

[55 VICT.]

*Neuchatel Asphalte Company, Limited,*  
*Act, 1892.*

[Ch. xiv.]



### CHAPTER xiv.

An Act to regulate the Capital of the Neuchatel Asphalte  
Company Limited and for other purposes.

A.D. 1892.

[20th May 1892.]

**W**HEREAS the Neuchatel Asphalte Company Limited (herein-after called "the Company") was incorporated on the 29th day of July 1873 under the Companies Acts 1862 and 1867 for the purpose amongst others of acquiring on the terms expressed in a certain agreement of the 17th of July 1873 therein mentioned or on such other terms as might be mutually agreed a certain concession granted by the Government of the Canton of Neuchatel in Switzerland and then held by the Neuchatel Rock Paving Company Limited and the exclusive right thereunder of getting the bituminous rocks and mineral products from the Val de Travers and also all the mines works business property and assets of the last-mentioned company and also five sub-concessions granted by the said Neuchatel Rock Paving Company Limited and then held by five subsidiary companies namely the Anglo-Austrian Bituminous Rock Paving Company Limited the Anglo-Hungarian Bituminous Rock Paving Company Limited the Anglo-German Bituminous Rock Paving Company Limited the Belgian-Dutch Bituminous Rock Paving Company Limited and the South American Val de Travers Rock Paving Company Limited respectively and all the businesses properties and assets of the said five subsidiary companies respectively and generally for the purpose of carrying on the business of manufacturers of asphalte and bituminous rock pavement in every branch and (subject to any exclusive concessions for the time being in force whereby the area of the Company's operations might be restricted) to lay down in all places wheresoever the pavement manufactured by or for the Company :

And whereas by clause 5 of the memorandum of association of the Company the capital of the Company is £1,150,000 divided into 35,000 preferred shares and 80,000 ordinary shares of £10 each

[Price 9d.]

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A.D. 1892. respectively with power on increase of capital to issue preference or guaranteed shares as part or as the whole of such increased capital:

And whereas by the articles of association of the Company it is provided as follows namely:—

“ (3) The capital of the Company shall consist of the  
“ 35,000 preferred shares and the 80,000 ordinary shares of  
“ £10 each respectively mentioned in the memorandum of  
“ association.

“ (4) The directors shall be at liberty to commence and  
“ carry on the business of the Company or any part thereof as  
“ soon as they shall think fit notwithstanding that the whole  
“ of the capital may not have been subscribed and allotted.

“ (5) The directors may with the sanction of the Company  
“ in general meeting increase its capital by the issue of new  
“ shares to such an aggregate amount with such a preferential  
“ right to dividend and such priority in the distribution of assets  
“ or subject to such postponement of dividends or in the dis-  
“ tribution of assets as the Company shall in general meeting  
“ direct and such increase of capital may at any time be made  
“ although the whole of the existing capital may not have  
“ been allotted.

“ (6) All capital raised by the creation of new shares shall  
“ be considered as part of the original capital provided that in  
“ creating additional capital no alteration in the right of the  
“ preferred shares to the preferential dividend herein-after pro-  
“ vided shall be made without the consent of three fourths of  
“ the holders of the preferred shares present in person or by  
“ proxy at a meeting specially convened for the purpose of  
“ considering such alteration.

“ (7) Subject to any direction to the contrary which may  
“ be given by the meeting sanctioning the increase of capital  
“ the directors shall have power to allot and dispose of all  
“ new shares in such manner and on such terms as they shall  
“ consider most desirable for the interests of the Company.

“ (8) The Company may by special resolution from time  
“ to time reduce its capital and also alter the amount and  
“ denomination of its shares but this power shall be so exercised  
“ as not to prejudice the rights of the preferred shareholders.

“ (9) The directors shall allot and issue as fully paid up  
“ all the ordinary shares and 33,700 of the preferred shares  
“ according to the terms of the said agreement and the directors  
“ may allot and issue the residue of the preferred shares to



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“ such persons upon such terms and at such times as they may  
“ think fit and any shares allotted in payment or part payment  
“ for property transferred or for services rendered to the Com-  
“ pany may be issued as and if so issued shall be deemed to be  
“ fully paid-up shares.

