

## SYNDICATES BILL

### EXPLANATORY NOTE

THIS Bill controls the issue of invitations to the public to acquire interests in syndicates.

It also regulates the management and administration of those syndicates that have managers and in respect of which public invitations to acquire interests have been issued.

*Clause 1* relates to the Short Title and commencement. The Bill will come into force on 1 January 1973.

*Clause 2* defines words used in the Bill.

“Syndicate” means any partnership, special partnership, joint venture, or other unincorporated association of persons established before or after the commencement of the Bill to undertake for profit or gain any financial or business scheme, venture or enterprise. It includes a proposed syndicate.

“Promoter” means any person responsible for the issue of a prospectus, but does not include a person acting solely in a professional capacity.

“Manager” includes any person who, not being a member of a syndicate, participates in the management or, being a member of a syndicate, has any rights or powers of management to the exclusion of any other member. It does not include any person acting solely in a professional capacity.

“District Registrar” means the District Registrar of Companies in the district where the place of business of the syndicate is situated.

“Prospectus” has substantially the same meaning as it has in the Companies Act 1955. It includes any invitation to the public to subscribe for or purchase any interest in a syndicate.

Under *clause 2 (4) and (5)*, an invitation may be deemed to be issued to the public if it is issued to any section of the public, whether or not as clients of the promoter, unless the invitation is not calculated to result in the interest becoming available for subscription or purchase by any member of the public other than those actually receiving the invitation, or is otherwise a domestic concern of the promoter and the persons receiving the invitation.

*Clause 3* deals with exemptions from the application of the Bill. It will not apply to any profession, occupation, or business that may only be carried on by persons holding qualifications prescribed by law, or to any other classes of syndicate for the time being specified in the First Schedule.

Parts II and III will not apply to syndicates in respect of which no prospectuses have been issued.

The First Schedule may from time to time be amended by Order in Council.

## PART I

### PUBLIC INVITATIONS TO ACQUIRE INTERESTS IN SYNDICATES

*Clause 4* prohibits the issue of a prospectus unless—

- (a) A statutory trustee has been appointed:
- (b) A bond has been lodged with the statutory trustee:
- (c) The terms on which the interest will be acquired, held, and disposed of are provided for in a form of deed (the deed of syndicate) approved by the Registrar:
- (d) The prospectus complies with *clause 10*.

A person who owns any interest in a syndicate that has been in existence for at least 12 months may sell it publicly without complying with this clause, if he has not publicly sold any other interest in that syndicate within the previous 2 years.

*Clause 5* provides that no form of application to acquire an interest in a syndicate may be issued unless it is accompanied by a prospectus that complies with *clause 10* and is not more than 6 months old.

This clause does not apply if the interest is not being offered publicly.

*Clause 6* provides for the appointment of the statutory trustee by the promoters.

It must be a trustee corporation, or a company or bank approved for the purpose by the Secretary for Justice.

*Clause 7* provides that where a prospectus is issued in respect of a proposed syndicate all subscriptions are to be paid to and held by the statutory trustee until the syndicate is established.

If the syndicate is not established before the operative date (see *clause 18*), the statutory trustee is to notify the subscribers and hold the subscriptions on trust pending their directions.

He is also to return all money oversubscribed to the persons by whom it was paid.

*Clause 8* provides that a bond by 2 or more approved sureties must be lodged with the statutory trustee for \$20,000 to secure the performance by the promoters of their obligations under the Bill.

The statutory trustee may sue the sureties on the bond if any promoter defaults.

Persons who sustain loss as a result of a breach of any promoter's obligations may claim compensation from the statutory trustee from the proceeds of the bond.

No bond is required if every promoter is a public company with a paid up capital intact of at least \$30,000, or a private company approved by the Secretary for Justice and having a paid up capital intact of not less than that amount.

*Clause 9* provides that the Registrar shall approve the form of a deed of syndicate if he is satisfied that a statutory trustee has been appointed, the bond (where required) has been lodged, and the form of deed complies with Part II of the Bill and does not contain any provisions contrary to the Bill.

*Clause 10* deals with the prospectus, which must be in writing, and must contain all the information set out in the Second Schedule to the Bill (q.v.).

