

New Zealand.

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1934-35, No. 51.

Title.

AN ACT to provide for the Winding-up of certain Companies to which the Companies (Special Investigations) Act, 1934, is applicable, and to make certain Incidental Provisions. [5th April, 1935.]

WHEREAS the Inspectors appointed pursuant to the Companies (Special Investigations) Act, 1934, to investigate the affairs of the several companies specified in the Schedule hereto have reported the result of their investigations as required by the said Act, and copies of their reports are set out in parliamentary papers (1934-35) H.-27 and (1934-35) H.-27B: And whereas it appears from such reports—

Preamble.

- (a) That large sums of money have been subscribed by members of the public in New Zealand and Australia to two of the said companies—namely, the Investment Executive Trust of New Zealand, Limited (incorporated in New Zealand), and the Southern British National Trust, Limited (incorporated in New South Wales), upon the security of debentures issued by those companies:
- (b) That the terms upon which such moneys were subscribed, as set out in the debentures, required that such moneys, subject to certain specified deductions, should be invested in specified classes of securities and that the income from such investments, subject to certain specified deductions, should belong to the debenture-holders according to their respective classes:
- (c) That large amounts of the moneys so subscribed were invested in debentures issued by certain companies specified in the Schedule hereto:
- (d) That the companies with which such investments were made were directly or indirectly controlled by the directors of the Investment Executive Trust of New Zealand, Limited, and of the Southern British National Trust, Limited, and by reason of such control the said directors indirectly utilized the moneys originally subscribed by the debenture-holders in order to make profits for themselves, and have by their dealings through such companies received large sums of money and other property, and are now possessed of certain shares in and debentures of and claims against such companies:

- (e) That except in the case of Farms and Farmlets, Limited, and the Transport Mutual and General Insurance Company, Limited, the Inspectors appointed in respect of the several companies specified in Part I of the Schedule hereto respectively recommend that such companies should be wound up :
- (f) That it is unlikely that in the event of a winding-up the assets available for the debenture-holders of the Investment Executive Trust of New Zealand, Limited, and of the Southern British National Trust, Limited, would be sufficient to pay to them the whole of the capital secured by their debentures :
- (g) That in view of the fact that the moneys subscribed by the debenture-holders have been utilized by the said directors in manner aforesaid it would not be just and equitable in the event of a winding-up that any claims by the said directors should be allowed to rank in priority to or equally with the claims of members of the public under debentures issued by the Investment Executive Trust of New Zealand, Limited, or by the Southern British National Trust, Limited :

And whereas by reason of the matters set forth in such reports and in parliamentary paper (1934-35) H.-27A (being a statement by the Minister of Finance as to the proposed special legislation arising out of such reports), and by reason of the relationship of Farms and Farmlets, Limited, and of the Transport Mutual and General Insurance Company, Limited, with other companies specified in Part I of the Schedule hereto, it is expedient that all the companies so specified should be compulsorily wound up : And whereas by means of investments made as hereinbefore mentioned with companies specified in the Schedule hereto portions of the moneys subscribed by the debenture-holders as aforesaid were used for the purpose of purchasing a freehold property situated at the corner of King Street and Castlereagh Street in the City of Sydney, New South Wales, which property is hereinafter referred to as the Trust Building, and

further portions of such moneys were subsequently expended in altering, improving, and furnishing the said building: And whereas the Trust Building was so purchased in the name of the British National Investment Trust, Limited, being a company specified in the Schedule hereto and incorporated in New Zealand, and is now vested in that company, subject to a mortgage securing the principal sum of one hundred thousand pounds and interest thereon: And whereas the British National Trust, Limited, being a company specified in the Schedule hereto and incorporated in the Territory for the Seat of Government of the Commonwealth of Australia, is also interested in the Trust Building by virtue of its holding an unregistered lease of the building for ninety-nine years and by virtue of its owning substantially the whole of the ordinary shares in the British National Investment Trust, Limited: And whereas the Public Trustee of New South Wales has taken possession of the Trust Building and of other assets in New South Wales of certain companies specified in the Schedule hereto as Receiver and Manager under an Act of the Parliament of New South Wales, the Short Title of which is the Companies (Receiver and Manager) Act, 1934: And whereas by a Bill that is now before the said Parliament it is proposed that provision be made for the vesting of the Trust Building (freed from the said lease), and of all fixtures, furniture, and other chattels of the British National Trust, Limited, in or about the said building, in the said Public Trustee of New South Wales, upon trust to sell and dispose of the same and to distribute the proceeds of such sale and disposition, and the rents and profits of the said building, fixtures, furniture, and other chattels received by him pending such realization, after payment of all costs, charges, and expenses charged on the said property, between the Southern British National Trust, Limited, and the Investment Executive Trust of New Zealand, Limited, in the following proportions—namely, one-third to the Southern British National Trust, Limited, and two-thirds to the Investment Executive Trust of New Zealand, Limited: And whereas the proposed division of such proceeds will render valueless

