

COMPANIES (RECEIVER AND MANAGER) ACT.

Act No. 21, 1934.

An Act to make provision for the appointment of the Public Trustee as Receiver and Manager of certain Companies; to protect the assets of the said Companies; to amend the Royal Commissions Act, 1923-1934, and other Acts; and for purposes connected therewith. [Assented to, 6th November, 1934.]

George V,
No. 21, 1934.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. (1) This Act may be cited as the "Companies (Receiver and Manager) Act, 1934." Short titles.

(2) The Royal Commissions Act, 1923-1934, as amended by this Act, may be cited as the Royal Commissions Acts, 1923-1934.

2. The Public Trustee when referred to in this Act is the Public Trustee as Receiver and Manager appointed by this Act. In this Act "Court" means the Supreme Court in its Equitable Jurisdiction, "Judge" means Judge of the Supreme Court, and "Companies" means the Companies mentioned in the Schedule to this Act. Interpretation.

3. The Public Trustee is hereby appointed Receiver and Manager of the Companies mentioned in the Schedule to this Act. Appointment of Public Trustee as Receiver and Manager of certain Companies.

4.

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Powers of
Public
Trustee.

4. The Public Trustee as such Receiver and Manager shall be the agent of the said Companies and of each of them and shall have power—

- (1) to take possession of, collect, and get in the assets of the Companies and each of them;
- (2) to carry on or concur in carrying on the business of any of the Companies;
- (3) to take any proceedings in the name of the Companies or any of them or otherwise;
- (4) to sell or dispose of or concur in selling or disposing of any of the assets of the Companies or any of them;
- (5) to make any arrangement or compromise which he shall think expedient in the interests of any of the Companies;
- (6) to retain the nett proceeds of the businesses of the Companies or the nett proceeds of any sale;
- (7) to defend in the name of the Companies or any of them or otherwise any proceedings that may be brought against the Companies or any of them or against himself;
- (8) to take possession of, collect, hold and dispose of all books, papers, documents, records and securities relating to or in the possession or under the control of any of the Companies or that should be in such possession or under such control;
- (9) to discharge any liabilities of any of the Companies;
- (10) to exercise any of the powers or rights of the directors of any of the Companies or the powers or rights of any of the Companies,

and such other powers as may be prescribed by regulations under this Act.

Further
powers of
Public
Trustee.

5. In addition to the foregoing powers the Public Trustee shall have power to co-operate or act in conjunction with any person appointed by or under any Act of Parliament or Ordinance or Order of any Court of the Commonwealth or any State or of the Dominion of New Zealand as Receiver or Manager of the assets of all or any of the Companies or with any person so appointed for the purpose of protecting any such assets.

6.

6. (1) The Public Trustee may apply by summons to the Court to determine any question relating to the Companies or any of them.

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Application to court.

(2) Every such determination shall be binding on the Public Trustee and on such of the Companies and other persons as shall or may be affected thereby, including all persons interested in the Companies.

(3) The Court or a Judge may give directions at any time for service of the said summons or of the said determination on any person or persons or class of persons.

7. No sale of or dealing with any of the assets of any of the Companies whether held subject to any trust, mortgage, contract, or otherwise shall be of any validity whatsoever except by or with the consent of the Public Trustee and the powers of the directors of each of the Companies shall be suspended.

No sale of assets without consent of Public Trustee.

8. No action, suit, execution, or proceeding shall be commenced or proceeded with against the said Companies or any of them save and except a suit or proceeding by a person claiming to rescind a contract with any of the Companies on the ground of fraud or misrepresentation to the extent only of a judgment order or declaration rescinding such contract.

Stay of proceedings

9. The following provisions of this Act, that is to say, sections three, four and five, subsection one of section six, and sections seven and eight and paragraph (a) of subsection one of section sixteen, shall remain in force only until a declaration has been published by the Governor in the Gazette that it is no longer in the interests of the creditors of the Companies or of persons beneficially interested therein that the Public Trustee shall act as Receiver or Manager of the said Companies or until the Parliament otherwise provides.

Duration of Act.

10. The provisions of this Act relating to the Public Trustee shall apply to a Deputy Public Trustee appointed by the Governor in pursuance of section six of the Public Trustee Act, 1913, as amended by subsequent Acts.

