

COMPANIES (LIQUIDATION) ACT.

Act No. 37, 1935.

George V.
No. 37, 1935.

An Act to make provision for the winding-up of certain companies; to appoint the Public Trustee liquidator thereof; to vest certain property in the Public Trustee and to provide for the management, sale and disposal thereof, and for the distribution of the proceeds of such sale and disposal; to amend the Companies (Receiver and Manager) Act, 1934, and other Acts; and for purposes connected therewith. [Assented to, 11th April, 1935.]

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:—

Short title
and construction.

1. (1) This Act may be cited as the "Companies (Liquidation) Act, 1935."

(2) This Act shall be read with the Companies Act, 1899, as amended by subsequent Acts, which Act as so amended is in this Act referred to as the Principal Act.

Southern
British
National
Trust, Ltd.,
and British
Consolidated
Investments
Ltd. to be
wound up
under supervision
of
court.

2. The Southern British National Trust Limited and the British Consolidated Investments Limited, being the companies of those respective names formed and registered under the provisions of Part I of the Principal Act, shall be wound up under the supervision of the court as if the said companies were now in voluntary liquidation and orders had on the date of commencement of this Act been made by the court ordering that the said companies be wound up under the supervision of the court and appointing the Public Trustee sole liquidator of such companies. Such winding-up shall be deemed to commence on such date.

3.

3. V. B. McInnes and Company (Australia) Limited, in Liquidation, being the company of that name formed and registered under the provisions of Part I of the Principal Act, shall, as from the date of commencement of this Act, be wound up under the supervision of the court as if an order had on such date been made by the court ordering the said company so to be wound up and appointing the Public Trustee sole liquidator thereof.

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Liquidation of V. B. McInnes & Co. (Australia) Ltd. to be continued under supervision.

4. The Governor may from time to time by proclamation published in the Gazette order that any or all of the companies set out in the Schedule to this Act shall be wound up by the court.

Governor may direct companies in Schedule to be wound up by the court.

Any company so ordered to be wound up shall, as from the date specified in such proclamation, be wound up by the court as if an order were on such date made by the court under the provisions of paragraph (f) of section eighty-four of the Principal Act, and by such order the Public Trustee were appointed the sole liquidator thereof.

The commencement of winding-up of each such company shall be the date stated in that behalf in the proclamation.

5. On any winding-up under the provisions of this Act of any of the companies mentioned in this Act or in the Schedule—

Special powers to court.

(a) the court may make all such orders and give all such directions as it could on a petition for winding-up by or under the supervision of the court;

(b) the Public Trustee shall not be required to give security for the due performance of his duties as liquidator.

6. On the winding-up of the companies mentioned in sections two and three of this Act the powers of the directors thereof shall cease, and no general meetings thereof shall be held except such as may be summoned by the liquidator or directed by the court.

Special provisions in certain liquidations.

7. (1) As from the date of commencement of this Act, the estate and interest of the British National Investment Trust Limited as registered proprietor of the lands comprised in Certificate of Title dated the seventeenth day of March, one thousand nine hundred and thirty-three, and registered Volume 4567, Folio 46, subject to such

Vesting of Trust Building.

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such encumbrances, liens, estates or interests as may be noted thereon, shall vest in the Public Trustee, as if the said registered proprietor had on the date of such commencement executed and procured the registration of a memorandum of transfer transferring such estate and interest subject as aforesaid to the Public Trustee.

(2) The Registrar-General shall make such entries in the said folium of the register book as may be necessary to give effect to this section.

(3) Section seventy-six of the Real Property Act, 1900, shall not apply to such transfer of such estate and interest to the Public Trustee.

(4) The mortgagee of the said lands shall not, merely by reason of the winding-up of the mortgagor company under the provisions of this Act or of any law of the Commonwealth or any State, Territory or Dominion, be entitled to exercise any of his rights, powers or remedies against the mortgaged property for the recovery of the moneys secured by the mortgage or for the enforcement or realisation of the security.

