

[62 & 63 Vict.]

*Transvaal Mortgage, Loan,
and Finance Company's Act, 1899.*

[Ch. ciii.]



CHAPTER ciii.

An Act for enabling the Transvaal Mortgage Loan and Finance Company Limited to arrange with the holders of their Founders' Shares for subdividing Shares and creating certain preferences and for other purposes. A.D. 1899.

[13th July 1899.]

WHEREAS the Transvaal Mortgage Loan and Finance Company Limited (in this Act called "the Company") was incorporated in the year 1889 and is incorporated under the Companies Acts 1862 to 1867 as a company limited by shares :

And whereas the capital of the Company was £500,000 divided into 99,500 ordinary shares of £5 each and 500 Founders' shares of £5 each all of which have been issued and are now registered in the names of the shareholders :

And whereas the sum of £2 per share has been called up on all the said 99,500 ordinary shares of which £196,021 5s. has been paid and the sum of £5 per share has been paid up on all the said Founders' shares and the 500 Founders' shares have all been issued and are fully paid :

And whereas the capital of the Company was in the year 1890 increased to a total of £2,000,000 by the creation of 300,000 shares of £5 each ranking *pari passu* in all respects with the said ordinary shares but none of such new shares have yet been issued :

And whereas the Founders' shares carry the right to one-half the profits of the Company in each year after payment of a dividend of 8 per centum on the ordinary share capital and to one moiety of any assets of the Company remaining after payment and discharge of the debts and liabilities of the Company and the repayment of its paid-up share capital :

And whereas the articles of association of the Company registered at its incorporation contained the following provisions :—

" In all questions which shall arise between the holders of the Founders' shares amongst themselves or between the

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holders of the ordinary shares and the holders of the Founders' shares the holders of the Founders' shares shall in every respect be bound by any resolution which has been passed by three-fourths of the holders of the Founders' shares present in person or by proxy at any meeting of the holders of the Founders' shares of which notice specifying the intention to propose such resolution has been duly given in accordance with these articles as for a general meeting of the Company and the regulations of these articles with reference to the title to vote and to the number of votes and all other matters in connexion with general meetings shall be applicable to such meetings of the holders of Founders' shares :

“The holders of Founders' shares shall in like manner be bound by every resolution deed agreement authority or other document signed by the holders of three-fourths in number of the Founders' shares as if every such holder of Founders' shares had definitely assented thereto executed or signed such resolution deed agreement authority or other document and the Company shall not be bound in any dealing with the holders of Founders' shares or any question affecting them to enquire whether any such resolution has been duly passed or deed agreement authority or document duly executed or signed provided the same shall be authenticated by the signature of holders of three-fourths of the Founders' shares” :

And whereas the holders of upwards of three-fourths of the Founders' shares have assented in writing to their rights to dividends and capital being altered as set forth in this Act :

And whereas the Company has by special resolutions passed at an extraordinary general meeting of the Company held on the 23rd day of November 1898 and duly confirmed at an extraordinary general meeting held on the 12th day of December 1898 resolved--

“That the capital of the Company be reduced from £2,000,000 divided into 399,500 ordinary shares of £5 each and 500 Founders' shares of £5 each to £1,900,000 divided into 300,000 ordinary shares of £5 each 99,500 ordinary shares of £4 each and 500 Founders' shares of £4 each and that such reduction be effected by writing off £1 per share of the amount which has been paid up on each of the 99,500 ordinary shares which have been issued and £1 per share of the amount which has been paid up on each of the 500 Founders' shares of the Company as being capital lost or unrepresented by available assets :”

“That the terms of an agreement expressed to be made between the Company of the one part and the holders of Founders' shares of the other part for altering the rights conferred upon the holders of Founders' shares by the memorandum of association of the Company as specified by clauses 3 and 4 of the said agreement (a copy whereof has been sent to each of the shareholders in the Company together with a notice of this meeting) be and are hereby adopted” :

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And whereas doubts have arisen as to how far such modification of the rights of the holders of Founders' shares is within the power of the Company under such articles :

And whereas the Company is desirous and it is expedient that the modification of such rights should be carried into effect as herein-after set forth :

And whereas the holders of Founders' shares have by a special resolution passed at an extraordinary general meeting of the holders of Founders' shares held on the 20th day of January 1899 and duly confirmed at an extraordinary general meeting of the holders of Founders' shares held on the 6th day of February 1899 approved and assented to the promotion and passing of this Act subject to such additions alterations variations and amendments as Parliament might think fit :