*Clause 11* provides that an advertisement inviting the public to acquire any interest in a syndicate will not be deemed to be a prospectus, as long as it only deals with the matters set out in this clause, and states that applications to acquire interests will be issued only with a prospectus that complies with *clause 10* and also states where copies of the application and prospectus can be obtained.

*Clause 12* controls the making of statements by experts in a prospectus. It also regulates the circumstances in which a prospectus may include a statement that any person will undertake to buy back any property of a syndicate at a future date.

*Clause 13* provides that a prospectus may not be issued until a copy has been delivered for registration by the District Registrar of Companies.

*Clause 14* deals with civil liability for mis-statements in a prospectus.

*Clause 15* deals with criminal liability for such mis-statements.

*Clause 16* sets out the circumstances in which a person responsible for the issue of a prospectus may avoid liability for a contravention of *clause 4* or *clause 5* of the Bill.

No trustee of a syndicate will be liable for mis-statements in a prospectus by any other person.

*Clause 17* prohibits door to door offers of interests in a syndicate to members of the public.

*Clauses 10 to 17* are similar to provisions in the Companies Act 1955 or the Unit Trusts Act 1960.

## PART II

### DEED OF SYNDICATE

This Part of the Bill deals with the contents of the deed of syndicate.

*Clause 18* provides that every deed of syndicate must specify certain matters. These include (*inter alia*)—

- (a) A place of business for inspection purposes and correspondence:
- (b) The duration and objects of the syndicate:
- (c) The total amount to be subscribed to the syndicate:
- (d) The amount or amounts to be contributed by each member:
- (e) A date (called "the operative date") before which the total amount to be subscribed must be so subscribed:
- (f) The manner in which profits, gains, and losses shall be apportioned:
- (g) Any restrictions on the transferability of members' interests, including any options given to any persons, and the method of valuing interests for such purposes:
- (h) Voting rights on polls or special resolutions.

*Clause 19* provides that no member of a syndicate may be its sole manager. It also provides that where a manager or managers are appointed they shall hold office, and shall be remunerated, and may be removed, in accordance with this clause.

No manager can be appointed for more than 3 years.

Managers may be reappointed.

This clause does not apply to special partnerships.

*Clause 20* provides that where a trustee of a syndicate (not being the statutory trustee for the purposes of the Bill) is to be appointed for any purpose, it must be either a trustee corporation or any approved company or bank.

The statutory trustee may, if so desired, be also appointed a trustee of the syndicate for any other purposes.

A trustee, other than the statutory trustee, may nominate another company to hold the property of the syndicate (cf. section 6 of the Unit Trusts Act 1960).

*Clause 21* declares to be void any provision in a deed of syndicate conferring an irrevocable power of attorney on a manager, or excluding any trustee or manager from liability for breach of its or his duties.

*Clause 22* provides that a deed of syndicate shall come into effect when it is registered by the District Registrar.

The deed must be registered before the operative date specified in it.

The District Registrar shall register the deed if he is satisfied that—

- (a) It is in the approved form:
- (b) The total amount to be subscribed has been subscribed:
- (c) The deed has been executed by all the subscribers:
- (d) The deed has been stamped.

*Clause 23* provides for the variation of a deed of syndicate. A variation must be in a form approved by the Registrar and will come into effect when it is registered by the District Registrar.

Certain provisions required by *clause 18* to be specified in the Bill cannot be varied unless every party to the deed executes the variation.

### PART III

#### MANAGEMENT AND ADMINISTRATION OF SYNDICATES

This Part only applies to a syndicate in respect of which a prospectus has been issued, and which also has a manager or managers.

The Part applies regardless of any provision to the contrary in a deed of syndicate or other instrument. (*Clause 24.*)

*Clause 25* imposes duties on managers. In particular they must—

- (a) Use their best efforts for the proper conduct of the syndicate:
- (b) Account to the members for all money received by them:
- (c) Produce any documents in their control for inspection by any member or trustee:
- (d) Provide such information relating to the syndicate as any trustee of the syndicate may require:

- (e) Supply to the members in general meeting such information about the syndicate as they may require:
- (f) Summon extraordinary general meetings if called upon by a sufficient number of members.

Every manager also has the same liability for his acts or omissions as if he were a trustee of the property of the syndicate.