“ (97) The net profits of the Company shall be applied and  
“ divided as follows First a dividend at the rate of £7 per  
“ cent. per annum shall be paid on the preferred shares in pro-  
“ portion to the amount for the time being paid up or deemed  
“ to have been paid up thereon and subject to the payment of  
“ such dividend as aforesaid a like dividend shall be paid on  
“ the ordinary shares and after payment of such dividends as  
“ aforesaid on all the shares the surplus of the net profits shall  
“ be distributed by way of dividend rateably amongst all the  
“ shareholders in such proportion as aforesaid but without  
“ preference or distinction.

“ (98) No such distribution of profits shall be made without  
“ the consent of a general meeting It shall however be com-  
“ petent for the directors without such sanction in the interval  
“ between two meetings to declare an interim dividend on  
“ the preferred shares at any rate not exceeding 7 per cent. and  
“ on the ordinary shares not exceeding 4 per cent. per annum.

“ (99) In case of any dispute as to the amount of net  
“ profits the decision of the Company in general meeting shall  
“ be final.

“ (100) The directors may before recommending any divi-  
“ dend on any of the shares set aside out of the net profits of  
“ the Company such sum as they think proper as a reserved  
“ fund to meet contingencies or for equalising dividends or for  
“ repairing or maintaining the works connected with the  
“ business of the Company or any part thereof and the  
“ directors may invest the sum so set apart as a reserved fund  
“ or any part thereof upon such securities as they may select  
“ but they shall not be bound to form a fund or otherwise  
“ reserve moneys for the renewal or replacing of any lease or  
“ of the Company's interest in any property or concession.

“ (126) In case of a winding up or distribution of the  
“ assets of the Company the holders of the ordinary shares  
“ shall be entitled to participate in such assets rateably with  
“ the holders of the preferred shares the intention being that  
“ the priority hereby conferred on the preferred shares shall be  
“ confined to dividend subject to any exceptional claims which  
“ may be maintained by the holders of fully paid-up shares” :



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And whereas by the said agreement of the 17th of July 1873 the said Neuchatel Rock Paving Company Limited and the said five subsidiary companies agreed to sell to the Company the said concession and all the said sub-concessions granted to the said five subsidiary companies and all the mines works businesses property and assets of the said Neuchatel Rock Paving Company Limited and the said five subsidiary companies in consideration of fully paid-up preferred and ordinary shares in the Company :

And whereas in consideration of the said purchase by the Company there have been issued 34,020 fully paid-up preferred shares and 79,680 fully paid-up ordinary shares of £10 each respectively of the Company making in the aggregate shares to the nominal amount of £1,137,000 and no other shares of the Company have ever been issued leaving 980 preferred shares and 320 ordinary shares representing a capital of £13,000 still unissued :

And whereas the profit and loss account of the Company for some years after 1873 showed a loss and the Company has never been able to pay a dividend at the rate of £7 per centum per annum to the holders of preferred shares and they are at present entitled to be paid arrears of dividends before the holders of ordinary shares receive any dividend :

And whereas the holders of ordinary shares have never yet received and there is no probability that so long as the share capital of the Company is constituted as at present the holders of ordinary shares ever will receive any dividend at all on their ordinary shares :

And whereas there have always been disputes and differences between the holders of the preferred shares and the holders of the ordinary shares in the Company as to whether any and what sum in any year was profit and distributable as dividend or whether all or some and what part of the money earned by the Company should be set aside to make good alleged depreciation of the Company's assets by lapse of time or other circumstances and the holders of the preferred and ordinary shareholders have conflicting interests under the said 97th and 126th articles of association of the Company :

And whereas at an extraordinary general meeting of the Company held on the 27th May 1880 and adjourned to the 8th day of June 1880 and at a subsequent extraordinary general meeting held on the 23rd June 1880 special resolutions were passed and confirmed purporting to reduce the capital of the Company by writing off eighty per centum thereof in respect of capital not represented by available assets and providing for the creation and issue of two fully paid-up ten per centum preference shares of £1 each in exchange



for each subsisting seven per centum preference share of £10 each and two fully paid-up ordinary shares of £1 each in exchange for each existing ordinary share of £10 and for the division of the net profits of the Company firstly in a dividend at the rate of ten per centum per annum on the preference shares and subject thereto in a dividend at the rate of £5 per centum per annum on the ordinary shares the surplus net profits after payment of such dividends respectively to be divided by way of dividend pro rata on both classes of shares but without preference or distinction :      A.D. 1892.

