

ELIZABETH II



1987 CHAPTER xvi

An Act to authorise the Brighton Marine Palace and Pier Company to raise additional capital and to confer other powers on the Company in relation to their undertaking; and for other purposes. [15th May 1987]

WHEREAS by the Brighton Marine Palace and Pier Acts and Orders 1888 to 1952 the Brighton Marine Palace and Pier Company (hereinafter referred to as "the Company") are incorporated and authorised to maintain a promenade and amusement pier at Brighton with a pier-head or promenade at the seaward end of the pier:

And whereas for the improvement and refurbishment of the pier and its amenities and for the general purposes of the undertaking it is expedient that the Company should be authorised to raise additional capital:

And whereas it is expedient to extend other powers of the Company in several respects and to amend or repeal certain of the enactments relating to the pier, as by this Act provided:

And whereas the purposes of this Act cannot be effected without the authority of Parliament:

May it therefore please Your Majesty that it may be enacted, and be it enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Short and
collective titles.

1.—(1) This Act may be cited as the Brighton Marine Palace and Pier (Finance, &c.) Act 1987.

(2) This Act shall be included among the enactments which may be cited together as the Brighton Marine Palace and Pier Acts and Orders 1888 to 1987.

Interpretation.

2. In this Act, unless the context otherwise requires—

“the Company” means the Brighton Marine Palace and Pier Company;

“debenture stock” does not include unsecured loan stock;

“the directors” means the directors of the Company;

“share” means share in the share capital of the Company and includes stock except where a distinction between stock and shares is expressed or implied and “share capital” and “shareholder” shall be construed accordingly;

“the undertaking” means the undertaking of the Company as for the time being existing.

Incorporation of
Acts.

3.—(1) The following enactments so far as the same are applicable to the purposes and are not inconsistent with the provisions of this Act are hereby incorporated with this Act, namely:—

1845 c. 16.

(a) the Companies Clauses Consolidation Act 1845 (except sections 56 to 60, 85 to 87, 101 to 108, 115 to 119, 145, 161 and 162 thereof):

Provided that—

(i) section 11 of the said Act of 1845 shall have effect as if the words “Except as otherwise provided by the conditions of issue thereof” were inserted at the beginning of that section;

(ii) section 15 of that Act shall have effect as if for the words “on demand” there were substituted the words “within two months following any demand therefor”;

(iii) section 39 of that Act shall have effect as if the words “but such power” to the end of the section were omitted;

(iv) section 91 of that Act shall have effect as if the words “auditors, treasurer and secretary” were omitted;

(v) section 98 of that Act shall have effect as if after the words “shall be signed by the chairman of such meeting” there were inserted the words “or of the next succeeding meeting”;

and sections 85 to 87 and 102 of that Act shall cease to apply to the Company;

1863 c. 118.

(b) the Companies Clauses Act 1863 (except sections 17 to 21 and the provisions limiting the rate of dividend on preference capital and Part IV thereof):

Provided that—

(i) section 14 of the said Act of 1863 shall have effect as if the words “but if in any year” to the end of the section were omitted;

(ii) section 22 of that Act shall have effect as if the words “and to the same amount as” were omitted;

(iii) section 25 of that Act shall have effect as if the words “or the sum of ten thousand pounds whichever of the two last mentioned sums is the smaller sum” were omitted; and

(iv) section 31 of that Act shall have effect as if for the words “other than the right” there were substituted the words “Save that holders of perpetual debenture stock shall not be entitled”.

(2) In the construction of the enactments so incorporated with this Act the expression "special Act" shall be read as a reference to this Act and the expression "company" shall mean the Company.

4.—(1) Subject to and in accordance with the provisions of this Act, the Company may from time to time raise by the creation and issue of share capital or by borrowing on mortgage of the undertaking or by the creation and issue of debenture stock, or wholly or partly by any one or more of those modes, such sums as, when added to any money raised by the issue of share capital or borrowed by the issue of loan capital and in either case outstanding at the date or respective dates on which the Company exercise the powers of this section, shall be sufficient to produce in the aggregate £15,000,000.

Capital and
borrowing
powers.

(2) (a) The Company may raise sums by the creation and issue of share capital under this section, by the creation and issue of ordinary shares or preference shares or special shares or wholly or partly by one or more of those modes.

In this paragraph "special shares" means shares carrying such deferred, qualified or other special rights or privileges or subject to such conditions or restrictions as to dividend, return of capital, voting or otherwise as the Company may by resolution direct.

(b) For the purposes of this section the amount raised or to be raised by the issue of share capital shall be taken to be the amount which has been or will be raised, as the case may be, after taking into account any premiums or discounts which may be obtained or allowed on the issue or re-issue thereof.