certain preference shares in the British National Investment Trust, Limited, of a nominal value of fifty-five thousand pounds, held by the Southern British National Trust, Limited, and consequently, in order to compensate for the loss of such shares, it is proposed by the said Bill of the Parliament of New South Wales to provide for the cancellation of certain debentures of the Southern British National Trust, Limited, for fifty-five thousand pounds held by the Investment Executive Trust of New Zealand, Limited: And whereas the cancellation of such debentures will have the effect of varying the relative positions of the several classes of the debenture-holders of the Investment Executive Trust of New Zealand, Limited: And whereas by reason of such variation, and by reason of the fact that the relative positions of the several classes of such debenture-holders have also been varied by unauthorized dealings by the directors of the said company with the investments held as security for the respective classes of debentures, it is expedient that provision should be made in manner hereinafter appearing for the purpose of defining the relative rights of the several classes of such debenture-holders:

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 and
commencement.

1. (1) This Act may be cited as the Companies (Special Liquidations) Act, 1934-35.

(2) This Act shall come into operation on a day to be specified in that behalf by the Governor-General by a Proclamation published in the *Gazette*. No such Proclamation shall be issued until after the New South Wales legislation, as defined in the next succeeding section, has come into operation.

Interpretation.

2. In this Act, unless the context otherwise requires,—

“The New South Wales legislation” means legislation of the Parliament of New South Wales (whether passed before or after the passing of this Act) making provision for the sale and disposal of the Trust Building and for the distribution of the proceeds of such sale and disposal:

“ The Trust Building ” means the building known as the Trust Building situated at the corner of King Street and Castlereagh Street in the City of Sydney, New South Wales, and includes the land upon which such building is erected :

Expressions defined in the Companies Act, 1933, shall have the meanings so defined.

3. The several companies specified in Part I of the Schedule hereto, being companies incorporated in New Zealand to which the Companies (Special Investigations) Act, 1934, is applicable, shall be wound up by the Court.

Certain
New Zealand
companies to be
wound up by
the Court.

4. The winding-up of every company to which the last preceding section relates shall be deemed to commence on the date of the commencement of this Act.

Commencement
of winding-up.

5. (1) The Public Trustee shall, without further appointment than this Act, be the liquidator of every such company. In his capacity as the liquidator of any such company he shall be described by the style of “ The Public Trustee as liquidator under the Companies (Special Liquidations) Act, 1934-35, of [*Name of company*] ”.

Public Trustee
to be liquidator.

(2) Forthwith after the commencement of this Act the Public Trustee shall notify the Registrar of Companies of his appointment as liquidator of each of the said companies.

(3) The appointment of the Public Trustee as the Receiver under the Companies (Temporary Receivership) Act, 1934, of any company specified in Part I of the Schedule hereto shall be deemed to be determined on the commencement of the winding-up of that company.

Determination
of temporary
receivership.

6. (1) Subject to the provisions of this Act, the provisions of the Companies Act, 1933, and of all rules and regulations under that Act, shall, so far as they are applicable, and with the necessary modifications, apply with respect to the winding-up of each of the companies specified in Part I of the Schedule hereto as if the Court had on the date of the commencement of this Act made an order for the winding-up of the company upon the ground specified in paragraph (f) of section one hundred and sixty-nine of the Companies Act, 1933.

As to application
of Companies
Act.

(2) Sections one hundred and eighty-seven, one hundred and eighty-eight, one hundred and eighty-nine, one hundred and ninety-five, one hundred and ninety-nine, two hundred, and two hundred and seventy-one of

the Companies Act, 1933, shall not apply with respect to the winding-up of any of the said companies.

(3) In the application, in accordance with this Act, of the provisions of the Companies Act, 1933, and of the rules and regulations under that Act to the winding-up of any of the said companies,—

(a) References in such provisions to the winding-up order shall be deemed to be references to this Act :

(b) References in such provisions to the Official Assignee shall be deemed to be references to the Public Trustee :

(c) Section one hundred and ninety-two of the said Act shall be construed as if the reference in subsection one to the sanction of the Court or of the committee of inspection were omitted.

(4) All moneys received by the Public Trustee as liquidator of any of the said companies shall be paid into the Public Trustee's Account, but shall not form part of the Common Fund.

7. (1) In addition to all other powers conferred on him by this or any other Act, the Public Trustee as the liquidator under this Act of any company shall have the following powers :—

(a) To appoint servants, clerks, managers, and agents on such terms and subject to such conditions as he thinks fit, and at his discretion to dismiss any person appointed by him :

(b) To consult and employ counsel, accountants, sharebrokers, and other persons :

(c) To postpone the realization of any asset of the company for such period as he thinks fit.

(2) The exercise by the Public Trustee in the winding-up of any company of the powers conferred by subsection one of this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

(3) Where the Public Trustee commences any action or other legal proceeding by any company of which he is the liquidator or the Receiver against any other such company or against himself acting in any capacity (whether as the liquidator or the Receiver of any company or

otherwise), or by himself acting in any capacity against any such company, he shall obtain the directions of the Court as to how the opposing interests are to be represented.

