

New Zealand.

ANNO VICESIMO NONO

VICTORIÆ REGINÆ.

No. 26.

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AN ACT to limit the Liability of Mining Companies. Title. **[27th October 1865.]**

WHEREAS it is expedient that encouragement should be given for Preamble.
the investment of capital in Mining Adventures and that provision
should be made for the limitation of the personal liability of share-
holders in Mining Companies—

BE IT THEREFORE ENACTED by the General Assembly of New Zealand
in Parliament assembled and by the authority thereof as follows—

I. The Short Title of this Act shall be "The Mining Companies Short Title.
Limited Liability Act 1865."

II. Notwithstanding anything in "The Joint Stock Companies Act "Joint Stock Com-
panies Act 1860" not
to apply.
1860" any Company Association or partnership formed for mining
purposes may be formed and may carry on any mining business that
has for its object the acquisition of gain to such Company Association
or partnership or to the individual members thereof without being
registered as a company under the said Act or formed in pursuance of
any other Act of the Parliament of New Zealand or of letters patent.

III. This Act shall extend and apply only to companies formed or Application and in-
terpretation of this
Act.
to be formed for mining purposes and in the construction and interpre-
tation of this Act the words "Mining purposes" shall mean the pur-
pose of obtaining any precious or other metal or mineral by any mode
or method whatsoever whereby the soil or earth or any rock or stone

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may be disturbed removed carted carried washed lifted smelted refined crushed or otherwise dealt with for the purpose of obtaining such metal or mineral whether such metal or mineral shall be the property of such company or of any other person whatsoever and the word "Company" shall include any partnership or co-adventure.

Liability limited.

IV. Any shareholder in any mining company registered under the provisions of this Act shall only be liable for any debts liabilities or obligations incurred on behalf of such company to the amount of share or shares for which such shareholder has agreed to subscribe or of which he shall have become the holder by any transfer registered in the books of the company.

Register of shareholders.

V. The manager of every company registered under this Act shall keep or cause to be kept a book or books containing the names in full and residences of the shareholders an account of the number of shares held by each of them the said shareholders and of the amount or amounts paid thereon and every transfer of a share or part of a share together with the names and residences of the transferees and such book or books shall at all times be open free of charge for the inspection of creditors or shareholders.

Unpaid calls to be a debt.

VI. The amount of calls which for the time being may be unpaid upon any share shall be deemed to be a debt due from the holder of such share to the company.

Company to sue and to be sued by and in name of manager.

VII. Every such company shall appoint a manager and no action or suit at law or in equity shall be brought against any member of such company for the recovery of any debts contracted for or by the company

Contracts made by the manager to be binding on the company.

VIII. Every contract made by the manager for the time being for the purchase of goods or the performance of work and the supply of the materials for the same to an amount respectively not exceeding fifty pounds for the purposes of the said company shall be binding upon the company and upon the assets thereof as herein provided and such assets may be seized and sold in execution in any action against such company upon any such contract but such company shall sue and be sued in the name of such manager.

Contracts may be made varied or discharged.

IX. Contracts on behalf of any company under this Act may be made varied or discharged as follows (that is to say)—

- (1.) Any contract which if made between private persons would be by law required to be in writing under seal may be made varied or discharged in the name and on behalf of the company in writing under the common seal of the company
- (2.) Any contract which if made between private persons would be by law required to be in writing and signed by the parties to be charged therewith may be made varied or discharged in the name and on behalf of the company in writing signed by any person acting under the express or implied authority of the company
- (3.) Any contract which if made between private persons would by law be valid although made by parole only and not reduced into writing may be made varied discharged by parole in the name and on behalf of the company by any person acting under the express or implied authority of the company

And all contracts made according to the provisions herein contained shall be effectual in law and shall be binding upon the company and their successors and all other parties thereto their heirs executors or administrators as the case may be.

Companies to be registered.

