

New Zealand.



ANALYSIS.

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1934, No. 28.

AN ACT to appoint the Public Trustee to be the Receiver and Manager of certain Companies to which the Companies (Special Investigations) Act, 1934, is applicable, pending the Completion of an Investigation of the Affairs of those Companies in Accordance with the said Act; to define the Powers of the Public Trustee in his Capacity of Receiver and Manager; and to make certain Incidental Provisions. Title.

[2nd November, 1934.]

WHEREAS, pursuant to the Companies (Special Investigations) Act, 1934, Inspectors have been appointed to investigate the affairs of the several companies specified in the Schedule hereto: And whereas the Inspectors so appointed have not yet reported the results of their Preamble.

investigations: And whereas, pending the completion of such investigations, the making of their reports by the Inspectors, and the taking of any steps that may be found necessary in the public interest in the light of such reports, it is desirable for the protection of debenture-holders and other creditors of such companies and in the public interest that the property of the said companies should as far as practicable be maintained intact: And whereas for the purpose of maintaining such property intact it is deemed advisable that the Public Trustee should be temporarily appointed as the Receiver and Manager of the said companies:

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title.

1. This Act may be cited as the Companies (Temporary Receivership) Act, 1934.

Application of Act.

2. (1) This Act applies to the companies specified in the Schedule hereto, being companies incorporated in New Zealand to which the Companies (Special Investigations) Act, 1934, is applicable.

(2) The Governor-General may at any time by Order in Council apply the provisions of this Act to any other company or companies to which the Companies (Special Investigations) Act, 1934, is applicable.

Public Trustee to be the Receiver and Manager of companies to which this Act applies.

3. (1) The Public Trustee, without further appointment than this Act, shall be the Receiver and Manager of the several companies to which this Act applies, and in his capacity as such shall have the powers and functions hereinafter defined.

(2) While the Public Trustee in his capacity as Receiver and Manager remains in office in respect of any company to which this Act applies it shall not be lawful or competent for any director, manager, or other person to be engaged in the management or conduct of the business of that company, or to act as its agent or servant, save with the permission of the Public Trustee and so far as such permission extends. No such person shall have any claim against the company or against the Receiver for any fees, salary, or wages in respect of any period during which the Receiver remains in office, except in so far as any such fees, salary, or wages may be payable by agreement between such person and the Receiver.

(3) All references in this Act to the Receiver of any company shall be deemed to be references to the Public Trustee in his capacity as the Receiver and Manager of that company.

4. The appointment of the Public Trustee as the Receiver of any company pursuant to the foregoing provisions of this Act shall take effect as follows:—

Date from which appointment of Public Trustee as Receiver to take effect.

(a) In the case of the companies specified in the Schedule hereto, the appointment shall be deemed to have been made and to have taken effect on the date of the passing of this Act:

(b) In the case of any company or companies to which this Act is applied by the Governor-General in Council pursuant to subsection two of section two hereof, the appointment shall be deemed to be made and to take effect on the date of the Order in Council.

5. In the exercise in relation to any company of the powers and functions conferred upon him by this Act, it shall be the duty of the Receiver, as far as practicable, to conserve and keep intact the assets of the company, but nothing in this section shall be construed to limit the powers expressly conferred on him by the next succeeding section.

Receiver to preserve assets and keep property intact.

6. (1) The Public Trustee as the Receiver of any company to which this Act applies shall have the following powers:—

Powers of Receiver.

(a) To take and retain possession of all property, whatsoever and wheresoever situated, belonging to the company, and in particular, but without limiting the generality of the power conferred by this paragraph, to demand, receive, and hold all scrip, share certificates, or other instruments of title to property of the company (whether registered in the name of the company or not) which is or may be in the hands of any person or corporation, whether or not employed by the company, with all related documents, records, and lists of such instruments:

(b) To demand and receive all moneys payable to the company:

(c) To sue for and recover all debts due and other moneys payable to the company, and to sue for and recover any other property to the

possession of which the Receiver may be entitled by virtue of his appointment :

- (d) To sell any property of the company (other than freehold or leasehold property) in such manner and on such terms and conditions as he thinks fit :
- (e) To repair and insure against fire or accident any property of the company, and to insure against liability to pay compensation or damages in respect of accidents to workers employed by the company or by the Receiver :
- (f) To pay all rates, taxes, insurance premiums, or other outgoings payable in respect of the property of the company, or under any policy of insurance of any kind :
- (g) To apply moneys belonging to the company, whether arising from real or personal property and whether income or capital, in or towards the payment of any debts, obligations, or liabilities incurred by the company or incurred by the Receiver in exercise of his powers as such :
- (h) To apply in the discretion of the Receiver and in such manner and to such extent as he thinks fit any moneys belonging to the company, whether arising from real or personal property and whether capital or income, for any purpose for or to which the directors of the company might lawfully have applied such moneys :
- (i) To borrow, on the security of any assets of the company, any moneys that may be required for the purposes of that company, and to lend to the company for the purposes aforesaid any moneys belonging to any other company to which this Act applies :
- (j) To carry out and perform contracts entered into by the company before the appointment of the Receiver :
- (k) To cause to be brought to New Zealand any books, records, vouchers, securities, instruments of title, or any other moveable property of the company held out of New Zealand :
- (l) To carry on the business of the company :

- (m) To appoint servants, clerks, managers, and agents on such terms and subject to such conditions as the Receiver shall think fit, and at his discretion to dismiss any person appointed by the company or by the Receiver :
- (n) To appoint a fit person to be the registered agent or public officer of the company in any place in the Commonwealth of Australia :
- (o) To grant powers of attorney to any person in or out of New Zealand to do any act or thing with respect to the property or affairs of the company which the Receiver could personally do by virtue of this Act.

