

Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980

No. 68 of 1980

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Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980

No. 68 of 1980

An Act relating to the interpretation of certain legislation relating to corporations and the securities industry, and for certain other matters

[Assented to 28 May 1980]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980*.

Commencement

2. This Act shall come into operation on the day on which the *Companies (Acquisition of Shares) Act 1980* comes into operation.

Relevant Acts

3. (1) For the purposes of this Act, each of the following Acts is a relevant Act:

- (a) this Act;
- (b) the *National Companies and Securities Commission Act 1979*;
- (c) the *Companies (Acquisition of Shares) Act 1980*;
- (d) the *Companies (Acquisition of Shares—Fees) Act 1980*;
- (e) any Act that contains a relevant application provision;
- (f) any Act amending this Act or amending an Act referred to in paragraph (b), (c), (d) or (e).

(2) For the purposes of paragraph (1) (e), a provision in an Act is a relevant application provision if the provision states that this Act applies to the Act concerned.

Interpretation of relevant Acts

4. (1) Except in relation to matters expressly provided for by Part II and Part IV and subject to sub-section (2) and to any express provision contained in a relevant Act, the laws in force in the Australian Capital Territory at the commencement of this Act that relate to the interpretation of Ordinances—

- (a) apply for the purposes of the interpretation of each relevant Act as if the relevant Act were an Ordinance; and
- (b) apply for the purposes of the interpretation of any instrument (including rules, regulations or by-laws) made, granted or issued under a relevant Act as if the instrument were made, granted or issued under an Ordinance.

(2) Nothing in this Act or in any other relevant Act affects the application to and in relation to any relevant Act of sub-section 3 (2) and sections 4, 5, 6, 14, 15A, 15B, 16A, 16B, 17A, 19B, 19BA, 19BAA, 19BB, 19BC, 19C, 30, 34B, 39, 47, 48, 49, 49A and 50 of the *Acts Interpretation Act 1901*.

Act to bind Crown

5. This Act binds the Crown.

PART II—INTERPRETATION

Division 1—General

Every section to be a substantive enactment

6. Every section of a relevant Act has effect as a substantive enactment without introductory words.

Headings, schedules, marginal notes and footnotes

7. (1) The headings of the Parts, Divisions and Subdivisions into which a relevant Act is divided form part of the relevant Act.

(2) A schedule to a relevant Act forms part of the relevant Act.

(3) No marginal note or footnote to a relevant Act, and no heading to a section of a relevant Act, shall be taken to be part of the relevant Act.

Citation

8. In any relevant Act—

- (a) an Act may be cited by its short title or by reference to the calendar year in which it was passed and its number;
- (b) an Imperial Act may be cited by its short title (if any) or in such other manner as is sufficient in an Imperial Act;

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- (c) a State Act may be cited by a reference to the State by the Parliament of which the Act was passed, together with such mode of reference as is sufficient in Acts passed by that Parliament;
- (d) an Ordinance may be cited by its short title or by reference to the calendar year in which it was made and its number;
- (e) an enactment may be cited by reference to the part, section, sub-section or other division of the Act, Imperial Act or State Act in which the enactment is contained; and
- (f) a provision of an Ordinance may be cited by reference to the part, section, sub-section or other division of the Ordinance in which the provision is contained.

Division 2—Words and References

Definitions

9. In any relevant Act, unless the contrary intention appears—

“Act” means an Act passed by the Parliament;

“Agreement” means the Agreement made on 22 December 1978 between the Commonwealth and the States a copy of which is set out in the Schedule to the *National Companies and Securities Commission Act 1979* or, if that Agreement is amended or affected by another agreement, that Agreement as so amended or affected;

“another Territory” means a Territory other than the Australian Capital Territory;

“Australia” or “the Commonwealth” means the Commonwealth of Australia and, when used in a geographical sense, does not include an external Territory;

“calendar year” means a period of 12 months commencing on 1 January;

“commencement”, in relation to an Act or Ordinance or a provision of an Act or Ordinance, means the time when the Act or Ordinance, or the provision, as the case may be, comes into operation;