X. Any company which may hereafter be formed under the provisions of this Act shall lodge in duplicate with the Warden of the district in

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which it is proposed to carry on operations or if there be no Warden then with the nearest Resident Magistrate and such Warden or Resident Magistrate shall safely keep a memorial in the form or to the effect contained in Schedule A. to this Act signed by the manager of such company and the said Warden or Resident Magistrate shall without delay forward one of the said duplicates of the memorial to the nearest Registrar of the Supreme Court in the Province in which the operations are proposed to be carried on or if there be no such Registrar in such Province then to the nearest Registrar in the next adjoining Province and the said memorial shall be published at the cost of the said company in the *New Zealand Gazette* and the *Gazette* of the said Province and in one newspaper published in the said district and copies of such *Gazettes* and newspaper shall be forwarded to and retained by the said Warden or Resident Magistrate and the said Registrar of the Supreme Court and the same shall be *prima facie* evidence that the persons therein named are members of the company.

XI. Any company formed previous to the passing of this Act may be registered under the provisions of this Act if a majority in number and value of the shareholders in such company shall express their consent thereto in writing and such consent together with a memorial as hereinbefore provided shall be lodged with and safely kept by the Warden of the district or nearest Resident Magistrate and Registrar of the Supreme Court as aforesaid and shall be published in the *New Zealand Gazette* and in the *Gazette* of the said Province and in one newspaper published in or near the district and copies of such *Gazette* and newspaper shall be forwarded to and retained by the said Warden or Resident Magistrate and in all cases where they are personally present respectively shall be *prima facie* evidence that the persons therein named are members of the company. Provided always that notwithstanding such registration any person having any claim or demand in respect of any contract matter or thing which shall have been made or happened before such registration shall have the same remedy as if such registration had not taken place.

Companies in existence may be registered.

XII. A certificate in the form or to the effect in Schedule B. to this Act under the hand of the said Warden or Resident Magistrate (whose handwriting it shall not be necessary to prove and who is hereby required to give such certificate to any person applying for the same on payment of one shilling) shall be conclusive evidence that the company has been duly registered under the provisions of this Act.

Proof of registration and of appointment of manager.

XIII. Upon the registration of any company under this Act the persons whose names are contained in the memorial lodged with the Warden or Resident Magistrate and Registrar of the Supreme Court and published in the *Gazettes* as hereinbefore provided together with such other persons as may from time to time become members of the company shall be a body corporate by the name contained in such memorial capable forthwith of exercising all the functions of an incorporated company and having a perpetual succession and a common seal with power to hold lands but with such liability on the part of the members to contribute to the assets of the Company as provided in this Act.

Incorporation.

XIV. Notwithstanding any change in the person who may constitute any company registered under the provisions of this Act the persons who shall subsequently become members of such company shall be subject to the same liability only as if they had been members of such company at the time it was registered.

Change of persons not to alter liability.

XV. Every company registered under this Act shall add to the style and title under which the business of such company is carried on the word "registered."

Company to add "registered."

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- Company to have a registered office. XVI. Every such company shall have a registered office to which all communications and notices may be addressed and service of notice or legal process at such office shall be deemed to be services upon the company and any company which shall carry on business without having such an office shall be liable to a penalty not exceeding five pounds for every day during which business shall be so carried on.
- Notice of removal or substitution to be registered. XVII. Notice of the removal of any such registered office or of the substitution of any other person as manager of any company registered under this Act shall be lodged with and retained by the Warden or Resident Magistrate and Registrar of the Supreme Court with whom such company was originally registered.
- Accounts to be periodically published. XVIII. The manager of every company registered under this Act shall make and publish in the *New Zealand Gazette* and in the *Gazette* of the Province in which such company carries on business in the months of January and July respectively in each year a full and correct account of the assets and liabilities of such company.
- Books to be kept. XIX. The manager of every company registered under the provisions of this Act shall cause true accounts to be kept of the sums of money received and expended by the company and the matter in respect of which such receipt and expenditure shall have taken place and of the assets and liabilities of the company.
- Books may be inspected. XX. Such books of accounts shall be kept at the registered office of the company and at all reasonable times shall be open to the inspection of every shareholder for the time being and also of every past shareholder for a period of three months after the time at which he ceased to be a shareholder.
- Penalty for falsifying books &c. or not allowing inspection. XXI. Any person who shall wilfully falsify any book or account of the company and any person who shall sign any memorial or notice required by this Act knowing the same to be untrue shall be guilty of a misdemeanor and any person who shall refuse to permit any person entitled so to do to inspect any book of the company shall on conviction thereof forfeit and pay any sum not exceeding five pounds.
- Capital may be increased. XXII. Any company registered under this Act with the sanction of a majority in number and value of the shareholders in such company given at an extraordinary meeting may from time to time increase its capital by the issue of new shares such aggregate increase to be of such amount and to be divided into shares of such respective amounts as such majority directs and also from time to time may borrow money not exceeding such sum as such majority directs.
- New capital to be deemed part of original capital. XXIII. Any capital raised by the creation of new shares shall be considered as part of the original capital and shall be subject to the same provisions with reference to the payment of calls or otherwise as if it had been part of the original capital.
- Notice of extraordinary meetings. XXIV. Fourteen days' notice of any extraordinary meeting to be called under this Act shall be given to each shareholder by inserting the same in three consecutive numbers of some newspaper published in the capital of the Province in which such company shall be registered and in three consecutive numbers of some newspaper published in the neighbourhood of the place of operations of the company and such notice shall be signed by the manager and shall specify the place the day and the hour of meeting and the nature of the business otherwise such meeting shall not have power to transact any business and every such notice so given shall be sufficient without any other notice whatsoever any rule of law or of the company to the contrary notwithstanding.
- Notice of increase of capital. XXV. A written notice in the form or to the effect contained in Schedule C. of this Act of any increase in its capital beyond the

