

# COMPANIES ORDINANCE 1933-1938. <sup>(1)</sup>

## An Ordinance relating to Companies.

**B**E it ordained by the Governor-General in and over the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *New Guinea Act 1920-1926*, as follows:—

1. This Ordinance may be cited as the *Companies Ordinance 1933-1938*. <sup>(1)</sup>

Short title.  
Amended by  
No. 3 of 1934,  
s. 50.  
Repeal.
2. The Ordinances specified in the Schedule to this Ordinance are repealed.
3. This Ordinance shall be incorporated and read as one with the *Companies Ordinance 1912-1926*.

Incorporation.
4. In this Ordinance unless the contrary intention appears—

Definitions.

“*Companies Ordinance 1912-1926*” means the *Companies Ordinance 1912*, as amended by the *Companies Ordinance 1923* and the *Companies Ordinance 1926*, of the Territory of Papua in its application to the Territory of New Guinea.

(1) The *Companies Ordinance 1933-1938* comprises the *Companies Ordinance 1933*, as amended by the other Ordinances referred to in the following Table:—

TABLE.

PART I.—ORDINANCES MADE BY THE GOVERNOR-GENERAL IN COUNCIL.

Short title, number and year.	Date on which made by Governor-General in Council.	Date on which notified in <i>Commonwealth Gazette</i> .	Date on which took effect.
<i>Companies Ordinance 1933</i> (No. 2 of 1933)	18.1.1933	19.1.1933	19.1.1933 ( <i>Cwth. Gaz.</i> of 19.1.1933)
<i>Companies Ordinance</i> (No. 2) 1933. (No. 29 of 1933)	27.4.1933	28.4.1933	28.4.1933 ( <i>Cwth. Gaz.</i> of 28.4.1933)

PART II.—ORDINANCES OF THE LEGISLATIVE COUNCIL.

Short title, number and year.	Date of assent by Administrator.	Date notified in <i>N.G. Gaz.</i> as not disallowed by Governor-General in Council.	Date on which came into operation.
<i>Companies Ordinance 1936</i> (No. 19 of 1936)	26.2.1936	15.6.1936	26.2.1936 ( <i>Laws of T.N.G.</i> , Vol. XIII., p. 412)
<i>Companies Ordinance 1938</i> (No. 16 of 1938)	24.8.1938	30.11.1938	15.10.1938 ( <i>N.G. Gaz.</i> of 30.9.1938)

## COMPANIES—

Formation or registration of companies proposing to engage in agricultural, &c., pursuits.

Amended by No. 29 of 1933, s. 2, No. 19 of 1936, s. 2, and by No. 16 of 1938, s. 3.

Shares held by holding companies.

Sub-section (1) amended by No. 19 of 1936, s. 3, and by No. 16 of 1938, s. 3.

5. Subject to this Ordinance, no company having for its object or one of its objects the engaging in agricultural, pastoral or forestry pursuits, mining for coal or iron ore, or aerial navigation, shall be formed or registered under the *Companies Ordinance* 1912-1926 unless at least two-thirds of the shares issued by the company are held by or on behalf of British subjects.

6.—(1.) Where any company (hereinafter in this section referred to as “the holding company”) holds shares in a company having for its object or one of its objects the engaging in agricultural, pastoral or forestry pursuits, mining for coal or iron ore, or aerial navigation, (hereinafter in this section referred to as “the active company”) application may be made to the Registrar by or on behalf of the active company for a declaration that a proportion of these shares (not being less than two-thirds) is held by or on behalf of British subjects.

(2.) Before making any declaration under this section, the Registrar may require the active company to produce such evidence as he considers necessary to enable him to determine the proportion of the shares in the holding company which is held by or on behalf of British subjects.

(3.) For the purposes of this section, the Registrar may regard any shares held by a holding company as being held by the shareholders of that company, and, where any shares of the holding company are held by a second holding company, he may require the active company to produce evidence to his satisfaction as to the natural persons who may, for the purposes of this section, be regarded as holding, through one or more holding companies, the shares in the active company.

(4.) If the Registrar is satisfied that more than two-thirds of the shares of the holding company are held by or on behalf of British subjects, he may make a declaration as to the proportion of the shares held by that company in the active company which, in his opinion, is held by or on behalf of British subjects, and that proportion of the shares shall, for the purposes of this Ordinance, be deemed to be held by or on behalf of British subjects while the declaration remains in force.

(5.) Where a declaration under this section has been made in regard to any shares in an active company, the Registrar may from time to time require the company to produce evidence to his satisfaction in regard to the holders of those shares, and may issue a fresh declaration superseding that declaration if he

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considers that such action is justified by the evidence, or may revoke the declaration if he is not satisfied, on the evidence produced, that at least two-thirds of the shares are still held by or on behalf of British subjects.

7. In order to obtain registration under the *Companies Ordinance 1912-1926*, a company of which the object or one of the objects is the engaging in agricultural, pastoral or forestry pursuits, mining for coal or iron ore, or aerial navigation, shall furnish to the Registrar, together with such other documents as are necessary, a list, verified by the statutory declaration of the secretary or provisional secretary or some other proper officer of the company, of the members of the company showing the nationality of each member.

Particulars to be furnished for registration purposes.

Amended by No. 19 of 1936, s. 4, and by No. 16 of 1938, s. 3.