8. Where the Public Trustee certifies under his hand and seal that the person who is entitled to any share in any company by virtue of any unregistered transfer or other instrument held by the Public Trustee is entitled to such share as trustee for any company of which the Public Trustee is the liquidator under this Act, the Public Trustee shall have the right to make such transfer of the share as he could have made if he had been registered as a member in respect of the share; but the directors shall have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the person registered as a member in respect of the share.

Transfer of
shares by Public
Trustee.

9. (1) All costs, charges, and expenses properly incurred by the Public Trustee in relation to the winding-up of any company under this Act (including his remuneration) shall be payable out of the assets of that company (including assets securing debentures issued by the company) in priority to all other claims except any claim of the Public Trustee for costs, charges, and expenses under section ten of the Companies (Temporary Receivership) Act, 1934.

Expenses of
winding-up.

(2) The remuneration of the Public Trustee as the liquidator of any company under this Act shall be fixed by regulations under this Act, and in the absence of any such regulations, or in so far as they do not otherwise provide, such remuneration shall be fixed by the scale of fees for the time being payable to the Public Account in respect of the services of the Official Assignee as liquidator. Such remuneration shall be credited to the Profit and Loss Account of the Public Trust Office.

10. (1) Pending the distribution of the proceeds of the sale of the Trust Building, the liquidator of the Investment Executive Trust of New Zealand, Limited, shall from time to time pay out of the assets of that company to the Public Trustee of New South Wales, as and when required by him to do so, the said company's proportionate share of any moneys required by the said Public Trustee to enable him to defray any costs, charges,

Contribution
towards expenses
pending sale of
Trust Building.

and expenses incurred, whether before or after the commencement of this Act, in respect of the Trust Building.

(2) The receipt of the Public Trustee of New South Wales for any moneys certified by him to be payable by the said liquidator under this section shall be a sufficient discharge to the said liquidator for such moneys.

Share of
Investment
Executive Trust
of New Zealand,
Limited, in
proceeds of
Trust Building,
&c., to be
received in
reduction of
British National
Trust debentures.

11. (1) The share to which the Investment Executive Trust of New Zealand, Limited, may be entitled under the New South Wales legislation in the proceeds of the sale and disposition of the Trust Building and of any other property, and in any rents and profits of such building and property, shall be received by the liquidator of the said company in reduction of the amount owing to the company under the debentures of the British National Trust, Limited, held by the Investment Executive Trust of New Zealand, Limited.

(2) If any debentures of the Southern British National Trust, Limited, of which the Investment Executive Trust of New Zealand, Limited, is the registered holder are declared by the New South Wales legislation to be cancelled, they shall be deemed to have been duly cancelled accordingly.

Application
of share in
proceeds of Trust
Building, &c.

12. (1) Subject to the next succeeding section, the share of the Investment Executive Trust of New Zealand, Limited, in the proceeds, rents, and profits mentioned in the last preceding section shall be applied by the liquidator of the said company as assets of the company securing the debentures issued by the company.

Debentures of
Investment
Executive Trust
of New Zealand,
Limited, of all
classes to rank
pari passu.

(2) For the purposes of the winding-up of the Investment Executive Trust of New Zealand, Limited, all debentures issued by the company shall be deemed to be of one class and to rank *pari passu*, and every charge over any property in favour of any class of the debenture-holders of the company shall be deemed to be a charge in favour of all the debenture-holders of the company.

Postponement
of claims of
directors and
officers of
companies
specified in
Schedule.

13. In the winding-up of any company specified in the Schedule hereto, all claims (whether as debenture-holder, creditor, shareholder, or otherwise) of any person who is or who has at any time been a director or officer of any of the companies specified in the Schedule hereto, or of any person (not being one of

such companies) who claims under any such director or officer or former director or former officer otherwise than as or through a *bona fide* purchaser for value under a contract made before the first day of April, nineteen hundred and thirty-five (the onus of proof being on the claimant), shall rank after all other claims.

14. The Governor-General may from time to time, by Order in Council, make all such regulations as may in his opinion be necessary or convenient for giving effect to the provisions of this Act. Regulations.

SCHEDULE.

Schedule.

PART I.—COMPANIES INCORPORATED IN NEW ZEALAND.

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.
 The Pacific Exploration Company, Limited.
 Farms and Farmlets, Limited.
 The Transport Mutual and General Insurance Company, Limited.
 V. B. McInnes and Company, Limited.
 Alcorn, Trower, and Company, Limited.
 Auckland Provincial Town Properties, Limited.
 New Zealand Freeholds and Buildings, Limited.
 Freeholds, Limited.

PART II.—COMPANIES INCORPORATED OUTSIDE NEW ZEALAND.

The Southern British National Trust, Limited.
 The British National Trust, Limited.