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registered capital signed by the manager of the company shall be lodged with the Warden or Resident Magistrate and Registrar of the Supreme Court with whom such company was originally registered within fourteen days from the time at which such increase has been resolved on.

XXVI. It shall be lawful for the company when and as often as any money is borrowed under this Act to secure the repayment thereof and interest thereon by a mortgage of the land comprised in any lease or claim and by a bill of sale of the machinery plant goods chattels and effects of such company. Power to mortgage.

XXVII. After the incorporation of any company the manager shall unless it is otherwise provided by any rules of the company convene an extraordinary meeting of the shareholders for the purpose of deciding the number of directors and for electing the same and the majority in number and value of the shareholders present at such meeting shall decide and select accordingly and such directors shall have the custody and use of the common seal and shall carry on and transact the business and affairs of the company. Provided always that every deed or document except as provided in section VIII. of this Act executed in the name of such company shall be signed by two directors and sealed with the common seal of the company. Directors to be appointed.

XXVIII. The Governor in Council may from time to time appoint in and for each mining district some proper person to be official agent in and for such district and may require of such person such security as he thinks fit and may remove any such official agent and in such case and in the case of the death or resignation of any such official agent the Governor in Council may appoint another in his stead and when the Judge of the District Court if there shall be such Court in the district and if not when some Judge of the Supreme Court shall have made any order or decree for winding up any such company the official agent appointed in and for such district shall have power to collect all debts and to sell or dispose of all the assets owing and belonging to such company and subject to the provisions in that behalf herein contained to enforce payment by the shareholders of the amounts if any unpaid upon the shares held by them or any of them. Appointment and power of official agent.

XXIX. Whenever any execution issued on a judgment decree or order in favor of any creditor in any action suit or other legal proceedings instituted by such creditor against any company registered under this Act is returned unsatisfied either in whole or in part by the person appointed to execute the same or whenever any creditor to whom such company is indebted in a sum exceeding fifty pounds then due has served on the company a demand under his hand requiring the company to pay the sum so due and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum or to secure or compound for the same to the satisfaction of the creditor such company shall be deemed to be unable to pay its debts and any such creditor as aforesaid may make application for winding up the company to the Judge of the District Court if there be such Court in the district and if not then to some Judge of the Supreme Court of the judicial district wherein such company is registered. Company may be wound up if unable to pay its debts.

XXX. Any application for the winding up of a company registered under this Act shall be by petition which petition shall be in the form of Schedule D. to this Act annexed or to the effect thereof and there shall be filed or lodged at the time when such petition is presented an affidavit verifying the same. Application to be by petition.

XXXI. Upon hearing of any petition as aforesaid the Judge may dismiss such petition with or without costs to be paid by the petitioner Hearing of petition.

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or he may make an order directing the company by a day to be named in such order to pay or secure payment to the petitioning creditor of all moneys that may be proved to be due to him together with such costs as such Judge may direct or the said Judge may if he so thinks fit on the hearing of such petition make an order or decree for winding up the company forthwith or such other order as to such Judge shall appear to be just.

Order for winding up company.

XXXII. If at the expiration of the time named in such order as aforesaid such payment is not made or security given the said Judge may thereupon make an order or decree for winding up the company.