(2) Before exercising any of the powers conferred by the foregoing provisions of this section, the Receiver may in his discretion apply to the Supreme Court, *ex parte*, for directions with respect to the exercise of such powers, and the Court may, on such application, make such order in the premises as it thinks fit.

7. In addition to the powers conferred on the Receiver by the last preceding section, he shall in relation to any company of which he is the Receiver have such further powers (if any) as the Supreme Court, on application made by the Receiver in that behalf, thinks fit to confer.

Supreme Court may confer additional powers on Receiver.

8. (1) It shall be the duty of all persons having possession or control of any books, records, documents, or other moveable property, whatsoever or wheresoever situated, belonging to any company to which this Act applies, forthwith after the passing of this Act (in the case of any company specified in the Schedule hereto), or forthwith after the publication in the *Gazette* of an Order in Council under subsection two of section two hereof (in the case of any company to which this Act is hereafter applied), to deliver all books, records, documents, or other property as aforesaid to the Receiver or to his authorized agent.

Persons in possession of any property belonging to a company to which this Act applies to deliver possession of the same to the Receiver.

(2) If any person fails for not less than fourteen days to comply with the requirements of the last preceding subsection he shall be guilty of an offence, and shall be liable on summary conviction to a fine of one hundred pounds, and to a further fine of ten pounds for every day during which such offence continues.

(3) If any person fails to comply with the requirements of subsection one hereof, the Receiver may at any time certify such failure to the Supreme Court (whether or not an offence has been committed under the last preceding subsection), and the Court may thereupon inquire into the matter of such failure and, after hearing any witnesses who may be produced against or by or on behalf of the alleged offender, and after hearing any statement which may be offered in defence, may punish the offender in like manner as if he had been guilty of contempt of the Court.

(4) It shall be no defence to any proceedings under this section that the person in possession or control of any property as aforesaid is or was entitled to a lien or other charge over that property.

Protection of Receiver.

9. (1) For the purposes of this Act the Receiver shall be deemed to be an officer of the Supreme Court and in the exercise of his powers and functions under this Act shall have all the privileges and be entitled to the same protection as if he had been appointed by that Court.

(2) The Receiver shall not be liable for any acts done by him in good faith in the exercise of his powers and functions as Receiver.

(3) No action or proceeding shall be proceeded with or commenced against any company to which this Act applies or against the Receiver except by leave of the Supreme Court and subject to such terms as that Court may impose.

Expenses of administration.

10. All costs, charges, and expenses properly incurred by the Receiver in the exercise in relation to any company of his powers and functions under this Act (including such fees, commission, or other remuneration as may be payable in respect of the services of the Receiver in accordance with regulations under the Public Trust Office Act, 1908) shall be payable out of the assets of that company in priority to all other claims.

Determination of receivership under this Act.

11. (1) The appointment of the Public Trustee as the Receiver of any company to which this Act applies may be determined by the Supreme Court by order made on application in that behalf by:—

- (a) The Attorney-General; or
- (b) Any director or directors of the company; or
- (c) Any debenture-holder or debenture-holders of the company.

(2) No application under this section shall be received by the Court in respect of any company at any time before the Inspector or Inspectors appointed to investigate the affairs of that company pursuant to the Companies (Special Investigations) Act, 1934, have duly reported to the Supreme Court as required by that Act.

(3) In the event of an order being made by the Supreme Court for the winding-up of any company to which this Act applies, whether on petition presented in accordance with section five of the Companies (Special Investigations) Act, 1934, or otherwise, the appointment of the Public Trustee as the Receiver of that company shall be thereby determined.

(4) On the making of an order under this section for the determination of the receivership of the Public Trustee in respect of any company, the Court may direct the Receiver to furnish to the company or to any person on behalf of the company such reports and returns as the Court thinks fit.

(5) Within one month after the determination of the receivership of the Public Trustee in respect of any company to which this Act applies he shall file in the office of the Supreme Court at Wellington a statement of accounts, duly audited by the Audit Office, showing in detail his receipts and payments in respect of that company.

12. (1) The Receiver shall notify the Registrar of Companies of his appointment as Receiver and of the termination of his appointment.

As to application
of Companies
Act.

(2) Notwithstanding anything to the contrary in the Companies Act, 1933, it shall not be obligatory on the Receiver to furnish in respect of any company of which he is the Receiver any annual or other return required by that Act.

(3) Nothing in Part VII of the Companies Act, 1933, shall apply with respect to the Public Trustee as the Receiver of any company to which this Act applies.

Schedule.

SCHEDULE.

COMPANIES INCORPORATED IN NEW ZEALAND TO WHICH THIS ACT
APPLIES.

- 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.