(5) The interest in the said land created by an undated and unregistered Memorandum of Lease made between the British National Investment Trust Limited as lessor and the British National Trust Limited as lessee purporting to demise the term of ninety-nine years from the first day of March, one thousand nine hundred and thirty-three, shall, as from the date of commencement of this Act, be deemed to have been surrendered by the British National Trust Limited to the Public Trustee, but such surrender shall be without prejudice to the rights and interests (if any) of any persons in possession of any part of the premises on the first day of November, one thousand nine hundred and thirty-four, or who have since that date been given possession of any part of the premises by the Public Trustee, and claiming to be under-lessees under the said lease and the provisions of section one hundred and twenty-two of the Conveyancing Act, 1919-1932, shall apply to such surrender.

(6) The property and interest of the British National Trust Limited in all fixtures, furniture and other chattels ~~in~~ on or upon the said land shall as from the date of commencement of this Act be deemed to have been duly assigned

assigned in law to the Public Trustee, and the Public Trustee shall hold the said property and interest on the trusts declared by this Act.

8. (1) The Public Trustee shall at such time and subject to such terms and conditions and in such manner as the court shall approve sell and dispose of the said estate, interest and property in the said land, fixtures, furniture and chattels so vested and assigned as aforesaid and distribute the proceeds of such sale and disposition and the rents and profits of the said land, furniture, fixtures and other chattels received by him pending such realisation, after payment of all costs, charges and expenses charged on the said property by section eleven of this Act, 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.

Power of
sale, etc.

(2) Such respective shares of the Investment Executive Trust of New Zealand Limited and of the Southern British National Trust Limited shall be received by such companies or their liquidators in reduction of the amounts owing to such companies respectively under the debentures of the British National Trust Limited held by them respectively.

(3) The share of the Investment Executive Trust of New Zealand Limited in such proceeds, rents and profits shall be paid to the Public Trustee of the Dominion of New Zealand on behalf of the said Investment Executive Trust of New Zealand Limited, and the receipt of the Public Trustee of the Dominion of New Zealand shall be a sufficient discharge therefor to the Public Trustee.

(4) Pending the sale directed by subsection one of this section, the Public Trustee shall manage the property so vested in and assigned to him as aforesaid, but shall not without the leave of the court lease the said land and the building thereon erected or any part thereof for more than five years.

The power of management by this subsection conferred shall include power to mortgage the whole or any part of the property.

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Application
of proceeds
of sale.

9. (1) The share of the Southern British National Trust Limited in the proceeds, rents and profits in section eight mentioned shall be applied by the liquidator thereof as assets of the said company securing the B Series of debentures issued by the said company.

(2) The B Class debentures of the Southern British National Trust Limited, whereof the Investment Executive Trust of New Zealand Limited is at the date of commencement of this Act the registered holder, shall be deemed to have been duly cancelled as from such date.

Public Trustee to continue to act under Act No. 21, 1934.

10. The Public Trustee shall continue to act under the provisions of the Companies (Receiver and Manager) Act, 1934, as receiver and manager of each of the companies mentioned in the Schedule to this Act until the commencement of the winding-up of each such company under the provisions of this Act.

How costs and expenses to be defrayed.

11. (1) Insofar as the assets of the Southern British National Trust Limited not charged as security for any debentures issued by such company are insufficient to defray the costs, charges and expenses in this section hereinafter set forth, such of the assets and property of the said company as are charged as security for the B Class debentures issued by the said company (including the land, fixtures, furniture and other chattels vested in and assigned to the Public Trustee by section seven of this Act) shall be charged with the payment to the Public Trustee of the following costs, charges and expenses:—

- (a) his costs, charges and expenses (including his remuneration) as liquidator of the Southern British National Trust Limited and trustee of the said land and chattels;
- (b) his costs, charges and expenses (including his remuneration) in and about the management of the building erected on the said land;
- (c) the costs, charges and expenses of any sale of the said land and chattels and of the distribution of the proceeds thereof; and
- (d) the costs, charges and expenses (including his remuneration) incurred by him as receiver and manager under the provisions of the Companies (Receiver and Manager) Act, 1934.

(2)

(2) The costs, charges and expenses of the Public Trustee in and of the administering, selling and distributing such of the assets of the said company as are charged as security for the A Class debentures issued by such company shall be charged on and payable out of such assets.

