

New Zealand.



ANALYSIS.

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| <p>Title.</p> <p>Preamble.</p> <p>1. Short Title.</p> <p>2. Company may act as executor and obtain probate.</p> <p>3. Company may apply for administration with will annexed.</p> <p>4. Court may act upon affidavit of director or secretary.</p> <p>5. Assets of company liable.</p> <p>6. Company may be appointed trustee and to hold other fiduciary positions.</p> <p>7. Company may act under power of attorney by directors.</p> <p>8. Provisions of Property Law Act, 1908, and of Companies Act shall apply.</p> <p>9. Secretary to represent company when personal attendance necessary.</p> | <p>10. Company's remuneration for services.</p> <p>11. Company's liability to be the same as private individual.</p> <p>12. Order for accounts may be made by the Court.</p> <p>13. Court may order audit.</p> <p>14. Statement of assets and liabilities of company to be gazetted yearly.</p> <p>15. Penalty for not gazetting statement.</p> <p>16. Company not to wind up without sanction of Court.</p> <p>17. Moneys unclaimed for six years to be paid to Treasury.</p> <p>18. Powers of company not affected by the Act.</p> <p>19. Company subject to any future legislation.</p> <p>20. Jurisdiction and powers of Court not affected.</p> <p>21. Act to be a private Act. Schedule.</p> |
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1934, No. 3.—*Private.*

AN ACT to confer Powers upon Pyne, Gould, Guinness, Limited, Title.
[23rd October, 1934.]

WHEREAS Pyne, Gould, Guinness, Limited, being a Preamble.
 company duly incorporated under the Companies Act, 1908, is desirous that it should have conferred upon it the powers hereinafter set forth in order to enable it more effectually and usefully to carry on the trust and agency business which it is authorized to carry on under

its memorandum of association: And whereas the company was incorporated on the twenty-fourth day of April, nineteen hundred and nineteen, for the purpose of acquiring the assets and goodwill of three old-established firms—namely, Pyne and Company (stock, station, and estate agents); Gould, Beaumont, and Company; and Guinness and Le Cren, Limited; each firm having an extensive business throughout the Provincial District of Canterbury especially as agents for farmers: And whereas the firm of Gould, Beaumont, and Company had been carrying on business for more than forty years prior to the incorporation of the company and one of the principal branches of their business was acting in a fiduciary capacity as executors and administrators and trustees of the estate of deceased persons and as financial agents and attorneys for clients of the firm resident in New Zealand and abroad. The firm had established a special department with separate books, banking account, and audit for the purpose of administering all trust estates committed to their charge: And whereas on the incorporation of the company a number of probates of wills appointing members of the firm of Gould, Beaumont, and Company and of powers of attorney were taken over by the company and the trusts thereof have been administered by the company under the system previously adopted by the firm of Gould, Beaumont, and Company: And whereas the company has a number of wills in its possession for safe custody on behalf of persons now living who have appointed the company executor and trustee of their estates: And whereas the paid up capital of the company set forth in its balance-sheet for the year ending the thirtieth day of September, nineteen hundred and thirty-three, is five hundred thousand pounds: And whereas it is expedient to define the powers of the company and to simplify and regulate its procedure and practice in relation to obtaining probate and administration of estates of deceased persons and in acting in any other fiduciary capacity in manner hereinafter set forth:

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 Pyne, Gould, Guinness (Limited) Trust Act, 1934.

2. Whenever the company shall be named as executor in the last will and testament, or in any codicil to the last will and testament, of any testator, it shall be lawful for the company to be and act as executor; and the company shall be entitled to apply for and obtain probate of the will and to perform and discharge all other the acts and duties of an executor as fully and effectually as a private individual may do when appointed executor.

Company may act as executor and obtain probate.

3. The power of the company to apply for and obtain probate of the will of any deceased person shall extend to and include the power to apply for and obtain letters of administration with the will annexed, but nothing in this Act contained shall be deemed to confer upon the company any right to apply for and obtain letters of administration in any intestate estate.

Company may apply for administration with will annexed.

4. In all cases in which the company is empowered to apply for probate or for letters of administration of the estate and effects of any deceased person it shall be lawful for the Court in which or the officer before whom such application is made to receive and act upon an affidavit made by a director or by the secretary of the company in place of any affidavit required by the said Court to be made by persons making application for probate or letters of administration.

Court may act upon affidavit of director or secretary.

5. (1) The company shall forthwith after the commencement of this Act deposit with the Public Trustee Government stock or other approved investments of a description authorized by law for the investment of trust funds to the value of not less than twenty-five thousand pounds, such stock or other investments to be held by the Public Trustee as security for, and shall stand charged with, the due and punctual performance by the company of all duties and obligations of a fiduciary character of a description referred to in this enactment. Such investments may (with the written consent of the Public Trustee) be varied or transposed from time to time:

Assets of company liable.

Provided that at all times so long as the company continues to act in any such fiduciary capacity as herein-before mentioned the aggregate amount of investments deposited under this clause and available to satisfy any just claims upon the company under this section shall not be less than twenty-five thousand pounds. Such deposit shall be deemed sufficient security for the discharge

of such duties and obligations and for the satisfaction of such claims in place of any bond which would have been required from private individuals when appointed to act in such fiduciary capacity.