“Commission” means the National Companies and Securities Commission;

“committed for trial”, in relation to a person, means committed to prison with a view to being tried before a judge and jury, or admitted to bail upon a recognizance to appear and be tried before a judge and jury;

“Consolidated Revenue Fund” means the Consolidated Revenue Fund of the Commonwealth;

“constituent documents”, in relation to a body, whether corporate or unincorporate, means—

- (a) the charter, memorandum or memorandum and articles of the body; and

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- (b) any other instrument or law (other than the *Companies Ordinance* 1962 or the corresponding law of a State or another Territory or of another country) constituting, or defining the constitution of, the body or governing activities or conduct of the body or of its members;

“Constitution” means the Constitution of the Commonwealth;

“Court” means the Supreme Court of the Territory or a Judge of that Court sitting in Chambers;

“Crown” means the Crown in right of the Commonwealth or of a Territory;

“Executive Council” means the Federal Executive Council;

“external Territory” means a Territory, not being an internal Territory, for the government of which as a Territory provision is made by any Act;

“financial year”, in relation to matters relating to the Consolidated Revenue Fund or moneys provided by the Parliament or to public taxes or finance, means the 12 months ending on 30 June;

“*Gazette*” means the *Commonwealth of Australia Gazette*;

“High Court” means the High Court of Australia;

“Imperial Act” means an Act passed by the Parliament of the United Kingdom;

“indictment” includes information;

“internal Territory” means the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory;

“Jervis Bay Territory” means the Territory accepted by the Commonwealth pursuant to the *Jervis Bay Territory Acceptance Act* 1915 and described in the Agreement set out in the Schedule to that Act;

“Judge”, in relation to the Supreme Court of the Territory, means a Judge (including the Chief Judge) appointed under sub-section 7 (1) of the *Australian Capital Territory Supreme Court Act* 1933, and includes an additional Judge appointed under sub-section 7 (2) of that Act;

“land” includes messuages, tenements and hereditaments, corporeal or incorporeal, of any tenure or description, whatever may be the estate or interest therein;

“law of the Territory” or “law of the Australian Capital Territory” includes a law of New South Wales as applying in the Territory;

“magistrate” means a magistrate in respect of whose office an annual salary is payable;

“Ministerial Council” means the Ministerial Council for Companies and Securities established by the Agreement;

“Minister” means one of the Queen’s Ministers of State for the Commonwealth;

“month” means calendar month;

“Northern Territory” means the Northern Territory of Australia;

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- “Ordinance” means an Ordinance of the Territory;
- “Parliament” means the Parliament of the Commonwealth;
- “participating State” means a State that is a party to the Agreement;
- “participating Territory” means—
- (a) if the Northern Territory is a party to the Agreement—the Northern Territory; and
 - (b) any external Territory to which the Agreement applies pursuant to clause 50 of the Agreement;
- “person” and “party” include a body politic or corporate as well as a natural person;
- “prescribed” means prescribed by the relevant Act or by regulations under the relevant Act;
- “Proclamation” means Proclamation by the Governor-General published in the *Gazette*;
- “property” means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description and includes things in action;
- “regulations” means regulations under the relevant Act;
- “State” means a State of the Commonwealth;
- “State Act” means an Act passed by the Parliament of a State;
- “statutory declaration” means a statutory declaration made by virtue of the *Statutory Declarations Act 1959*;
- “Territory” means a Territory referred to in section 122 of the Constitution;
- “United Kingdom” means the United Kingdom of Great Britain and Northern Ireland;
- “the Minister” means the Minister for the time being administering the Act or enactment in which or in respect of which the expression is used or, if, for the time being, different Ministers are administering that Act or enactment in different respects, each of those Ministers to the extent that he is administering that Act or enactment in the relevant respect;
- “the Territory” or “the Australian Capital Territory” means the Territory accepted by the Commonwealth pursuant to the *Seat of Government Act 1909* and described in the Second Schedule to that Act.