(c) The unexercised powers of the Company for raising money by the creation and issue of share capital under the Brighton Marine Palace and Pier Acts and Orders 1888 to 1952 shall cease to be exercisable.

(d) Any share capital which the directors were before the coming into operation of this Act authorised by a resolution of the Company to create and issue and which was not so created and issued before the coming into operation of this Act may be created and issued by the directors under subsection (1) above and without any further requisite.

(e) After the passing of this Act any share capital may be created by a simple majority of those present, personally or by proxy, who are entitled to vote at a meeting of the Company; and, subject to the terms of the resolution, any such capital may be issued to such persons, at such times, on such terms and conditions and in such manner, as the directors think advantageous to the Company.

(3) The Company may create and issue debenture stock subject to the provisions of Part III of the Companies Clauses Act 1863, as amended in its application to the Company, but notwithstanding anything therein contained the principal moneys secured by and interest on any mortgage, debenture or debenture stock created and issued by the Company under this Act shall rank in accordance with the terms of the mortgage or the terms of issue of the debenture or debenture stock in question. Notice of the effect of this subsection shall be endorsed on all mortgages and certificates of debenture stock issued after the passing of this Act.

1863 c. 118.

5.—(1) (a) The Company may borrow money on mortgage of any of the property or other assets of the Company.

Power to borrow
on mortgage of
assets.

(b) The power to borrow conferred by the foregoing paragraph may be exercised by mortgage, floating charge or by the creation and issue of debenture stock, debentures or other securities.

(2) Borrowing by the Company under subsection (1) above shall, to any amount borrowed in manner authorised by that subsection and for the time being outstanding, be deemed to have been in the exercise of the powers of the Company to borrow on mortgage of the undertaking or by the creation and issue of debenture stock.

Priority of mortgages and debenture stock over other debts.

6. All principal money to be raised by the Company on mortgage or by the creation and issue of debenture stock under the provisions of this Act shall have priority against the Company and the property from time to time of the Company over all other claims on account of any debts incurred or engagements entered into by them after the passing of this Act:

Provided that this priority shall not affect any claim against the Company or their property in respect of any rent or sum reserved by, or payable under, any lease granted or made to, or vested in, the Company, which is entitled to rank in priority to or *pari passu* with the interest on their mortgages or debenture stock.

Appointment of receiver.

7. The mortgagees of the undertaking may enforce payment of arrears of interest or principal or principal and interest due on their mortgages by the appointment of a receiver. In order to authorise the appointment of a receiver in respect of arrears of principal, the amount owing to the mortgagees by whom the application for a receiver is made shall not be less than £10,000.

Application of money.

8.—(1) Without prejudice to section 11 (Company may incur temporary loans) of this Act all money raised under the Brighton Marine Palace and Pier Acts and Orders 1888 to 1987, including premiums, shall be applied only to purposes to which capital is properly applicable; and any sum of money which may arise by way of premium from the issue of share capital under the provisions of this Act shall not be considered as part of the capital of the Company entitled to dividend.

(2) The Company may apply to any of the purposes of this Act to which capital is properly applicable any money which they have raised or are authorised to raise under the Brighton Marine Palace and Pier Acts and Orders 1888 to 1987.

Saving for powers of Treasury.

1946 c. 58.

9. It shall not be lawful to exercise the powers of borrowing or raising capital conferred by this Act otherwise than in compliance with the provisions of any order for the time being in force made under section 1 of the Borrowing (Control and Guarantees) Act 1946.

Share capital to be part of general capital.

10. Any share capital created and issued by the Company under the powers of this Act shall be part of the general capital of the Company and, save as is otherwise expressly provided by the terms of issue thereof, the shares or stock therein and the holders thereof respectively shall in proportion to the amount of their shares or stock be entitled to the like rights of voting and any other rights, qualifications and privileges, and be subject to the like provisions and liabilities, as if that capital were part of the capital of the Company created and issued under the Brighton Marine Palace and Pier Acts and Orders 1888 to 1952 of the same class or description and the shares or stock were shares or stock in that capital.

Company may incur temporary loans.

11. In addition to the powers to borrow money on mortgage, or to raise money by the creation and issue of debenture stock or unsecured loan stock for the time being conferred on the Company, the Company may, for the purposes of or in connection with the undertaking, borrow by way of overdraft

from banks, by temporary loans or otherwise, any sums which they may temporarily require—

- (a) for the purpose of defraying expenses pending the receipt of revenues receivable by them in respect of the period of account in which those expenses are chargeable:

Provided that the aggregate amount outstanding at any time of the moneys so borrowed shall not exceed £5,000,000; and

- (b) for the purpose of defraying, pending the issue of shares of any description, or the borrowing of money (such issue or borrowing being within the statutory powers of the Company at the time when the powers of this section to borrow temporarily are exercised), or the receipt of capital moneys from any other source, expenses intended to be defrayed by means of such issue, borrowing, or receipt, as the case may be.