(2) All the remaining capital and assets of the company shall also be liable for the proper administration of all estates entrusted to the charge of the company.

Company may be appointed trustee and to hold other fiduciary positions.

6. In all cases in which any Court of justice or any person or persons or corporation shall appoint the company to be a trustee under any deed, will, settlement, or other documents, or a guardian or a trustee, or to be a manager, or committee of the estate under any law now in force or hereafter to be in force in the Dominion relating to mentally defective persons it shall be lawful for the company to accept such appointment and to act as such trustee, guardian, manager, or committee, and to perform and discharge all such acts and duties pertaining to any such office.

Company may act under power of attorney by directors.

7. It shall be lawful for the company to act under any power of attorney by which the company is appointed attorney by any person or by any company or corporation, and all power conferred upon the company by any such power of attorney may be exercised and carried into execution by the secretary and any director or by any two directors of the company; but in all cases the capital, both paid and unpaid, and all other assets of the company shall be liable for the due execution of the powers so conferred upon the company.

Provisions of Property Law Act, 1908, and of Companies Act shall apply.

8. The provisions of section one hundred of the Property Law Act, 1908, and of section three hundred and thirty-three of the Companies Act, 1933, shall extend and apply, as the case may require, to every power of attorney by which the company is appointed by any person, company, or corporation; and a statutory declaration made at the time prescribed by the said sections by the secretary and any director of the company that the company has not, to the best of the knowledge and belief of the person making such declaration (as regards any power of attorney given to the company by an individual), received any notice or information of the revocation by death or otherwise of any such power of attorney, or (as regards any power of attorney given to the company by another company or corporation) of

the revocation of such power of attorney, or of the winding-up or dissolution of the principal company or corporation, shall have the same force and effect as the declaration mentioned in the said section when made by a private individual acting under power of attorney.

9. In all cases in which the personal attendance of an executor, administrator, trustee, committee, or guardian is required in a Court of justice or elsewhere the company shall be entitled to make such attendance in the person of the secretary or acting-secretary of the company; and the personal duties of executor, administrator, trustee, committee, manager, or guardian may be discharged on behalf of the company by the secretary or acting-secretary; and such secretary or acting-secretary shall be responsible in his own proper person by process of attachment, commitment for contempt, or by other process to all Courts having jurisdiction over the matter for the proper discharge of such duties and for obedience to the orders and decree of such Court, as well by the company as by the said secretary or acting-secretary, and by all officers of the company; but, notwithstanding such personal liability of the said secretary or acting secretary, the capital and all the assets of the company shall remain liable for any pecuniary loss which may be occasioned or may happen through the imperfect or improper discharge or through the neglect of the company or of any of its officers of an act or duty in respect of any office, appointment, or engagement held or entered upon by the company.

Secretary to represent company when personal attendance necessary.

10. The company shall be entitled to receive, in addition to all moneys properly expended by it and chargeable against the estate placed under the administration and management of the company, a commission to be fixed from time to time by the board of directors of the company, but not to exceed in any case five pounds for every one hundred pounds received by the company as executor, administrator, trustee, committee, manager, or guardian, or as an attorney acting under power of attorney; and such commission shall in each case be payable out of the moneys or property committed to the management of the company, and shall be received and accepted by the company as a full recompense and remuneration of the company for acting as such

Company's remuneration for services.

executor, administrator, trustee, committee, manager, guardian, or attorney :

Provided that nothing in this enactment shall prevent the company from acting as agent in selling, letting, or disposing of the property belonging to any estate committed to its charge and held upon trust, and charging for its services in any such capacity upon the usual scale in all cases where it is expressly authorized so to do by the will, deed, or other instrument creating or evidencing the trust, or from charging and accepting payment of any commission, remuneration, expressly directed by the will, deed, settlement, or other document creating or evidencing any such trust.

Company's liability to be the same as private individual.

11. In all cases in which the company shall be appointed executor administrator, trustee, committee, guardian, or attorney under power the company shall, in addition to the liabilities and restrictions imposed by this Act, be subject in all respects to the same control and liable to removal as private individuals who may be appointed executors, administrators, trustees, committees, guardians, or attorneys, are subject to.

Order for accounts may be made by the Court.

12. If any trustee, *cestui que trust*, executor or legatee, administrator or next-of-kin, or creditor, entitled to or interested in any estate which shall have come or shall hereafter come into the possession or under the control of the company shall be unable, upon application to the board of directors or to the secretary of the company, to obtain a sufficient account of the property and assets of which such estate shall consist and of the disposal and expenditure thereof or thereout, such trustee, *cestui que trust*, executor or legatee, administrator or next-of-kin, or creditor shall be entitled to apply to the Supreme Court or to any Judge thereof upon motion, after notice to the company, but without suit or petition for an account, and if the Supreme Court or Judge shall be of opinion that no sufficient account has been rendered by the company, the said Court or Judge shall order such account to be rendered by the company as to the said Court or Judge shall seem just ; or if the said Court or Judge shall think that no sufficient case has been established to require the company to furnish an account, it shall be lawful for the said Court or Judge to dismiss the application ; and the said Court or Judge shall have power in

all cases to make such order as to costs either against the company or against the applicant, or as to payment of costs out of the estate, as to the said Court or Judge shall seem right.