Parts of speech and grammatical forms

10. In any relevant Act, unless the contrary intention appears, where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

Reference to corresponding laws

11. In any relevant Act, unless the contrary intention appears—

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- (a) a reference to the corresponding law of a State or of another Territory shall, in the case of a participating State or participating Territory, be construed as a reference to the provisions of that relevant Act as they apply, with any additions, exceptions or modifications, as part of the law of that State or Territory by virtue of a law of that State or Territory enacted or made in accordance with the Agreement; and
- (b) a reference to a provision of a law of a State or of another Territory that corresponds with a particular provision of that relevant Act or of another Act shall, in the case of a participating State or participating Territory, be construed as a reference to that provision of that relevant Act or of that other Act, as the case may be, as it applies, with any additions, exceptions or modifications, as part of the law of that State or Territory by virtue of a law of that State or Territory enacted or made in accordance with the Agreement.

References to a Minister

12. Where in a relevant Act a Minister is referred to, the reference shall, unless the contrary intention appears, be deemed to include a reference to any Minister or member of the Executive Council for the time being acting for or on behalf of the Minister so referred to.

References to writing, printing and documents

13. In any relevant Act, unless the contrary intention appears—

- (a) a reference to writing shall be construed as including a reference to any mode of representing or reproducing words, figures or symbols in a visible form;
- (b) “printed” includes type-written, lithographed or reproduced by any mechanical means; and
- (c) “document” includes—
 - (i) any paper or other material on which there is writing or printing, or on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them; and
 - (ii) a disc, tape or other article from which sounds, images or messages are capable of being reproduced,

and without limiting the generality of the foregoing, includes any summons, order and other legal process and any notice.

Lodging of documents and references to office of Commission

14. (1) A document that is required by a relevant Act to be lodged with the Commission shall be lodged at the office of the Corporate Affairs Commission for the Territory and any such document that is lodged, or submitted for lodgment, at that office shall be deemed to be lodged, or submitted for lodgment, as the case may be, with the Commission.

(2) Any application to the Commission for the issuing of a document or the doing of any other act or thing by the Commission under a relevant Act

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shall be in writing and shall be delivered to the office of the Corporate Affairs Commission for the Territory and any such application that is delivered to that office shall be deemed to have been made to the Commission.

(3) A reference in a relevant Act to the office of the Commission shall be construed as a reference to the office of the Corporate Affairs Commission for the Territory.

Service by post

15. Where a relevant Act authorizes or requires a document to be served by post, whether the expression “serve” or the expression “give” or “send” or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing and posting (under prepaid post) the document as a letter to the last-known address of the person to be served, and unless the contrary is proved, to have been effected at the time when the letter would have been delivered in the ordinary course of post.

Gender and number

16. In any relevant Act, unless the contrary intention appears—
- (a) words importing the masculine gender include females, and words importing the feminine gender include males; and
 - (b) words in the singular include the plural, and words in the plural include the singular.

References to the Sovereign

17. In any relevant Act, unless the contrary intention appears, a reference to the Sovereign reigning at the time of the passing of the relevant Act, or to the Crown, shall be construed as a reference to the Sovereign for the time being.

Corporations liable to and may sue for penalties

18. (1) Every provision of a relevant Act relating to offences punishable on indictment or summary conviction shall, unless the contrary intention appears, be deemed to refer to bodies corporate as well as to natural persons.

(2) Where under a relevant Act a forfeiture or penalty is payable to a party aggrieved, it is payable to a body corporate where the body corporate is the party aggrieved.

References to officers, localities, &c.

19. (1) In any relevant Act, unless the contrary intention appears, a reference to an officer or office by designation shall—

- (a) if there is an officer or office of that designation in and of the Territory—be construed as a reference to that officer or office; or
- (b) if there is not an officer or office of that designation in and of the Territory, but there is such an officer or office in and of the

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Commonwealth—be construed as a reference to the officer or office, in and of the Commonwealth.