And whereas the Company is desirous and it is expedient that the powers of the Company be enlarged so that the Company be authorised to receive moneys in advance of calls upon its shares and to convert the same into preference shares and that such other provision be made as herein-after contained in respect of the capital of the Company and the present and future holders thereof :

And whereas the objects 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 (that is to say) :—

1. This Act may be cited for all purposes as the *Transvaal Mortgage Loan and Finance Company's Act 1899.* Short title.

2. In this Act the words “paid-up capital” shall mean the ordinary share capital from time to time existing and paid up the expression “extraordinary resolution” shall have the meaning attached to it in Section 129 of the Companies Act 1862. Interpretation.

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Cessation of
present
rights of
Founders'
shares.

3. So soon as so much of the capital of the Company as has been lost or is unrepresented by available assets has been duly cancelled the holders of Founders' shares shall cease to have the rights conferred upon the holders of Founders' shares by the memorandum of association of the Company but shall in lieu thereof have the rights specified in the two following sections.

Substituted
rights of
Founders'
shares as to
dividend.

4. So long as the amount of paid-up capital of the Company shall not exceed one hundred thousand pounds the holders of Founders' shares shall be entitled to receive an amount equal to ten per cent. on the sum actually distributed among the ordinary shareholders in any year by way of dividend or bonus. And when the paid-up capital of the Company exceeds one hundred thousand pounds the holders of Founders' shares shall be entitled to receive an amount equal to ten per cent. on the amount of dividend or bonus distributed on one hundred thousand pounds of share capital and to seven and a half per cent. on the amount of dividend or bonus distributed on the capital in excess of one hundred thousand pounds.

Substituted
rights of
Founders'
shares as to
capital.

5. In any distribution of capital of the Company the holders of Founders' shares shall be entitled to receive one-tenth of any amount distributed amongst the holders of the paid-up ordinary capital where such paid-up ordinary capital amounts to one hundred thousand pounds or less. And where the paid-up ordinary capital exceeds one hundred thousand pounds the holders of the Founders' shares shall be entitled to receive an amount equal to ten per cent. on the sum distributed on one hundred thousand pounds of the paid-up ordinary capital together with seven and a half per cent. on the sum distributed on all paid-up ordinary capital in excess of one hundred thousand pounds. Provided always that in no case shall the holders of the Founders' shares participate in any return of paid-up ordinary capital in respect of moneys called up subsequent to the liquidation of the Company.

Holders of
Founders'
shares to
assent to
reduction of
liability on
ordinary
shares.

6. The holders of Founders' shares shall at any time after the carrying into effect of the foregoing provisions at the request of the Company assent to the reduction of the liability on the ordinary shares of the Company by the cancellation of such amount as the Company shall think fit.

Holders of
Founders'
shares to
exchange
certificates.

7. The holders of Founders' shares shall immediately after the cancellation of lost capital has been effected deliver up their certificates for Founders' shares to be exchanged for new certificates on which the conditions then affecting the same will be endorsed.

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8. The holders of each class of shares shall be entitled from time to time to make such alterations in their respective interests in the Company as may be approved and sanctioned by an extraordinary resolution passed by separate meetings of the holders of each class of shares.

Power for holders of each class of shares to alter their respective interests.

9. Trustees executors administrators and all other persons holding shares of the Company in any representative or fiduciary capacity are hereby indemnified for all acts done bonâ fide by them in pursuance of the provisions of this Act.

Trustees &c. may consent.

10. The memorandum and articles of association of the Company shall be and are hereby amended so as to conform with the provisions of this Act.

Amendment of memorandum and articles of association.

11.—(1) The Company may at any time and from time to time by extraordinary resolution divide all or any ordinary shares for the time being in the capital of the Company whether the same shall then have been issued or not or any stock representing paid-up shares in the capital of the Company into preference shares and ordinary shares or into preference stock and ordinary stock in such proportions and to be distinguished by such denominations respectively as may be determined by such extraordinary resolution but so that the proportion of preference shares or stock shall not exceed sixty per cent. of the issued capital of the Company but in any such division all the shares or stock of the same class whether the same shall then have been issued or not shall be divided in like manner Provided always that no part of the capital called up prior to the 1st January 1899 shall be converted into preference capital.

Power to make regulations as to capital &c. by extraordinary resolution.