13. It shall be lawful for the Supreme Court or for any Judge thereof, on application under the last preceding section, to order, in addition to or in substitution for any account to be rendered by the company, that a person to be named in such order shall examine the books and accounts of the company in reference to the estate as to which the order is made; and in that case the company shall deliver to the person named in such order a list of all books kept by the company, and shall produce to such person at all reasonable times when required the said books and all accounts, vouchers, papers, and other documents of the company, and shall afford to him all necessary information and all other necessary facilities for enabling him to make the said examination; and the said Court or any Judge thereof shall have the same power as to the costs of such examination as is given by the last preceding section in reference to costs of or occasioned by the application under that section.

Court may order audit.

14. The secretary of the company shall, once in every year during which the company carries on business, make before a Justice of the Peace a declaration in form contained in the Schedule hereto, or as near thereto as circumstances will admit; and a copy of such declaration shall be published in the *New Zealand Gazette*, and shall be put up in a conspicuous place in the registered office of the company and in every branch office or place in New Zealand where the business of the company is carried on, and shall be given to any member or creditor of the company who applies for the same.

Statement of assets and liabilities of company to be gazetted yearly.

15. If default is made in compliance with the provisions of the last preceding section, the company shall be liable to a penalty not exceeding five pounds for every day while such default continues; and every director and the secretary of the company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Penalty for not gazetting statement.

16. So long as any estate in respect of which the company is executor, administrator, or trustee shall remain in whole or in part unadministered it shall not be

Company not to wind up without sanction of Court.

lawful to proceed to wind up the company voluntarily, unless with the sanction of the Supreme Court or of a Judge of such Court; and it shall be lawful for any person interested in such estate or who may have any claim in respect thereof to apply to the Supreme Court or to a Judge of such Court in a summary way to restrain the winding-up voluntarily of the company, and the said Court or Judge shall in any and every such case have power to make such order in the matter as the circumstances of each case shall appear to such Court or Judge to require.

Moneys
unclaimed for six
years to be paid
to Treasury.

17. (1) Every sum of money held by the company as a trustee, executor, guardian, or otherwise under this Act which remains unclaimed, and of which no lawful owner is known, for a period of six years after its receipt by the company shall at the end of each financial year be paid over by the company to the Consolidated Fund, and every such payment shall, to the extent of the moneys paid, discharge the company of the trust in respect of such moneys.

(2) Nothing in this section shall operate as a bar to any lawful claim to any such moneys for a period of ten years after their receipt by the company, and the Minister of Finance shall, within such period, issue and pay any such lawful claims out of the Consolidated Fund without further appropriation than this Act.

(3) If default is made in compliance with the provisions of this section, the company shall be liable to a penalty not exceeding five pounds for every day while such default continues, and every director and the secretary of the company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Powers of
company not
affected by the
Act.

18. Nothing in this Act contained shall be construed to affect the constitution or powers of the company set forth in its memorandum of association, but the company shall continue under its original incorporation with the powers and privileges by this Act conferred, and subject to the additional duties and liabilities by this Act imposed.

Company subject
to any future
legislation.

19. The company shall be subject to the provisions of any Act that may hereafter be passed by the General Assembly for the regulation of trust companies, and shall not be entitled to receive any compensation in respect of the operation of any Act which may be so

passed whatsoever may be the effect of any such Act in respect of the company.

20. Nothing in this Act contained shall operate to annul or abridge any powers or jurisdiction now possessed by the Supreme Court in respect of trustees, and all such powers and jurisdiction shall apply to the company in respect of all trusts undertaken by it.

Jurisdiction and powers of Court not affected.

21. This Act is hereby declared to be a private Act.

Act to be a private Act.

SCHEDULE.

Schedule.

In the matter of the Pyne, Gould, Guinness (Limited) Trust Act, 1934.

I, _____, Secretary of Pyne, Gould, Guinness (Limited), do solemnly and sincerely declare :—

- 1. That the liability of the members is limited.
- 2. That the capital of the company is £
- 3. That the number of shares issued is
- 4. That the whole of the subscribed share capital has been paid up.
- 5. That the amount of all moneys received on account of estates is £
- 6. That the amount of all moneys paid on account of estates is £
- 7. That the amount of the balance held to the credit of estates under administration is £
- 8. That the liabilities of the company on the _____ day of _____ last were :—

Debts owing to sundry persons by the company, viz.,—

- On judgment, £
- On specialty, £
- On notes or bills, £
- On simple contracts, £
- On estimated liabilities, £

9. That the assets of the company on that day were :

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act of the General Assembly of New Zealand intituled the Justices of the Peace Act, 1927.

Declared at Christchurch this }
day of _____, 19____, }
before me—