Deputy Public Trustee.

11. Neither the Public Trustee nor any of his deputies, officers, servants, or agents shall be liable to any person for any act or thing done or omitted to be done in exercise

Exemption from liability of Public Trustee.

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or purported exercise of any of the powers conferred by or under this Act or for or in respect of any of the liabilities of any of the companies.

Expenses of Public Trustee.

12. The Public Trustee shall be entitled to reimburse himself or pay or discharge out of the assets of or recover from the Companies as a debt all expenses incurred in or about the execution of his powers under this Act.

Amendment of Royal Commissions Act, 1923-1934.

13. The Royal Commissions Act, 1923-1934, is amended by inserting in Division 1 of Part II, after section fourteen, the following new section:—

No prohibition against Royal Commission.

14A. No Royal Commission to which this Act applies shall be subject to any proceedings by way of injunction, mandamus, prohibition, certiorari or otherwise by reason of the provisions of section 89 (1A) of the Companies Act, 1899, as amended by subsequent Acts.

Delaying and obstructing Public Trustee.

14. (1) Any person who, with intent to delay or obstruct the carrying out by the Public Trustee of any of his powers or functions under this Act destroys or alters or withholds from the Public Trustee (whether demand has been made therefor or not) any of the assets of any of the companies or any book, paper, document, record or security relating to, or in the possession, or under the control of, any of the Companies, or sends, or attempts to send, or conspires with any other person to send, out of New South Wales any such asset, book, paper, document, record or security shall be guilty of an indictable offence and shall be liable to be imprisoned for a period not exceeding five years.

(2) If in any prosecution for an offence against this section, it is proved that the person charged with the offence has destroyed or altered or withheld from the Public Trustee any of the assets of any of the Companies or any book, paper, document, record or security in the possession or under the control of any of the companies or has sent, or attempted to send, or conspired to send out of New South Wales any such asset, book, paper, document, record, or security the onus of proving that in so doing he has not acted in contravention of this section shall be upon him.

Reports by Public Trustee.

15. The Public Trustee shall in respect of the operation of this Act furnish from time to time such information

information and make such reports to the Attorney-General as the Public Trustee may think desirable or as the Attorney-General may require.

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16. (1) The Governor may make regulations Regulations. prescribing—

- (a) the powers that may be exercised by the Public Trustee as Receiver and Manager under this Act, whether ordinarily exercisable by a Receiver and Manager or not;
 - (b) the mode of service of any summons, determination order, or direction of the Court or a Judge under this Act; and
 - (c) all matters which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations shall—
- (a) be published in the Gazette;
 - (b) take effect from the date of publication, or from a later date to be specified in such regulations; and
 - (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and, if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given within fifteen sitting days after any regulation has been laid before such House, disallowing such regulation or part thereof, such regulation or part shall thereupon cease to have effect.

17. Section seven of this Act shall be deemed to have commenced on and to have been in operation from six o'clock in the afternoon of Thursday the first day of November, one thousand nine hundred and thirty-four; and this Act shall be read and construed so as not to exceed the legislative power of the State to the intent that where any enactment thereof would, but for this section, have been construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power and shall not affect the operation or validity of any other provision of this Act.

Operation
of Act.

THE SCHEDULE

The Investment Executive Trust of New Zealand, Limited.
The Sterling Investments Company (New Zealand) Limited.
The Investment Securities Association, Limited.
The British National Investment Trust, Limited.
The New Zealand Shareholders Trust, Limited.
Wynwood Investments, Limited.
The Pacific Exploration Company Limited.
Farms and Farmlets, Limited.
The First Mortgage Freehold Security Company of New Zealand,
Limited.
The Transport Mutual and General Insurance Company, Limited.
V. B. McInnes and Company Limited.
Alcorn Trower and Company, Limited.
Financial Publications, Limited.
The Southern British National Trust, Limited.
The British National Trust, Limited.
V. B. McInnes & Company (Australia), Limited.
McInnes & Company, Limited.
British Medical Investment Trust, Limited (the name of which has
been or is about to be changed to British Vocational Investment
Trust Limited).
British Consolidated Investments, Limited.
The Selwyn Timber Company, Limited.
The Wynsel Timber Company, Limited.
Modern Homes, Limited.
Liberty Motors Corporation, Limited.