And whereas an action of Bolton v. the Company and Others 1880 B. No. 01646 was forthwith instituted in the Chancery Division of the High Court by Thomas Dolling Bolton on behalf of himself and all other holders of preferred shares of the Company against the Company and others and by an order dated the 25th November 1880 on motion for injunction the Court declared such resolutions to be ultra vires and by injunction restrained the Company and its directors from acting on or giving effect to such resolutions :

And whereas by the consent of the parties the said order was treated as the hearing and further proceedings in the action were discontinued and no appeal was brought against such order :

And whereas in the year 1881 an action of Lambert v. the Company and Others 1881 L. 1767 was brought in the Chancery Division of the High Court by Alfred James Lambert on behalf of himself and all other holders of ordinary shares of the Company against the Company for the purpose in effect of restraining the directors from paying any dividend on the preferred and other shares until they should have first set apart and capitalised out of the gross profits such a sum as would be necessary to replace by means of a reserve or sinking fund the capital which had been lost or sunk or expended in the purchase of what was wasting property :

And whereas the said action came on for hearing on the 25th July 1882 and the Court being of opinion that the contract between the parties was defined and determined by the articles of association according to which power was given to a general meeting to declare what were net profits and that the Court had no authority to abrogate that power by assuming jurisdiction to determine the questions raised in the action decreed the said action to stand dismissed with costs :

And whereas no appeal was brought against the said decree :

And whereas ultimately a third action of Lee v. the Company and Others 1886 L. No. 630 was brought in the year 1886 by one Charles

A.D. 1892. John Lee on behalf of himself and all other the shareholders of the Company other than the defendants against the Company and the then directors and by his statement of claim the said Charles John Lee alleged a depreciation in the value of the said concession and loss of capital and claimed a declaration that the Company did not in the year ending the 31st of December 1885 earn any profit available for the payment of any dividend and an injunction restraining the Company and the other defendants from paying any dividend:

And whereas the said last-mentioned action was dismissed by Mr. Justice Stirling with costs and such decision was on appeal affirmed by the Court of Appeal:

And whereas the dividend declared with the consent of the general meeting of the Company on the preferred shares for the year 1885 at the rate of four pounds ten shillings per centum per annum was paid and dividends have since been annually paid on the preferred shares:

And whereas the said Charles John Lee has appealed to the House of Lords against such decision and such appeal is still pending:

AND whereas to compromise such action and with a view to avoiding disputes and litigation in the future between the holders of the preferred and ordinary shares it has been agreed with the consent of the plaintiff in the last-mentioned action that the capital of the Company shall be rearranged so as to consist of only one class of shares to be called new shares which shall be of the nominal value of £10 each and that such new shares shall be issued to the holders of both preferred shares and ordinary shares in the Company in the following manner (that is to say) That one new share shall be given in exchange for every preferred share and one new share shall be given in exchange for every ten ordinary shares and that the present preferred and ordinary shares in the Company shall be cancelled or surrendered to the Company and all rights on the part of preferred shareholders to arrears of dividend up to the 31st day of December 1891 shall be relinquished and that no further proceedings in the said appeal to the House of Lords in the said action of Lee v. the Company shall be taken but that the costs of the plaintiffs in such action shall be provided for as herein-after appearing:

And whereas doubts are entertained as to the power of the Company to alter the capital in the manner proposed and the objects intended to be hereby effected cannot be obtained 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:—

A.D. 1892.

1. This Act may be cited as the Neuchatel Asphalte Company Limited Act 1892. Short title.

2. In this Act—

Interpretation.

(1) "The Company" means the Neuchatel Asphalte Company Limited;

(2) The expression "the directors" means the directors of the Company and includes any managing director or directors or committee to whom any powers by this Act conferred on the directors may be delegated by the directors;

(3) The expression "share" or "shares" means share or shares in the Company;

(4) The word "existing" means existing immediately before the passing of this Act.

3. The said recited fifth clause of the memorandum of association shall as from the date of the passing of this Act be cancelled and there shall be substituted in lieu thereof—

Alteration of memorandum of association.

(5) The capital of the Company is four hundred and thirty thousand pounds divided into forty-three thousand new shares of ten pounds each with power to increase or reduce capital and on increase of capital to issue preference or guaranteed shares as part or as the whole of such increased capital.

4. The said recited third eighth ninety-seventh and ninety-eighth articles of association shall as from the date of the passing of this Act be cancelled and there shall be substituted in lieu thereof respectively—

Alteration articles of association.