*Clause 26* enables a trustee (other than a statutory trustee) of a syndicate to refuse to act on the direction of any manager to acquire or dispose of property if in his opinion it is not in the interests of the members. This does not apply where the members have authorised or directed the manager's actions. The trustee may also enforce in his own name certain of the managers' obligations, and may summon extraordinary general meetings.

*Clause 27* imposes on such a trustee the duty to act with diligence and vigilance, and to ensure that the managers carry out their obligations.

*Clause 28* provides that a register of members of the syndicate shall be kept at its place of business.

*Clause 29* requires managers to keep proper books of account.

*Clause 30* requires managers to establish separate bank accounts in the name of the syndicates.

*Clause 31* requires managers to present annual accounts and reports to the members in general meeting.

*Clause 32 to 34* provide for the appointment of an auditor, and for an annual report by him to the members.

*Clauses 35 to 41* deal with meetings of members of syndicates, including voting rights, proxies, and polls.

*Clause 42* requires that minute books be kept at the place of business of a syndicate in respect of meetings held by the members and by the managers.

## PART IV

### MISCELLANEOUS PROVISIONS

*Clause 43* provides that an application may be made to the Supreme Court (or, if the assets do not exceed \$3,000, to a Magistrate's Court) for the dissolution of a syndicate as if in every case it were a partnership to which section 38 of the Partnership Act 1908 were applicable. This clause does not apply to special partnerships.

*Clause 44* deals with actions by and against syndicates.

*Clause 45* applies section 48A of the Companies Act 1955, or the Protection of Depositors Act 1968, as may be appropriate, where an undertaking to purchase any assets of a syndicate at a future date is given in pursuance of a statement in the prospectus. The amount of the purchase price is deemed to be a deposit by the members of the syndicate to the person giving the undertaking. The effect of this is that a trustee must be appointed to see that the person giving the undertaking will be able to perform it.

*Clause 46* prohibits undischarged bankrupts, and persons convicted of certain offences (including offences under this Act), from acting as promoters, trustees, or managers of certain syndicates without the leave of the Supreme Court.

It also provides that promoters of syndicates, in addition to their obligations under this Bill, shall have the same obligations as promoters of companies have at common law.

*Clause 49* provides a general right of appeal to the Supreme Court against any refusal, act, or decision of the Registrar or District Registrar.

*Clause 50* provides for service of notices and other documents.

*Clause 51* prescribes fees.

*Clause 52* contains regulation-making powers. Regulations may be made limiting the maximum remuneration that may be paid to managers.

*Clause 53* amends (*inter alia*) the Unit Trusts Act 1960 to expressly state that a unit trust does not include an association.

*Clause 54* enables syndicates in respect of which prospectuses have been issued before the commencement of the Bill to bring themselves under the Bill. The contractual rights of other persons are, however, preserved.

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*Hon. Sir Roy Jack*

## SYNDICATES

### ANALYSIS

	<b>PART III</b>
	MANAGEMENT AND ADMINISTRATION OF SYNDICATES
Title	24. Application of this Part
1. Short Title and commencement	25. Duties of managers
2. Interpretation	26. Powers of trustees
3. Exemptions from Act	27. Duties of trustees
	28. Register of members
	29. Accounts
<b>PART I</b>	30. Syndicate to have separate bank account
<b>PUBLIC INVITATIONS TO ACQUIRE INTERESTS IN SYNDICATES</b>	31. Annual accounts and reports
4. Restrictions on invitations to public to participate in syndicates	32. Appointment and remuneration of auditors
5. Restrictions on issue of forms of application to participate in syndicates	33. Disqualifications for appointment as auditor
6. Appointment of statutory trustee	34. Auditors' report
7. Trustee to hold subscriptions until syndicate established	35. Meetings
8. Bond	36. Notice of meetings
9. Approval of form of deed	37. Procedure at meetings
10. Prospectus	38. Proxies
11. Certain advertisements deemed not to be prospectuses	39. Polls
12. Statements in prospectus	40. Special resolutions
13. Registration of prospectus	41. Resolutions agreed to unanimously
14. Civil liability for mis-statements in prospectus	42. Minutes
15. Criminal liability for mis-statements in prospectus	
16. Limitation of liability for prospectus	<b>PART IV</b>
17. Restrictions on door to door sales	MISCELLANEOUS PROVISIONS
	43. Dissolution of syndicate
<b>PART II</b>	44. Actions by and against syndicates
<b>DEED OF SYNDICATE</b>	45. Certain syndicates to have trustees
18. Contents of deed	46. General provisions as to promoters, trustees, and managers
19. Appointment of managers	47. Registers
20. Trustees	48. Power of officers to refuse to accept inaccurate documents
21. Void provisions in deed	49. Appeals
22. Registration of deed	50. Service of documents
23. Variation of deed	51. Fees
	52. Regulations
	53. Amendments to other enactments
	54. Existing syndicates
	Schedules