(2) In any relevant Act, unless the contrary intention appears, references to localities, jurisdictions and other matters and things shall be construed as references to such localities, jurisdictions and other matters and things in and of the Territory.

Mention of officer in general terms

20. Where in a relevant Act a person holding or occupying a particular office or position is referred to in general terms, the reference shall, unless the contrary intention appears, be deemed to include a reference to all persons who at any time occupy that office or position for the time being.

Division 3—Powers and Duties

Exercise of powers and duties

21. (1) Where a relevant Act confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires.

(2) Where a relevant Act confers a power or imposes a duty on the holder of an office as such, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder for the time being of the office.

Power to make, grant or issue an instrument includes power to repeal or amend the instrument

22. Where a relevant Act confers on a person or authority the power to make, grant or issue any instrument (including rules, regulations or by-laws), the power shall, unless the contrary intention appears, be construed as including a power, exercisable in the like manner and subject to the like conditions (if any), to repeal, rescind, revoke, amend or vary such an instrument.

Power to appoint includes power to remove or suspend

23. (1) Subject to sub-section (2), where a relevant Act confers upon a person or authority a power to make appointments to an office or position, the power shall, unless the contrary intention appears, be construed as including a power to remove or suspend a person appointed, and to appoint another person temporarily in the place of a person so removed or suspended or in place of a sick or absent holder of the office or position.

(2) Where the power of a person or authority to make appointments is exercisable only upon the recommendation, or subject to the approval or consent, of some other person or authority, the power of removal or suspension is, unless the contrary intention appears, exercisable only upon the recommendation, or subject to the approval or consent, of that other person or authority.

Exercise of certain powers, duties and functions by a delegate or person authorized by a delegate

24. (1) Where, under any relevant Act, the exercise of a power or duty or the performance of a function by a person is dependent upon the opinion, belief or state of mind of that person in relation to a matter—

- (a) if that power, duty or function has been delegated pursuant to any Act—that power or duty may be exercised or that function may be performed by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter; and
- (b) if a person to whom that power, duty or function has been so delegated has, pursuant to any Act, authorized another person to exercise that power or duty or to perform that function—that power or duty may be exercised or that function may be performed by the authorized person upon the opinion, belief or state of mind of the authorized person in relation to that matter.

(2) For the purpose of the exercise of a power or duty or the performance of a function under a relevant Act by—

- (a) a person to whom that power, duty or function has been delegated by the Commission; or
- (b) a person authorized by a delegate of the Commission to exercise that power or duty or to perform that function,

any reference to the Commission in a provision of that relevant Act relating to the exercise of that power or duty or the performance of that function shall be construed as including a reference to the delegate or the person authorized by the delegate, as the case may be.

Division 4—Distance and Time

Measurement of distance

25. In the measurement of any distance for the purposes of any relevant Act, that distance shall, unless the contrary intention appears, be measured in a straight line on a horizontal plane.

Reckoning of time

26. (1) Where, in a relevant Act, a period of time, dating from a given day, act or event, is prescribed or allowed for any purpose, the time shall, unless the contrary intention appears, be reckoned exclusive of that day or of the day of that act or event.

(2) Where the last day of a period prescribed or allowed by a relevant Act for the doing of anything falls on a Saturday, on a Sunday or on a day that is a public holiday or a bank holiday in the place in which the thing is to be or may be done, the thing may be done on the first day following that is not a Saturday, a Sunday or a public holiday or bank holiday in that place.

Expressions of time

27. Where, in a relevant Act, a reference to time occurs, the reference shall, unless the contrary intention appears, be deemed in relation to the doing of an act or thing in a State or Territory to be a reference to the legal time in that State or Territory.

Division 5—Effect of Repeal, Amendment or Expiration

Effect of repeal

28. (1) The repeal of a relevant Act or part of a relevant Act by which a previous relevant Act or part of a previous relevant Act or an Ordinance or part of an Ordinance was repealed does not have the effect of reviving the previous relevant Act or part of a previous relevant Act or the Ordinance or part of an Ordinance without express words.