(3) The capital of the Company shall be the forty-three thousand new shares of ten pounds each mentioned in the memorandum of association;

(8) The Company may by special resolution from time to time reduce its capital and also alter the amount and denomination of its shares;

(97) The net profits of the Company shall as from the first day of January one thousand eight hundred and ninety-two be distributed by way of dividend rateably amongst all the shareholders in proportion to the amount for the time being paid up or deemed to be paid up on the new shares held by them respectively but without preference or distinction;

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(98) No such distribution of profits shall be made without the consent of a general meeting. It shall however be competent for the directors without such sanction in the interval between two meetings to declare an interim dividend on the new shares at any rate not exceeding seven per centum.

Cancellation of sections 6 and 126 of articles of association.

5. The said recited sixth and one hundred and twenty-sixth articles of association shall be cancelled as from the date of the passing of this Act.

Division of profits.

6. The net profits of the Company made prior to the first day of January one thousand eight hundred and ninety-two shall be divided in accordance with the existing articles of association of the Company but the holders of preferred shares or new shares given in exchange therefor shall have no further claim as against the Company to any arrears of dividends.

Conversion of shares.

7. Every existing preferred share is hereby converted into one ten pound new share and every ten existing ordinary shares are hereby converted into one ten pound new share. All such new shares shall be deemed to be fully paid up and shall subject only as herein-after mentioned as from the said first day of January one thousand eight hundred and ninety-two carry dividends rateably and *pari passu*.

Stay of legal proceedings and payment of costs.

8. No further proceedings shall be taken in the said appeal to the House of Lords in the said action of *Lee v. the Company and Others* 1886 L. No. 630 and the directors shall pay out of the first moneys distributable as dividend on the new shares by this Act substituted for the existing ordinary shares the plaintiffs costs of the said action of *Lee v. the Company and Others* 1886 L. No. 630 not exceeding in all the sum of one thousand six hundred pounds and the costs of the Company and the other defendants of the said action of *Lee v. the Company and Others* 1886 L. No. 630 shall be paid by the Company.

Necessary alterations in register &c.

9. The directors shall cause to be made such alteration in the register and other books and documents of the Company and in the share certificates issued to members as may be required to carry into effect the above enactment.

New shares to be held on same trusts &c. as existing shares.

10. The new shares substituted for preferred and ordinary shares by this Act shall to all intents and purposes represent the shares for which they are respectively substituted and shall be subject and liable to the same trusts powers provisions declarations



agreements charges liens and incumbrances as immediately before the passing of this Act affected the shares for which they are respectively substituted and every deed or other instrument or any will or other disposition of or affecting the existing shares shall take effect with reference to the whole or a proportionate part as the case may be of the new shares substituted therefor under the provisions of this Act.

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**11.** Any of the new shares substituted by this Act for existing ordinary shares which would but for this proviso be distributable in fractions among holders of existing ordinary shares shall be sold in such manner as the directors think fit and the net proceeds of sale of such new shares shall be distributed among the holders of existing ordinary shares in the same proportions in which they would have been entitled to such new shares if they had not been sold.

As to  
fractions of  
new shares.

**12.** The Company shall forward to the Registrar of Joint Stock Companies a printed copy of this Act and it shall be recorded by him and if such copy is not forwarded within three months from the passing of this Act the Company shall incur a penalty of not exceeding ten 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 the like penalty and every penalty shall be recoverable summarily.

Print of Act  
to be sent to  
Registrar of  
Joint Stock  
Companies.

**13.** Every copy of the memorandum and articles of association issued by the Company after the passing of this Act shall contain the alterations made by this Act and shall have printed or written thereon notice of this Act.

All copies of  
memorandum  
and articles of  
association to  
have notice of  
this Act  
thereon.

**14.** The existing memorandum and articles of association of the Company respectively so far as the same respectively were immediately before the passing of this Act in force and except only so far as any of the articles clauses or provisions thereof respectively are repealed altered by repugnant to or inconsistent with any of the provisions of this Act shall respectively without prejudice to the powers of alteration given by the Companies Acts 1862 to 1890 continue in full force and effect.

Except as  
repealed or  
altered by  
this Act me-  
morandum  
and articles  
of associa-  
tion to  
remain in  
force.

**15.** Subject to the provisions of this Act all the powers of the Company existing at the time of the passing of this Act and being then unexercised shall be and continue in full force and effect.

Saving of  
existing  
powers.

A.D. 1892. **16.** The costs charges and expenses preliminary to and of and  
Costs of Act. incidental to the preparing obtaining and passing of this Act shall  
be paid by the Company.

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