Company may be wound up by consent of majority of shareholders.

XXXIII. It shall be lawful for a majority in number and value of the shareholders at an extraordinary meeting to pass special resolutions requiring the company to be wound up under the provisions of this Act and thereupon a petition signed by the shareholders concurring therein and verified as hereinbefore directed may be presented to the District Court if there shall be such Court in the district and if not then to some Judge of the Supreme Court and on the hearing of such petition such Court or Judge may make an order or decree for winding up the company forthwith or such other order as to such Court or Judge shall appear to be just.

Judge to receive proof of debts.

XXXIV. The Court shall have power to receive proof of debts and to examine witnesses and shall proceed therein according to the practice of the Supreme Court sitting under "The Debtors and Creditors Act 1862" or any other Act for the like purpose for the time being in force.

Distribution of assets.

XXXV. All moneys collected by the official agent shall be distributed by him amongst the creditors of the company in proportion to their several claims and if any balance shall remain after all the creditors shall have been paid in full their just demands then such balance shall be divided amongst the shareholders of the company in proportion to their respective shares therein Provided that such official agent shall be entitled to retain for his own use and payment for his services a sum equal to five pounds per centum upon the amount so collected by him.

Agent to publish schedule.

XXXVI. At least one month before making such distribution the official agent shall make and publish in the *New Zealand Gazette* and in the *Gazette* of the Province and in one or more newspapers published and circulating in or near the district wherein mining operations have been carried on by such company a schedule showing the assets and liabilities of the company the amount of moneys collected by him and the mode of distribution thereof and any such official agent who shall knowingly and wilfully falsify such schedule shall be deemed to be guilty of a misdemeanor and shall be dealt with accordingly.

Liability of shareholders to contribute.

XXXVII. In the event of any company registered under the provisions of this Act being wound up every present and past shareholder of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company and the costs charges and expenses of the winding up and for the payment of such sums as may be required for the adjustment of the rights of the contributors amongst themselves with the qualifications following that is to say—

- (1.) No past shareholder shall be liable to contribute to the assets of the company if he has ceased to be a shareholder for a period of three months or upwards prior to the date of the order or decree for winding up.
- (2.) No past shareholder shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a shareholder.

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- (3.) No past shareholder shall be liable to contribute to the assets of the company unless it appear to the Court before which such contribution shall be sought to be enforced that the existing shareholders are unable to satisfy the contributions required to be made by them in pursuance of this Act.
- (4.) No contribution shall be required from any shareholder exceeding the amount unpaid on the shares in respect of which he is liable as a present or past shareholder.
- (5.) No past shareholder shall be liable to contribute to the assets of the company in any case where it shall appear to the satisfaction of the Court before which such contribution shall be sought to be enforced that since the time at which such past shareholder ceased to be a shareholder the capital of the company has been in any way increased or profits have been realized over and above the amount necessary to defray the current working expenses of the company unless it shall also be shown to the satisfaction of the said Court that such increased capital or profits as the case may be have been wholly applied in or towards the payment of the debts and liabilities of the company contracted prior to the time at which such shareholder ceased to be a shareholder.

XXXVIII. Payment of all calls due by any shareholder to the company and payment of any contribution in the event of any company being wound up may be enforced before any two or more Justices who are hereby empowered to make an order for such payment and such order and every warrant thereon may be in such one of the forms in Schedule E. to this Act as shall be applicable to the case.

Payment of call and contribution.

XXXIX. When any order shall have been made for the payment by any person of any contribution under this Act no warrant shall be issued on such order (notwithstanding such contribution shall be thereby adjudged to be paid forthwith or at any other time) unless it shall be proved to the satisfaction of the Justice issuing such warrant by the oath of the official agent (which oath such Justice is hereby authorized and required to administer) that the whole or some specified part of the sum mentioned in such order is really and absolutely required by such agent for the purposes of this Act regard being had to the contributions of other persons and in case it shall appear to such Justice that part only of the said sum is so required such warrant shall be issued for such part only of the said sum but if at any time or from time to time afterwards it shall be proved to the satisfaction of a Justice (in manner aforesaid) that any further part of the residue of the said sum is required as aforesaid such Justice may from time to time issue another warrant or warrants for such further part or residue (as the case may be) of the said sum until a warrant or warrants shall have been issued for the full amount of the said sum and every warrant (whether of distress or commitment) which shall specify the amount to be recovered and shall state that the same is "part" or "further part" or "residue" (as the case may be) of the sum mentioned in the said order and shall be in all other respects in the same form and to the same effect as if it had been issued for the full amount of the said sum shall be valid and shall and may be issued on the application of the official agent without any other notice or summons to the party against whom the same shall be granted than would have been necessary in case such warrant had been issued for the full amount of the said sum.