(2) The repeal by a relevant Act of an Ordinance or part of an Ordinance by which a previous Ordinance or part of a previous Ordinance was repealed does not have the effect of reviving the last-mentioned Ordinance or part of an Ordinance without express words.

Saving

29. (1) Where a relevant Act repeals a former relevant Act or part of a former relevant Act, then, unless the contrary intention appears, the repeal does not—

- (a) revive anything not in force or existing at the time when the repeal takes effect;
- (b) affect the previous operation of the relevant Act or the part of the relevant Act so repealed, or anything duly done or suffered under the relevant Act or the part of the relevant Act so repealed;
- (c) affect a right, privilege, obligation or liability acquired, accrued or incurred under the relevant Act or the part of the relevant Act so repealed, or an investigation, legal proceedings or remedy in respect of that right, privilege, obligation or liability; or
- (d) affect a penalty, forfeiture or punishment incurred in respect of an offence committed against the relevant Act or the part of the relevant Act so repealed, or an investigation, legal proceeding or remedy in respect of that penalty, forfeiture or punishment,

and the investigation, legal proceeding or remedy may be instituted, continued or enforced, and a penalty, forfeiture or punishment may be imposed, as if the repealing relevant Act had not been passed.

(2) Where a relevant Act repeals an Ordinance or part of an Ordinance, then, unless the contrary intention appears, the repeal does not—

- (a) revive anything not in force or existing at the time when the repeal takes effect;

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- (b) affect the previous operation of the Ordinance or the part of the Ordinance so repealed, or anything duly done or suffered under the Ordinance or the part of the Ordinance so repealed;
- (c) affect a right, privilege, obligation or liability acquired, accrued or incurred under the Ordinance or the part of the Ordinance so repealed, or an investigation, legal proceeding or remedy in respect of that right, privilege, obligation or liability; or
- (d) affect a penalty, forfeiture or punishment incurred in respect of an offence committed against the Ordinance or the part of the Ordinance so repealed, or an investigation, legal proceeding or remedy in respect of that penalty, forfeiture or punishment,

and the investigation, legal proceeding, or remedy may be instituted, continued or enforced, and a penalty, forfeiture or punishment may be imposed, as if the relevant Act had not been passed.

Repealed provisions continue in force until substituted provisions operate

30. (1) Where a relevant Act repeals a former relevant Act or part of a former relevant Act and substitutes provisions in lieu of the repealed provisions, the repealed provisions remain in force until the substituted provisions come into operation.

(2) Where a relevant Act repeals an Ordinance or a part of an Ordinance and substitutes provisions in lieu of the repealed provisions, the repealed provisions remain in force until the substituted provisions come into operation.

Amending Act to be construed with amended Act

31. An Act amending a relevant Act shall, unless the contrary intention appears, be construed with the relevant Act being amended and as part of it.

Expiration of Acts

32. The expiration of a relevant Act does not affect any civil proceedings previously commenced under the relevant Act and the civil proceedings may be continued, and everything in relation to the civil proceedings may be done, in all respects as if the relevant Act continued in force.

References to amended or re-enacted laws

33. (1) Where a relevant Act contains a reference to a short title that is or was provided by law for the citation of another Act as originally enacted, or of another Act as amended, then, except so far as the contrary intention appears—

- (a) the reference shall be construed as a reference to that other Act as originally enacted and as amended from time to time; and
- (b) where that other Act has been repealed and re-enacted, with or without modifications, the reference shall be construed as including a reference to the re-enacted Act as originally enacted and as amended

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from time to time and, where, in connection with that reference, particular provisions of the repealed Act are referred to, being provisions to which provisions of the re-enacted Act correspond, the reference to those particular provisions shall be construed as including a reference to those corresponding provisions.

(2) Where a relevant Act contains a reference to a short title that is or was provided by law for the citation of an Ordinance as originally made, or of an Ordinance as amended, then, except so far as the contrary intention appears—

- (a) the reference shall be construed as a reference to that Ordinance as originally made and as amended from time to time; and
- (b) where that Ordinance has been repealed and remade, with or without modifications, the reference shall be construed as including a reference to the remade Ordinance as originally made and as amended from time to time and, where, in connection with that reference, particular provisions of the repealed Ordinance are referred to, being provisions to which provisions of the remade Ordinance correspond, the reference to those particular provisions shall be construed as including a reference to those corresponding provisions.