## A BILL INTITULED

**An Act to control the issue of invitations to the public to acquire interests in syndicates, and to regulate the management and administration of syndicates in respect of which such invitations are issued** 5

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

**1. Short Title and commencement**—(1) This Act may be cited as the Syndicates Act 1972. 10

(2) This Act shall come into force on the 1st day of January 1973.

**2. Interpretation**—(1) In this section, unless the context otherwise requires,—

“Company” means a company within the meaning of the Companies Act 1955: 15

“Deed of syndicate”, in relation to any syndicate, means the deed providing for the terms on which interests in the syndicate are acquired, held, and disposed of, and includes every variation of that deed: 20

“District Registrar”, in relation to any syndicate, means the District Registrar of Companies, under the Companies Act 1955, in the district where the place of business of the syndicate is situated:

“Expert” includes an accountant, engineer, valuer, and any other person whose profession or calling gives authority to a statement made by him: 25

“Invitation” includes an offer, and also includes an advertisement calling attention to an offer or intended offer of any interest in a syndicate for subscription or purchase: 30

“Issued”, in relation to any prospectus or other invitation, or advertisement, includes published, circulated, distributed, or disseminated by newspaper, broadcasting, television, cinematograph, or any other means whatsoever; and references to the issue of any prospectus or other invitation, or advertisement have a corresponding meaning: 35

“Manager” includes any person who—

(a) Not being a member of a syndicate, participates in the management or administration of the syndicate; or 40



- (b) Being a member of a syndicate, has any right or power to participate in the management or administration of the syndicate that is not also possessed or exercisable by every other member—  
5 but does not include any person by reason of his acting in a professional capacity in respect of a syndicate:
- “Nominated company”, in relation to any trustee, means  
10 a company nominated by that trustee under section 20 of this Act:
- “Operative date” in relation to any syndicate, means the date specified in the deed of syndicate in accordance with paragraph (g) of subsection (1) of section 18 of this Act:
- 15 “Paid up capital intact”, in relation to any company, has the same meaning as it has in subsection (1) of section 414 of the Companies Act 1955:
- “Place of business”, in relation to any syndicate, means  
20 the place of business specified in the deed of syndicate in accordance with paragraph (b) of subsection (1) of section 18 of this Act:
- “Promoter” means any person who issues or causes to be issued any prospectus, but does not include any person by reason of his acting in a professional capacity for any other person who is a promoter:
- 25 “Prospectus” means any prospectus, notice, circular, advertisement, or other invitation to the public to subscribe for or purchase any interest in a syndicate:
- “Registrar” means the Registrar of Companies under the  
30 Companies Act 1955, and includes the Deputy Registrar of Companies under that Act:
- “Special resolution” means a resolution passed in accordance with section 40 of this Act:
- 35 “Statutory trustee”, in relation to any syndicate, means the trustee appointed in accordance with section 6 of this Act:
- “Syndicate” means any partnership, special partnership, joint venture, or other unincorporated association of persons established (whether before or after the commencement of this Act) to undertake, with a view to profit or gain, any financial or business scheme, venture, or enterprise:
- 40 “Trustee” includes any statutory or other trustee of a syndicate.

(2) Every reference in this Act to a syndicate, unless the context otherwise requires, includes a reference to a proposed syndicate.