12. Notwithstanding anything in any enactment, the directors may by virtue of this section and without further or other sanction or authority, exercise on such terms as they think fit any powers for the time being vested in the Company of borrowing and re-borrowing on mortgage or on temporary loan or otherwise and of creating and issuing debenture stock or unsecured loan stock.

Exercise of borrowing powers by directors.

13. The Company may by resolution—

- (a) consolidate and divide all or any of the shares issued by the Company into shares of a larger amount;
- (b) subdivide all or any of the shares issued by the Company into shares of a smaller amount, so, however, that in the subdivision the proportion between the amount paid up and the amount, if any, unpaid on each such share of smaller amount shall be the same as it was in the case of the share from which such share of smaller amount is derived;
- (c) cancel shares created in the share capital which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person and diminish the amount of the share capital by the amount of the shares so cancelled.

Consolidation, division or cancellation of shares.

14.—(1) Any securities to which this section applies may have attached to them a right to the holder to have issued to him, in substitution for the whole or any part of his holding of such securities, a holding of shares of any class at such time or times and subject to such terms and conditions as the Company think fit.

Issue of convertible securities.

(2) Any such securities in respect of which the right to convert into shares has been exercised shall, upon the right being exercised, be deemed to have been paid off and cancelled, and in relation to any such securities being preference shares section 4 (Capital and borrowing powers) of this Act shall have effect as if such securities had never been created and issued.

(3) The securities to which this section applies are—

- (a) any preference shares or debenture stock created and issued under the said section 4;
- (b) any unsecured loan stock created and issued under section 15 (Unsecured loan stock) of this Act.

Unsecured loan
stock.

15.—(1) The Company may raise all or any part of the money which for the time being they are authorised to raise on mortgage of the undertaking or by the creation and issue of debenture stock by the creation and issue, at such times, in such amounts and manner, on such terms and conditions, and with such rights and privileges, as the Company think fit, of unsecured loan stock instead of the whole or any part of the money which they may from time to time have power to raise on mortgage of the undertaking or by the creation and issue of debenture stock.

(2) Any unsecured loan stock issued by the Company under this section may be issued as redeemable stock and the provisions of section 17 (Redeemable debenture stock) of this Act shall apply to such redeemable stock as if it were redeemable debenture stock (as defined in that section).

Redeemable
shares and
purchase of own
shares.

16.—(1) (a) The Company may issue shares which are to be redeemed or are to be liable to be redeemed at the option of the Company or the holder on such terms and in such manner as the Company think fit.

(b) The Company may purchase their own shares (including any redeemable shares) and, so long as shares of the Company are not offered to the public within the meaning of sections 59 and 60 of the Companies Act 1985, make a payment in respect of the redemption or purchase of their own shares otherwise than out of distributable profits of the Company or the proceeds of a fresh issue of shares.

1985 c. 6.

(2) For the purposes of the powers of subsection (1) above Chapter VII of Part V of the Companies Act 1985 shall apply to the Company as it applies to a private company registered under that Act limited by shares or limited by guarantee and having a share capital which by its articles is authorised to exercise powers corresponding to those powers.

Redeemable
debenture stock.

17.—(1) In this section unless the context otherwise requires—
“stock” means preference stock or shares or debenture stock;

“issue” includes reissue;

“redeemable debenture stock” means debenture stock issued under the powers of this section so as to be redeemable;

“redeemed debenture stock” means any redeemable debenture stock which has been redeemed and is available for issue under the provisions of this section.

(2) (a) Subject to the provisions of this section, the directors may from time to time by virtue of this Act and without further or other sanction issue so as to be redeemable any debenture stock created by the Company after the passing of this Act and any redeemed debenture stock.

(b) No redeemed debenture stock shall be issued except for the purpose of effecting the redemption of redeemable debenture stock under the provisions of this section unless the issue is authorised by a resolution of a general meeting of the Company.

(3) (a) Redeemable debenture stock may be redeemed out of revenue or out of capital and such redemption may be effected by purchase as provided for in subsection (7) below, by paying off the debenture stock or by issuing to the holder of the debenture stock other stock in substitution therefor.

(b) For the purpose of raising money to pay off, or of providing stock in substitution for, any redeemable debenture stock the Company may create new stock or the directors may issue any redeemed debenture stock so as to be redeemable or irredeemable as they may think fit.

(c) No new stock shall be created nor shall any redeemed debenture stock be issued so as to make the total amount of any particular class of stock exceed the amount of stock of that particular class which the Company are for the time being authorised to create, except during any necessary interval between the creation or (in the case of redeemed debenture stock) the issue of the stock and completion of the redemption of the redeemable debenture stock for the purpose of redeeming which the stock of such particular class is proposed to be so created or issued.