PART III—OFFENCES AND PENALTIES

Time for instituting criminal proceedings

34. Notwithstanding anything in any other law, proceedings for an offence against a relevant Act may be instituted within the period of 5 years after the act or omission alleged to constitute the offence or, with the consent of the Ministerial Council, at any later time.

Indictable offences and summary offences

35. (1) An offence against a relevant Act that is punishable by imprisonment for a period exceeding 6 months may, unless the contrary intention appears, be punished either summarily or on indictment, but an offender is not liable to be punished more than once in respect of the same offence.

(2) An offence against a relevant Act that is not punishable by imprisonment or is punishable by imprisonment for a period not exceeding 6 months is, unless the contrary intention appears, punishable summarily.

Proceedings how and when taken

36. (1) Except where provision is otherwise made in the relevant Act concerned, proceedings for an offence against a provision of a relevant Act may be instituted only—

- (a) by the Commission;
- (b) by a person to whom the Commission has delegated the power to institute the proceedings;

- (c) by a person authorized by a person referred to in paragraph (b) to institute the proceedings; or
- (d) by another person authorized in writing by the Ministerial Council to institute the proceedings.

(2) A delegation for the purposes of paragraph (1) (b) or an authorization for the purposes of paragraph (1) (c) or (d) may relate to all offences against relevant Acts, to all offences against a particular relevant Act or particular relevant Acts, to a particular offence or particular offences against a relevant Act, to any offences against, or constituted by any contravention of, or failure to comply with, a particular provision or particular provisions of a relevant Act or to a class of offences against a relevant Act.

Double jeopardy

37. Where an act or omission constitutes an offence—

- (a) under a relevant Act; and
- (b) under another law of the Territory or a law of a State or of another Territory,

and the offender has been punished in respect of the offence under a law referred to in paragraph (b), he is not liable to be punished in respect of the offence under the relevant Act.

Aiding and abetting, attempts, &c.

38. (1) A person who aids, abets, counsels or procures, or by act or omission is in any way directly or indirectly knowingly concerned in or party to, the commission of an offence against any relevant Act shall be deemed to have committed that offence and is punishable accordingly.

(2) A person who attempts to commit an offence against any relevant Act is guilty of an offence and is punishable as if the attempted offence had been committed.

(3) Nothing in this section shall be taken to affect the application in relation to any relevant Act of the provisions (other than sections 5 and 7) of the *Crimes Act 1914*.

PART IV—OFFENCES UNDER NATIONAL COMPANIES AND SECURITIES COMMISSION ACT

Penalties at foot of sections or sub-sections

39. (1) Subject to sub-section (2), the penalty, pecuniary or other, set out—

- (a) at the foot of a section of the *National Companies and Securities Commission Act 1979*; or
- (b) at the foot of a sub-section of a section of the *National Companies and Securities Commission Act 1979*, but not at the foot of the section,

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indicates that a contravention of the section or the sub-section, respectively, whether by act or omission, is an offence against that Act, punishable upon conviction by a penalty not exceeding the penalty so set out.

(2) Where a penalty set out at the foot of a section, or sub-section of a section, of the *National Companies and Securities Commission Act 1979* is expressed to apply to a part only of the section or sub-section, it applies to that part only.

PART V—INSTRUMENTS UNDER RELEVANT ACTS

Application of Act to instruments under relevant Acts

40. (1) This Act applies to and in relation to an instrument (including regulations, rules and by-laws) made, granted or issued under a relevant Act as if the instrument were a relevant Act and as if each regulation, rule or by-law were a section of a relevant Act.

(2) Unless the contrary intention appears, expressions used in such an instrument have the same meanings as in the relevant Act under which the instrument was made, granted or issued.