(3) For the purposes of this Act—

(a) A statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and 5

(b) A statement shall be deemed to be included in a prospectus if it is contained in the prospectus or in any report or memorandum appearing on the face of the prospectus or by reference incorporated in or issued with the prospectus. 10

(4) Except as otherwise provided in this Act, a reference in this Act to an invitation to the public to subscribe for or purchase any interest in a syndicate includes a reference to such an invitation to any section of the public, whether as clients of the person issuing or causing the invitation to be issued or in any other manner. 15

(5) Subsection (4) of this section shall not be taken as requiring an invitation to subscribe for or purchase any interest in a syndicate to be treated as being to the public if it can properly be regarded, in all the circumstances, as not being calculated to result directly or indirectly in the interest becoming available for subscription or purchase by any persons other than those receiving the invitation, or otherwise as being a domestic concern of the persons making and receiving it. 20 25

**3. Exemptions from Act—**(1) Nothing in this Act shall apply in respect of any syndicate of a class or description for the time being specified in the First Schedule to this Act. 30

(2) The Governor-General may from time to time, by Order in Council, amend the First Schedule to this Act by adding, omitting, or amending any class or description of syndicate. 35

(3) Nothing in Parts II and III of this Act shall apply to any syndicate in respect of which a prospectus has not been issued since the commencement of this Act.

## PART I

## PUBLIC INVITATIONS TO ACQUIRE INTERESTS IN SYNDICATES

- 4. Restrictions on invitations to public to participate in syndicates**—(1) No person shall issue or cause to be issued  
5 any prospectus in respect of a syndicate unless the matters specified in subsection (2) of this section have been complied with.
- (2) The matters referred to in subsection (1) of this section are as follows:
- 10 (a) A statutory trustee of the syndicate shall have been appointed in accordance with section 6 of this Act:
- (b) A bond that complies with section 8 of this Act shall have been lodged with the statutory trustee of the syndicate, and an authenticated copy of the bond  
15 shall have been filed with the District Registrar:
- (c) The terms on which all interests in the syndicate are or will be acquired, held, and disposed of shall be provided for in a form of deed approved under  
20 section 9 of this Act by the Registrar:
- (d) The prospectus shall comply with section 10 of this Act.
- (3) Nothing in subsection (1) of this section shall prohibit a person from issuing or causing to be issued an invitation to the public to purchase any interest owned by him in a syndicate, without complying with subsection (2) of this section,  
25 if—
- (a) He has not within the previous 2 years sold, as a result of issuing or causing to be issued any invitation to the public, any other interest owned by him in that syndicate; and
- 30 (b) That syndicate has been in existence for not less than 12 months.
- (4) Any person who contravenes subsection (1) of this section commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.
- 5. Restrictions on issue of forms of application to participate in syndicates**—(1) No person shall issue or cause to be issued  
35 any form of application to subscribe for or purchase any interest in a syndicate unless the form is issued together with a prospectus that complies with section 10 of this Act, whose

date of publication is a date within the period of 6 months preceding the date on which the form of application was issued.

(2) Subsection (1) of this section shall not apply if it is shown that the form of application was issued in respect of an interest in a syndicate that was not offered to the public. 5

(3) Any person who contravenes subsection (1) of this section commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

**6. Appointment of statutory trustee**—For the purpose of compliance with paragraph (a) of subsection (2) of section 4 of this Act, the promoter or promoters of a syndicate shall appoint— 10

(a) A trustee corporation within the meaning of the Trustee Act 1956; or 15

(b) A company or bank approved for that purpose by the Secretary for Justice, either generally or in respect of a particular syndicate—

to be the statutory trustee of the syndicate.

**7. Trustee to hold subscriptions until syndicate established**—(1) Where any prospectus is issued in respect of a proposed syndicate, all money that is subscribed before the deed of syndicate comes into effect shall be held on trust by and in the name of the statutory trustee of the syndicate to be applied in accordance with this section. 20 25

(2) If the deed of syndicate comes into effect before the operative date, the statutory trustee shall apply the money referred to in subsection (1) of this section in accordance with the terms of the deed.

(3) If the deed does not come into effect before the operative date, the statutory trustee shall— 30

(a) Give notice in writing of that fact to every subscriber as soon as practicable; and

(b) Request the directions of the subscriber as to the disposal of the money subscribed by him; and 35

(c) Hold the money referred to in subsection (1) of this section in trust for the respective subscribers pending their directions.