Order not to be enforced except on certain occasions.

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Company may make rules.

XL. The majority in number and value of the shareholders in any company may from time to time both before and after incorporation make and alter rules for prescribing the number and qualification of directors and fixing a quorum thereof for holding and convening general and special but not extraordinary meetings of the shareholders and directors respectively for the election removal and annual retirement of all or some of the directors for determining the mode of filling occasional vacancies in that body for settling the number of votes which shareholders may give in respect of any specified number of shares whether such votes may or may not be given by proxy for the deposit and custody of proxies (if allowed and used) for removing and appointing the manager bankers and solicitors of the company for declaring dividends and making calls for the transfer and relinquishment of shares and the conditions on which the same respectively may be effected for keeping minutes of all general special and extraordinary meetings of the directors and shareholders respectively for preparing half-yearly balance sheets of the accounts of the company for auditing and examining the same for making and producing reports of the business and affairs thereof for the custody and use of the common seal and for any other objects not inconsistent with this Act but if any such rule shall be made or altered after incorporation it shall be made or altered only at an extraordinary meeting of the shareholders.

SCHEDULE A.

I the undersigned [here insert manager's name] hereby make application to register [here insert the name of the company adding the word "registered"] under the provisions of "The Mining Companies Limited Liability Act 1865" and I do solemnly and sincerely declare that the following statement is to the best of my belief and knowledge true in every particular namely—

1. The name and style of the company is
2. The place of operations [or intended operations as the case may be] is at
3. The nominal capital of the company is pounds in shares of each.
4. The amount already paid up is
5. The name [in full] of the manager is
6. The office of the company is at
7. The names [in full] and several residences of the shareholders and the number of shares held by each at this date are as follows—

[here insert complete list.]

Dated this day of 18

Witness to signature

C. D.

Justice of the Peace.

A. B.

Manager.

SCHEDULE B.

This is to certify that a mining company called "The Company registered" is by virtue of "The Mining Companies Limited Liability Act 1865" incorporated a memorial having been duly lodged with me in the Court at and published in the *New Zealand Gazette* of the day of and in the Provincial *Gazette* of the day of and in the newspaper of the day of and copies of the said *Gazette* and newspaper have been duly forwarded to me.

Given under my hand this day of

A. B.

[Warden or Resident Magistrate
as the case may be.]

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SCHEDULE C.

I the undersigned [here insert manager's name] hereby give notice of an increase in the capital of "The _____ Company registered" and I do solemnly and sincerely declare that the following statement is to the best of my belief and knowledge true in every particular namely—

1. The day on which the increase was resolved on is _____
2. The nominal capital of the company has been increased from _____ pounds in shares of _____ pounds each to _____ pounds in shares of _____ pounds each.
3. That I am the manager of the company.

Witness to signature

C. D.

Justice of the Peace.

A. B.

Manager.

SCHEDULE D.

FORM OF PETITION.

To his Honor _____ Judge of the Supreme Court [or District Court.]
 The petition of _____ a creditor of the _____ Company registered under "The Mining Companies Limited Liability Act 1865" sheweth That [here state fully particulars of claim] and your petitioner having been unable to obtain any satisfaction of his claim prays that your Honor will be pleased to issue an order for winding up the said company.

SCHEDULE E.

[To wit] Be it remembered [&c. as usual] for that _____ a past [or present as the case may be] shareholder in the "_____ Company registered" was justly and truly liable to pay to _____ the official agent of the said company the sum of _____ in respect of _____ shares held by him in the said company and now at this day [&c. proceed as in common orders.]

[To wit] Be it remembered [&c. as usual] for that _____ was the holder of _____ shares in "The _____ Company registered" and was justly and truly indebted to the said company in the sum of _____ for _____ call of _____ which on the day of _____ was duly made on every share in the said company and now at this day [&c. proceed as in common orders.]

[N.B.—There should be a separate order for each call but all the shares of one person may be included in one order.]

