance contains nine. The reference in our sub-section (9) to "(7)" should therefore be "(8)".</p>

Section	Remarks.
5.	<p>To correct an apparent anomaly. Section 104 (1) of the Principal Ordinance provides for the return of allotments in one month, but in sub-section (2) and the proviso to sub-section (3) the words "sixty-days" appear. To make the whole section uniform Section 104 (1) has been amended.</p>
6.	<p>The period 21 days given by Section 109 to register mortgages and charges has proved in practice to be insufficient and is therefore extended to "sixty-days". This is more in keeping with the amendment of Section 104 above.</p>
7.	<p>The Special Committee appointed to consider the provisions of the Bill unanimously agreed that until legislation can be introduced defining the status and qualifications of auditors it was inadvisable to attempt to define the qualifications of auditors by Rules. The practice has proved detrimental to professional men who are bound by the <sup>etiquette</sup> <del>etiquette</del> of the <del>home</del> and other Societies to which they belong while those authorised to practice under Rules, in the absence of a governing body, have recourse to extensive methods of advertising themselves in ways which professional men cannot properly adopt.</p>
8.	<p>To correct an omission by adding after the word "company" in sub-section (2) a comma, and the words "nor to a company".</p>

Section	Remarks
9.	To correct an omission by adding after the words "supervision of" in line 3 of Section 234 (1) the words "the Court, and with the sanction of".
10.	The Indian Companies Act (Act No. 1 of 1922) was applied to this Colony on the 10th June, 1923, having the necessity for this alteration.
11.	To correct a clerical error by substituting "or" for "upon".
12.	To correct a typographical error.
13.	To correct an omission.
14.	The Special Committee unanimously recommended the repeal of Section 281 (2). There appears to be no good reason to impose on companies registered under the Ordinance the extra obligations required by the Registration of Business Names Ordinance, 1918, namely to disclose the Christian names and surnames of the Directors on circulars, show-cards and note paper etc. This agrees with Uganda legislation.
15.	<p>The necessity for this Section is as follows:-</p> <p>Section 28 of the Indian Companies Act, 1922, which was in force here before the commencement (1st April 1923) of the Companies Ordinance, 1921, provided that:-</p> <p>"Every share in any company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same has been otherwise determined by a contract duly made in writing and filed with the Registrar of Joint Stock Companies at or before the issue of such shares".</p>

Action

Remarks

The statutory liability under Section 28 to pay the whole amount in cash could only be avoided in one way, namely, by a registered contract; and if through inadvertence this was not done a holder of shares was exposed to the danger of paying over again unless the omission was promptly discovered and an application made to the Court under Section 38 for an order cancelling the shares to enable them to be re-issued after the registration of a proper contract.

The position was precisely the same at home until the passing of the Companies Act, 1898, which gave the Court power to grant relief for non-compliance with Section 20 of the Companies Act, 1867, corresponding to Section 28 of the now repealed Indian Act.

Legislation following the 1898 Act was not adopted here with the result that the liability to pay in cash still attaches by reason of the provisions of Section 7 (2) of the Interpretation and General Clauses Ordinance, 1912, whereas no liability attaches to shares issued since the commencement of the Principal Ordinance.

To provide against cases of hardship which have actually come to light it seems not unreasonable to adopt here the provisions of the English Act of 1898, which was dictated by principles of equity.

After very careful consideration the Special Committee decided on the inclusion of sub-section (5). It was at first thought that its inclusion might nullify sub-sections (1) to (4) and persons who had failed

tion.

## Remarks

failed to register a sufficient contract might refrain from going to Court and rest on the protection afforded by sub-section (3).

There appears to be no good ground for this view. The facts that no proceedings can be commenced does not make the share fully paid, and a shareholder may wish to have the failure to file remedied so as to be able, as a fully-paid shareholder, to claim in the assets, or exercise voting or other powers. Moreover the Liquidator is still bound to treat the shares as unpaid and a shareholder can only be rescued from this position by going to the Court. It practically amounts to this that unless a shareholder does go to the Court he still remains saddled with worthless shares.

To preserve cumulative jurisdiction.

To correct a clerical error.

Nairobi.

5th June, 1923.

Sd. IVON L. O. GOWER  
AG. ATTORNEY-GENERAL.

C. D.  
R 7 SEP  
D 10

9th Sep.

42797/23 Kenya

339

30

SC 11 September 1923

*Amend.*  
46/23

*Sir*  
*4/23/23*

DRAFT.

With reference to your

Memorandum to the Comptroller

letter No 2097/23, of the

No. Companies Act

30<sup>th</sup> of April last, and to

Board of Trade

MINUTE.

previous correspondence on the

Mr. Seal 7.9.23

subject of the Companies

Mr. Parkinson

Ordinances of Kenya and

Mr.

Uganda. I am able to

Sir C. Dargie

give to you, for your consideration  
of the Board of Trade,

Sir G. Grindle

the acc<sup>y</sup>. copy of a draft,

Sir H. Read

with enclosures, from the O. A. G.

Sir J. Maesterton S. H.

of Kenya, regarding the Kenya

Mr. Ormsby-Gore

"Companies Amendment  
Ordinance, 1923".

Duke of Devonshire.

2. It will be

observed from Section 14

*2174/23*  
*1976 - P*  
*Copy to file*

A.G. (42797/23)  
in enclosures

to repeal Section 281 (2) of the  
Ordinance of 1921, no objection  
would be offered to such a  
course. The framing of the  
necessary legislation.

DRAFT.

MINUTE.

Mr.

Mr.

Mr.

Sir C. Davis.

Sir G. Grindle.

Sir H. Read.

Sir J. Masterton Smith.

Mr. Ormsby-Gore.

Duke of Devonshire.

3. The Duke of Devonshire  
does not propose to advise  
H. P. to disallow the  
Ordinance now enclosed,  
but before tendering any  
advice to H. P. he will  
await the Board's reply  
to their letter, in case they  
desire to offer any provision  
in the Ordinance.

(Signed) G. GRINDLE