(4) If the statutory trustee receives any money in excess of the amount to be subscribed to the syndicate he shall, as soon as practicable after the deed of syndicate comes into effect, return that money to the persons by whom it was subscribed. 40

(5) Every person, other than the statutory trustee, who receives any money referred to in subsection (1) of this section shall forthwith pay it to the statutory trustee.

(6) Any person who—

- 5 (a) Being a statutory trustee of a syndicate, knowingly fails to comply with subsection (2), subsection (3), or subsection (4) of this section; or
- (b) Fails to comply with subsection (5) of this section—
- 10 commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

**8. Bond**—(1) For the purpose of compliance with paragraph (b) of subsection (2) of section 4 of this Act, a bond shall be in a form approved by the Registrar, with one or more approved sureties, to the statutory trustee of the syndicate in

15 the sum of \$20,000 conditioned to secure the compliance of every promoter of the syndicate with his duties and obligations under this Act.

(2) For the purpose of subsection (1) of this section, the expression “approved surety” means—

- 20 (a) Any person declared by the Secretary for Justice, by notice in the *Gazette*, to be an approved surety for the purpose of this section:
- (b) Any person approved as a surety by the Secretary for Justice for the purpose of any specified bond.
- 25 (3) The sum named in a bond under this section shall not be deemed to be a penalty, but shall be liquidated damages, and shall accordingly be recoverable in full as a debt due by the surety or sureties to the statutory trustee, unless the surety or sureties prove performance of the condition upon which the
- 30 the bond is defeasible.

(4) Every sum so recovered shall be held by the statutory trustee and the residue, after deduction of costs and other expenses, shall be applied by it in compensating all persons sustaining loss as a result of the breach by any promoter of the condition of the bond; and the statutory trustee shall re-

35 fund to the surety or sureties any balance left after payment of that compensation and any interest payable under subsection (7) of this section.

(5) Where any claim is received by the statutory trustee

40 from any person claiming compensation out of any sum recovered under a bond under this section, the statutory trustee

shall cause a notice to be published in such newspaper or newspapers as it considers sufficient, calling on all persons desiring to claim compensation for any loss sustained as a result of a breach of the condition of the bond to establish their claims to the satisfaction of the statutory trustee (whether by judgment against any promoter or otherwise) within 6 months after the date of the first advertisement of the notice. The statutory trustee shall also serve a copy of the notice on every person who has subscribed for or purchased any interest in the syndicate.

(6) The statutory trustee shall not apply any sum recovered under a bond in compensating any person until the statutory trustee has complied with subsection (5) of this section and the period of 6 months has expired.

(7) Where any such claim is established to the satisfaction of the statutory trustee, there shall be payable to the claimant out of the money recovered under the bond interest on the amount of the claim so established from the date on which the claim is received by the statutory trustee until the expiration of the period of 6 months, at the rate for the time being payable in respect of judgments entered in the Supreme Court.

(8) Where several such claims are established to the satisfaction of the statutory trustee within the period of 6 months, and the balance of the money recovered under the bond is insufficient to pay all those claims in full and any interest payable under subsection (7) of this section, the statutory trustee shall apply that balance rateably among the several claimants in the proportions that their respective claims bear to the total of all claims.

(9) Notwithstanding section 4 of this Act, no bond shall be required if every promoter of the syndicate is either—

- (a) A company (other than a private company within the meaning of the Companies Act 1955) that has a paid up capital intact of not less than \$30,000; or
- (b) A private company within the meaning of the Companies Act 1955 that has a paid up capital intact of not less than \$30,000 and is approved for the purpose of this section by the Secretary for Justice.

**9. Approval of form of deed—**(1) For the purpose of compliance with paragraph (c) of subsection (2) of section 4 of this Act, the form of deed shall be lodged with the Registrar for his approval.

(2) A true copy of the form of deed shall also be filed with the Registrar.

(3) Where the Registrar is satisfied that—

- 5 (a) The promoters have appointed a statutory trustee of the syndicate in accordance with section 6 of this Act; and
- (b) Where required, a bond in accordance with section 8 of this Act has been lodged with the statutory trustee of the syndicate; and
- 10 (c) The form of deed complies with Part II of this Act, and does not contain any provision that is contrary to this Act—

but not otherwise, the Registrar shall approve the form of deed.