(2) The Company may by such extraordinary resolution—

(a) Determine what preferential dividend shall be attached to the preference shares or stock arising from any such division and whether the same shall be fixed fluctuating contingent cumulative perpetual terminable or otherwise ;

(b) Determine what rights of voting shall be conferred by the two classes of shares or stock arising from any such division or whether such rights shall be attached exclusively to one and which class ;

(c) Determine whether the amount paid up on any share so divided shall be credited as paid up on one only of the shares arising from such division or shall be credited as paid up on both the shares so arising and in what proportions and how

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in the latter case any capital paid up in advance of calls shall as between such two shares be credited ;

- (d) Authorise the directors to make calls upon any class of shares arising from such division without making calls upon any other class or classes of shares so arising ;
- (e) Determine whether the preference shares or stock arising from any such division shall confer any and what preferential rights as regards the return of paid-up capital whether in a winding up or otherwise ;
- (f) Offer to the holders of the ordinary shares the option of paying up in full or in part in advance of calls all or any of the ordinary shares held by them respectively on the footing that the amount paid up shall be converted into preference shares fully paid carrying a preferential dividend at a specified rate and from a specified date and that the ordinary shares so paid up in full or in part shall be reduced by a sum equal to the amount so paid up thereon.

Nothing done under the powers of this section shall derogate from or alter any preferential or special rights or privileges to which any shares or stock issued whether before or after the passing of this Act are or may be entitled unless otherwise provided by the terms on which such shares or stock were or may be issued and nothing in this clause shall be held to prevent the Company receiving payment in advance of calls.

Substitution of preference and ordinary shares or stock for existing shares or stock.

12. The preference and ordinary shares or stock into which any shares or stock in the capital of the Company may be divided shall be in substitution for such shares or stock and shall be liable to the same trusts powers provisions declarations agreements charges liens and encumbrances as affected the shares or stock for which the same are substituted immediately before the division thereof.

Unissued shares may be issued with special rights.

13. With the sanction of an extraordinary resolution of the Company any of the unissued shares for the time being in the capital of the Company may be issued with any preferential qualified or special rights privileges or conditions attached thereto whether as regards dividends capital or otherwise but subject to any preferential or other rights privileges or conditions attaching to any shares or stock of the Company existing at the date of the issue of such unissued shares.

Act to be lodged with Registrar.

14. The Company shall forward to the Registrar of Joint-Stock Companies a copy of this Act and it shall be filed by him and if

such copy be not forwarded within three months after the passing of this Act the Company shall incur a penalty not exceeding two pounds for every day after the expiration of those three months during which the copy is omitted to be forwarded and every director and manager of the Company who knowingly and wilfully authorises or permits such default shall incur a like penalty and every penalty under this Act shall be recoverable summarily.

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15. In any instrument executed before ~~the~~ passing of this Act references to shares of the Company existing before the passing of this Act shall be construed as references to the ordinary and Founders' shares and to the preference shares of the Company and in the case of any testamentary instrument executed before the passing of this Act any disposition which but for the passing of this Act would have operated as a specific bequest of any such first-mentioned shares shall be construed as a specific bequest of the ordinary shares and preference shares which may continue vested in the testator or of a proportionate part thereof respectively as the case may be.

Reference to
shares in
testamentary
instruments.

16. Nothing in this Act contained shall—

(1) Derogate from or abridge any power of the Company to issue preference shares or to create and issue any new series of preference shares ranking as regards dividend or capital or both in priority to or *pari passu* with the preference shares aforesaid; or

(2) Alter or relax any limitation or condition as to the amount of the bonds debentures or obligations of the Company for the time being contained in the regulations of the Company.

Saving as to
preference
shares and
borrowing.

17. Save as in this Act expressly provided nothing in this Act contained shall prejudice alter or affect the memorandum or articles of association of the Company or shall be deemed to render valid or invalid any act done or proceeding pending by or against the Company before or at the date of the passing of this Act.

General
saving
clause.

18. To every copy of the memorandum and articles of association of the Company supplied after the passing of this Act to any member under the provisions of section 19 of the Companies Act 1862 there shall be annexed a copy of this Act

Copy of
Act to be
supplied to
members on
request.

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and Finance Company's Act, 1899.*

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--- the memorandum and articles of association of the Company.

Costs of Act. **19.** All costs charges and expenses of or incidental to the
preparing for obtaining and passing of this Act or otherwise in
relation thereto shall be paid by the Company.

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