

COMPANY LAW ADVISORY COMMITTEE

AUSTRALIA-WIDE SYSTEM OF COMPANY REGISTRATION

Although the question of an Australia-wide system of company registration is not within the terms of reference of the Company Law Advisory Committee, the problems raised by such a proposal have come within our purview by reason of the fact that amongst the matters committed to us by the Standing Committee is the question of interstate registration of charges. Our Committee has already made considerable progress with the preparation of a report on this subject, and the matters that have engaged our attention bear such a close relationship with the problems of interstate registration that we have thought it would be useful to let the Standing Committee have the benefit of our reflections on the question of interstate registration of companies.

Our discussions so far have proceeded on the basis that the existing system of interstate registration of companies as foreign companies would continue to function. We have been concerned, within this framework, to find a means of avoiding the necessity of registering charges over the property of the company in each State in which the company carries on business, insofar as it has property that may be affected by the charge in that State. The following considerations seem to be involved:

- (a) A person wishing to search against a company will normally search in the State of original registration in any event.
- (b) If this be so, there is not much point in requiring him to search in any other jurisdiction.
- (c) The logical resort would be to dispense with registration of charges in all States or Territories other than that of original registration.
- (d) To adopt this course would deprive the States (other than the State of original registration) of the weapon on which they now rely for the collection of stamp duty, since the various Stamps Acts levy duty only on instruments brought within the jurisdiction, and if there is no need for registration the instrument will be kept elsewhere.
- (e) The stamp duty problem could be overcome by a system of returns, each company carrying on business within the State, or having within the State any property subject to a charge, being required to file a return indicating the value of the property subject to the charge, or the amount of the debt

for which the charge is give, according to whatever method of assessing duty is in force.

(f) Machinery is however required to enable a person who wishes to search for charges to ascertain where he should make the search. If every Australian company had to show on its letterhead in what State it was incorporated, this would give the requisite information, but this would not do for an overseas company. Moreover, in the case of any "foreign" company, the citizen of a State should be able to find by a search within the State the location of the company's principal place of business within the State, and also the location of its head office, whether within Australia or abroad. Also, in the case of an overseas company, some machinery is needed for determining in which of the Australian jurisdictions the register of charges affecting that company is kept.

Accepting the assumptions involved in the foregoing discussion, there are still some extremely complex problems to be resolved. The following illustrations may be given:

1. It is necessary to provide in some way for the transfer of existing registrations of charges to the single register. If this is not done, there will be no saving except in the case of companies registered after the new provisions come into force.
2. If all charges are transferred to the same register, there may be a question as to whether a charge which is void as against creditors for non-registration in one jurisdiction but has been registered in another should gain validity in the jurisdiction in which it was formerly invalid.
3. We are contemplating that, in order to overcome some of the anomalies of the existing legislation, a system of priorities should be substituted for the present system of limited invalidity. This would have the incidental effect of overcoming the difficulty referred to in 2., but requires a careful analysis of the question of priorities, especially in relation to the transitional period.
4. There is also the difficulty that one of the tests as to whether a charge is registrable is whether, if given by an individual, it would have to be registered under the Bills of Sale legislation in the State concerned. As the various State Acts dealing with Bills of Sale are different, this means that charges that would have to be registered, say, in Victoria, would not have

to be registered in N.S.W. This makes it desirable that a uniform test for registration of company charges should be developed.

5. Some charges that now require registration under the Companies Acts would probably be better left to registration under local State legislation: e.g. liens on crops or wool.

Notwithstanding the very considerable complications that we have had to take into account, we have reached a point in our deliberations where it can be said that we are all in favour of the adoption of a system of registration in one State only, and we have made considerable progress towards the solution of the problems referred to above, and incidentally towards the elimination of some of the anomalies and difficulties that arise under the present legislation. Unless unforeseen problems arise, our report should be available for the next meeting of the Attorneys.

We would suggest that the following conclusions might be drawn from the foregoing discussion:

A. An Australia-wide system of company registration could not proceed without the solution of the problems arising in relation to charges.

B. The examination of the problems in relation to charges throws light on the wider problem of the single system of company registration. On the one hand, our preliminary conclusions suggest that such a system might be based on the assumption that searches against a company, for whatever purpose, might be confined to one jurisdiction for each company; on the other, convenience would suggest that some form of registration might be required in each State in which the company carries on its business.

C. Neither the wider problem nor the narrower one can be solved without a change in the method of collecting stamp duty; but such a change should not present insuperable problems.

Since the work of our Committee is now so far advanced, the Ministers might think it appropriate to await the result of that work before making a decision whether to proceed further with the proposal for Australia-wide registration of companies.

Chairman,
Company Law Advisory Committee.

26th October 1971.