- 15 (4) The Registrar shall endorse his approval on the form of deed and on the copy, and shall return the original form of deed.

**10. Prospectus—**(1) Every prospectus shall be in writing.

20 (2) Every prospectus shall be dated and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

(3) Every prospectus shall set out the matters specified in the Second Schedule to this Act in respect of the syndicate to which it relates.

25 (4) A condition requiring or binding an applicant for an interest in a syndicate to waive compliance with the requirements of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus shall be void.

30 **11. Certain advertisements deemed not to be prospectuses—**

(1) An advertisement (including a notice, circular, or other document) issued by or on behalf of a promoter of a syndicate, offering or calling attention to an offer or intended offer of any interest in the syndicate to the public for sub-

35 scription or purchase shall be deemed not to be a prospectus if it contains no information or matter other than all or any of the following matters:

- (a) The nature of the interest offered or intended to be offered, the terms of the offer, and a brief description of any rights or privileges attached to the interest:
- 40 (b) The name of the syndicate and the total amount that has been or is to be subscribed or contributed by the members:

- (c) A statement of the general nature of the objects for which the syndicate has been or is to be established:
- (d) The names, addresses, and occupations of the managers or proposed managers of the syndicate:
- (e) Particulars of the opening and closing dates of the offer: 5
- (f) A coupon or coupons, to be filled in by any person who wishes to be sent a prospectus complying with section 10 of this Act in respect of the syndicate,—

and if it states that applications to subscribe for or purchase the interest will proceed only on one of the forms of application referred to in and issued with a printed copy of the prospectus, and also specifies the place at which forms of application and copies of the prospectus may be obtained. 10

(2) Nothing in this section shall limit or affect any liability that any person may incur under any rule of law or under 15 any other provision of this Act.

**12. Statements in prospectus**—(1) No prospectus shall include a statement purporting to be made by an expert unless—

- (a) He has given and has not, before delivery of a copy of 20 the prospectus for registration, withdrawn his written consent to the issue of the prospectus with the statement included in the form and context in which it is included; and
- (b) A statement that he has given and has not withdrawn 25 his consent as aforesaid appears in the prospectus; and
- (c) A statement of his qualifications appears in the prospectus; and
- (d) A statement appears in the prospectus as to whether or 30 not he is or is intended to be a manager or employee of, or professional adviser to, the syndicate; and
- (e) If the statement by the expert was made more than 12 months before the date of delivery of a copy of the prospectus for registration, a supplementary state- 35 ment on the same matter made by the same or another expert less than 12 months before that date appears in the prospectus.

(2) No prospectus issued in respect of a syndicate shall include a statement to the effect that an undertaking has 40 been or will be given by any person to the syndicate to purchase at a future date any property owned or to be acquired or proposed to be acquired by the syndicate, or



that any such undertaking has been or will be assigned to the syndicate, unless—

- (a) The person by whom the undertaking has been or is to be given has authorised the issue of the prospectus; and
  - (b) If that person is not legally bound to give such undertaking, the statement is immediately followed by a further statement in the prospectus that he is not so bound.
- (3) If any prospectus is issued in contravention of subsection (1) or subsection (2) of this section, every promoter of the syndicate who is knowingly a party to the issue of the prospectus shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding \$5,000.
- 13. Registration of prospectus—**(1) No prospectus shall be issued in respect of a syndicate unless, on or before the date of its publication, there has been delivered to the District Registrar for registration a copy of the prospectus signed by every promoter of the syndicate and by every person who is named in the prospectus as a manager or proposed manager of the syndicate, or by his agent authorised in writing, and having endorsed on or attached to it—
- (a) Any consent to the issue of the prospectus required by section 12 of this Act from any person as an expert; and
  - (b) A copy of any contract required by clause 19 of the Second Schedule to this Act to be stated in the prospectus or, in the case of a contract not reduced to writing, a memorandum giving full particulars of the contract.
- (2) The references in paragraph (b) of subsection (1) of this section to the copy of a contract required to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a language other than English, be taken as references to a copy of a translation of the contract in English or a copy embodying a translation in English of the parts in the other language, as the case may be.
- (3) Every prospectus shall, on the face of it,—
- (a) State that a copy has been delivered for registration as required by this section; and
  - (b) Specify, or refer to statements included in the prospectus that specify, any documents required by this