(d) During such interval as aforesaid the amount raised by means of any stock so created or issued shall, for the purpose of any enactment regulating the borrowing powers of the Company, be deemed not to have been raised.

(4) (a) Redeemable debenture stock shall be redeemable at such time, in such manner and subject otherwise to such terms and conditions as the directors may before the issue thereof determine.

(b) The terms and conditions of redemption upon which any redeemable debenture stock is issued shall be stated in any offer by the Company of such stock for subscription and in the certificate of such stock and no term or condition of redemption which is not so stated shall be binding upon the holder of the stock.

(5) Any discount allowed on the issue or any premium payable on the redemption of any redeemable debenture stock may be written off out of revenue.

(6) (a) For the purpose of any enactment relating to stamp duty, the share capital of the undertaking shall, subject to paragraphs (b) and (c) below, be deemed not to have been increased by the issue or, in the case of the creation of new stock under subsection (3) above, by the creation and issue of share capital in pursuance of this section for the purpose of redeeming redeemable debenture stock.

(b) Paragraph (a) above applies only if the redeemable debenture stock to be redeemed is redeemed before the expiration of the interval mentioned in subsection (3) (c) and (d) above.

(c) Notwithstanding paragraph (a) above, share capital shall be deemed to have been increased to any extent that the aggregate nominal amount thereof which is issued or created and issued exceeds the nominal amount of the redeemable debenture stock to be redeemed.

(7) (a) The Company may from time to time set aside out of revenue, after providing for the payment of interest on any mortgages, debentures or debenture stock and for other fixed charges and obligations, such sums as the Company consider proper for the purpose of redeeming any redeemable debenture stock which under the terms of the issue thereof is redeemable wholly or partly in cash.

(b) The Company may invest any sums so set aside and the income thereof in any securities (not being securities of the Company).

(c) All sums so set aside shall be applied in or towards the redemption of any redeemable debenture stock for the redemption of which they may have been so set aside or may, if the directors think fit, be at any time applied in the purchase of any such redeemable debenture stock at a price not exceeding the redemption price.

18.—(1) Subject to the provisions of this section, the directors may sell any shares in the Company in respect of which all warrants and cheques sent by the Company during the previous 12 years have remained uncashed and may authorise any person to execute an instrument of transfer accordingly.

Expropriation of shareholdings.

(2) The proceeds of any share sold under this section shall be deemed to be a debt due from the Company to the person entitled to such share immediately before the sale under subsection (1) above or such successor as is for the time being entitled.

(3) Not less than three months before selling any share under this section the directors shall—

- (a) send notice of the intended sale by post addressed to the holder of the share at the holder's registered address; and
- (b) publish notice of the intended sale in a national newspaper and a newspaper circulating in the area of the registered address of the holder of the share;

stating that any person entitled to the share may by notice in writing to the Company object to the sale; and the directors shall not proceed with the sale if within the said three months objection is made accordingly by any person reasonably appearing to be entitled to the share.

Capitalisation of profits and reserves.

19.—(1) The Company in general meeting may, upon the recommendation of the directors, resolve to capitalise in whole or in part any sum—

- (a) standing to the credit of any of the Company's reserve accounts; or
- (b) standing to the credit of the Company's profit and loss account; or
- (c) otherwise available for distribution.

(2) A sum the subject of a resolution under subsection (1) above shall be distributed amongst the shareholders who would have been entitled thereto if distributed by way of dividend and in the same proportions, but so that, subject to subsection (3) below, the same be not paid in cash but applied either in or towards paying up any amounts for the time being unpaid on any shares held by every such shareholder or in or towards paying up in full unissued shares or debentures of the Company to be allotted and distributed, credited as fully paid up, to and amongst those shareholders and in those proportions, or partly in the one way and partly in the other.

(3) The directors shall make all appropriations and applications of any sum resolved to be capitalised by any resolution passed under subsection (1) above and all allotments and issues of fully paid shares or debentures, if any, and generally shall do all acts and things required to give effect thereto, and in particular—

- (a) may make provision by the issue of fractional certificates or by payment in cash or otherwise for shares or debentures becoming distributable in fractions; and
- (b) may authorise any person to enter, on behalf of all the shareholders entitled thereto, into an agreement with the Company providing for—
 - (i) the allotment to every such shareholder credited as fully paid up, of any further shares or debentures to which he may be entitled upon such capitalisation; or
 - (ii) the appropriation by the Company of every such shareholder's proportion of the profits resolved to be capitalised, in or towards paying up any amount remaining unpaid on his existing shares;

and any agreement made under such authority shall be effective and binding on all such shareholders.



Brighton Marine Palace and Pier (Finance, &c.) Act 1987

CHAPTER xvi

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