(3) The Public Trustee may from time to time raise by sale or mortgage of the property and assets by this section charged with the payment of his costs, charges and expenses such moneys as may be necessary to defray such costs, charges and expenses.

(4) Costs, charges and expenses in this section shall include any extra remuneration paid by the authority or with the sanction of the Public Service Board to any deputy officer or servant of the Public Trustee for work done by such deputy officer or servant in or about the execution of the powers or performance of the duties conferred or imposed on the Public Trustee by this Act or the Companies (Receiver and Manager) Act, 1934.

(5) The remuneration to be paid to the Public Trustee for his pains and trouble as liquidator of the Southern British National Trust Limited, as trustee and manager of the said land and building and as receiver and manager under the provisions of the Companies (Receiver and Manager) Act, 1934, shall be such as shall be determined by the court on application in that behalf made by the Public Trustee.

12. (1) The Public Trustee as liquidator of the Southern British National Trust Limited and as trustee and manager of the land, fixtures, furniture and chattels mentioned in section seven of this Act may apply to the court to determine any question arising in the matter of the winding-up of such company or of the administration of the said trust, and the court may either hear and determine such application ex parte or after notice to such persons as it may order on summons for directions.

Application
to court.

(2) If the Public Trustee complies with any direction or order given or made by the court on such application he shall be deemed so far as regards his own responsibility to have discharged his duty in the subject-matter

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subject-matter of the application, provided that he has not been guilty of any fraud, wilful concealment or misrepresentation in or about such application.

Protection
of Public
Trustee.

13. (1) The Public Trustee, in the execution of the powers and duties conferred and imposed on him by this Act or by the Companies (Receiver and Manager) Act, 1934, shall not be liable to any person for any loss unless the same happens through his own wilful neglect or default.

(2) This section shall apply to all things done or purported to be done by the Public Trustee under the provisions of the Companies (Receiver and Manager) Act, 1934, as well before as after the commencement of this Act.

Special pro-
visions as to
promoters.

14. In the winding-up of the Southern British National Trust Limited all claims (whether as shareholder, debenture-holder, creditor 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 to the Companies (Receiver and Manager) Act, 1934, or of any person (not being one of such companies) who claims under any such director or officer otherwise than as or through a bona fide purchaser for value (the onus of proof whereof shall rest on the claimant) shall rank after the claim under their debentures of debenture-holders.

Special pro-
visions as to
winding up
of British
National
Trust, Ltd.

15. In the event of the winding-up of the British National Trust Limited the claims of the Investment Executive Trust of New Zealand Limited and of the Southern British National Trust Limited, as holders of debentures issued by the company first mentioned in this section, shall be paid in full in priority to all other holders of such debentures.

Powers,
etc., may be
exercised by
Deputy
Public
Trustee or
authorised
officer.

16. (1) Any of the powers and duties conferred and imposed on the Public Trustee by this Act or the Principal Act may be exercised and discharged by a Deputy Public Trustee or by any officer of the Public Trustee duly authorised in writing by him in that behalf.

(2) The provisions of section thirteen of this Act shall extend to such deputy or officer.

Regulations.

17. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which are necessary or convenient to be prescribed for carrying out or giving effect to this Act. (2)

- (2) The regulations shall—
- (a) be published in the Gazette;
 - (b) take effect from the date of publication or from a later date specified in the regulations;
 - (c) be laid before both Houses of Parliament within fourteen sitting days if Parliament is then 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 at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof, the regulation or part shall thereupon cease to have effect.

SCHEDULE.

Sec. 4.

The Investment Executive Trust of New Zealand Limited;
The British National Investment Trust Limited;
The British National Trust Limited;
The British Medical Investment Trust Limited;
The New Zealand Shareholders Trust Limited;
The Transport Mutual and General Insurance Company Limited;
The Sterling Investments Company Limited;
Pacific Exploration Company Limited;
Farms and Farmlets Limited;
Financial Publications Limited;
Liberty Motors Corporation Limited.
McInnes and Company Limited.

STATE