8. Where a company formed or registered under the *Companies Ordinance 1912-1926* alters, after the commencement of this Ordinance, the provisions of its memorandum with respect to the objects of the company to enable it to engage in agricultural, pastoral or forestry pursuits, mining for coal or iron ore, or aerial navigation, the alteration shall not take effect unless at least two-thirds of the shares issued by the company are held by or on behalf of British subjects.

Alteration of objects of company.

Amended by No. 19 of 1936, s. 5, and by No. 16 of 1938, s. 3.

9.—(1.) Where—

(a) a company is formed or registered under the *Companies Ordinance 1912-1926* for the purpose of engaging in agricultural, pastoral or forestry pursuits, mining for coal or iron ore, or aerial navigation; or

Transfer of shares.

Paragraph (a) amended by No. 19 of 1936, s. 6, and by No. 16 of 1938, s. 3.

(b) the provisions of the memorandum of a company with respect to the objects of the company are altered to enable the company to engage in agricultural, pastoral or forestry pursuits, mining for coal or iron ore, or aerial navigation,

Paragraph (b) amended by No. 19 of 1936, s. 6, and by No. 16 of 1938, s. 3.

the secretary or other proper officer of the company shall refuse to register the transfer or allotment to any person of a share in the company if the effect of the transfer or allotment is to reduce the number of shares held by or on behalf of British subjects to less than two-thirds of the total number of shares issued by the Company.

(2.) Any person who registers a transfer or allotment in contravention of this section shall be guilty of an offence.

Penalty: One hundred pounds, or imprisonment for six months.

10. Where in a company—

(a) formed or registered under the *Companies Ordinance 1912-1926* for the purpose of engaging in agricultural, pastoral or forestry pursuits, mining for coal or iron ore, or aerial navigation; or

Winding-up of company.

Paragraph (a) amended by No. 19 of 1936, s. 7, and by No. 16 of 1938, s. 3.

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Paragraph (b) amended by No. 19 of 1936, s. 7, and by No. 16 of 1938, s. 3.

- (b) of which the provisions of its memorandum with respect to the objects of the company have been altered to enable the company to engage in agricultural, pastoral or forestry pursuits, mining for coal or iron ore, or aerial navigation,

the number of shares held by or on behalf of British subjects is at any time less than two-thirds of the total number of shares issued by the company, the company may, on a petition presented by the Registrar, be wound up.

Nationality of members to be entered in register.

Paragraph (a) amended by No. 19 of 1936, s. 8, and by No. 16 of 1938, s. 3.

Paragraph (b) amended by No. 19 of 1936, s. 8, and by No. 16 of 1938, s. 3.

### 11.—(1.) Where—

- (a) a company is formed or registered for the purpose of engaging in agricultural, pastoral or forestry pursuits, mining for coal or iron ore, or aerial navigation; or

- (b) the provisions of the memorandum of a company with respect to the objects of the company are altered to enable the company to engage in agricultural, pastoral or forestry pursuits, mining for coal or iron ore, or aerial navigation,

there shall be registered in the register of members of the company and in the list of members required to be made by the company and forwarded to the Registrar, in addition to the particulars required by the *Companies Ordinance* 1912-1926, the nationality of each member of the company.

(2.) In the case of any such company which is registered under Part II. of the *Companies Ordinance* 1912-1926, the company shall, in addition to keeping the register of members, make and forward to the Registrar, in accordance with section twenty-two of that Ordinance, a list of members of the company showing the nationality of each member.

(3.) Every such company which is registered under Part V. of the *Companies Ordinance* 1912-1926 shall, in addition to the list required to be made and forwarded to the Registrar under the *Companies Ordinance* 1912-1926 and this Ordinance, make and forward to the Registrar at such times as are prescribed, a list containing particulars of the amount of capital of the company and the shares into which it is divided and the name and nationality of each member of the company and the number of shares held by him, and such other particulars as are prescribed.

Non-application of Ordinance to mining companies.

Section 11A inserted by No. 29 of 1933, s. 3.

Sub-section (1.) amended by No. 19 of 1936, s. 9, and by No. 16 of 1938, s. 3.

11A.—(1.) Subject to the next succeeding sub-section, this Ordinance shall not apply to any Company which, in the opinion of the Administrator, has for its main and substantial object the engaging in mining pursuits other than mining for coal or iron ore and to which the Administrator by notice published in the *New Guinea Gazette* declares that this Ordinance shall not apply.

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(2.) The Administrator may revoke any declaration made in pursuance of the last preceding sub-section in respect of any Company if he has reason to believe that the Company is mainly and substantially engaging in agricultural, pastoral or forestry pursuits, mining for coal or iron ore, or aerial navigation, and the declaration shall thereupon cease to have any force or effect.

Sub-section (2) amended by No. 19 of 1936, s. 9, and by No. 16 of 1938, s. 3.

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13.—(1.) The Administrator in Council may make regulations<sup>(3)</sup> not inconsistent with this Ordinance prescribing all matters which by this Ordinance are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.

Regulations. Sub-section (1) amended by No. 16 of 1938, s. 4.

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Sub-sections (2.) and (3.) omitted by No. 16 of 1938, s. 4.

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THE SCHEDULE.

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- Companies Ordinance 1923.*
- Companies Ordinance 1924.*
- Companies Ordinance 1925.*
- Companies Ordinance (No. 2) 1925.*
- Companies Ordinance 1930.*
- Companies Ordinance 1931.*

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(2) Section 12 amends the *Companies Ordinance 1912-1926* (Papua, adopted), and the amendments so made are incorporated therein.

(3) See the *Companies Regulations*, printed on p. 450.