section to be endorsed on or attached to the copy so delivered; and

- (c) Set out or refer to any statements required by section 12 of this Act to appear in the prospectus.
- (4) Where the District Registrar is satisfied that— 5
  - (a) The prospectus is dated; and
  - (b) The copy of the prospectus is signed in the manner required by this section; and
  - (c) It has endorsed on or attached to it the documents (if any) specified as aforesaid; and 10
  - (d) The statements (if any) required by section 12 of this Act appear in it and are set out or referred to on its face as aforesaid,—

but not otherwise, he shall register the prospectus.

(5) If a prospectus is issued without a copy of it having been delivered under this section to the District Registrar or without the copy so delivered having endorsed on or attached to it the required documents, every promoter who is knowingly a party to the issue of the prospectus shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding \$50 for every day from the date of the issue of the prospectus until a copy of the prospectus is so delivered with the required documents endorsed on or attached to it. 20

#### 14. Civil liability for mis-statements in prospectus— 25

(1) Subject to this section, the following persons shall be liable to pay compensation to all persons who subscribe for or purchase any interest in a syndicate on the faith of a prospectus for the loss or damage they may have sustained by reason of any untrue statement included in the prospectus: 30

- (a) Every person who is a manager of the syndicate at the time of the issue of the prospectus:
- (b) Every person who has authorised himself to be named and is named in the prospectus as a manager or as having agreed to become a manager either immediately or after an interval of time: 35
- (c) Every person who is a promoter of the syndicate:
- (d) Every person who has authorised the issue of the prospectus:

Provided that where, under section 12 of this Act, the consent of a person is required to the issue of a prospectus and he has given that consent, he shall not by reason of his having given it be liable under this subsection as a person who has 40

authorised the issue of the prospectus except in respect of an untrue statement purporting to be made by him as an expert.

(2) No person shall be liable under subsection (1) of this section if he proves that—

- 5 (a) Having consented to become a manager of the syndicate, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
- 10 (b) The prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or
- 15 (c) After the issue of the prospectus and before any interest referred to in it was subscribed for or purchased, he, on becoming aware of any untrue statement in the prospectus, withdrew his consent thereto and gave notice to the statutory trustee of the syndicate of his withdrawal and of the reason for his withdrawal, and also gave reasonable public notice of the fact
- 20 of his withdrawal; or
- (d) As regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the
- 25 subscription for or purchase of the interest, as the case may be, believe that the statement was true— and if he also proves that, as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or
- 30 valuation of an expert,—
- (e) It fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation; and
- (f) He had reasonable ground to believe and did up to the
- 35 time of the issue of the prospectus believe that the person making the statement was competent to make it; and
- (g) That person had given the consent required by section 12 of this Act to the issue of the prospectus—
- 40 and that, as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official docu-

ment, it was a correct and fair representation of the statement or copy of or extract from the document:

Provided that this subsection shall not apply in the case of a person liable, by reason of his having given any consent required of him by the said section 12, as a person who has authorised the issue of the prospectus in respect of an untrue statement purporting to be made by him as an expert. 5

(3) A person who, apart from this subsection, would under subsection (1) of this section be liable, by reason of his having given a consent required of him by section 12 of this Act, as a person who has authorised the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert, shall not be so liable if he proves— 10

(a) That, having given his consent under the said section 12 to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration; or 15

(b) That, after delivery of a copy of the prospectus for registration and before any interest referred to therein was subscribed for or purchased, he withdrew his consent in writing and gave notice to the statutory trustee of the syndicate of his withdrawal and of the reason for his withdrawal, and also gave reasonable public notice of the fact of his withdrawal; or 20 25

(c) That he was competent to make the statement and that he had reasonable ground to believe and did up to the time of the subscription for or purchase of the interest, as the case may be, believe that the statement was true. 30

(4) Where—

(a) A prospectus contains the name of a person as a manager of the syndicate, or as having agreed to become a manager of the syndicate, and he has not consented to become a manager, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue of the prospectus; or 35

(b) The consent of a person is required under section 12 of this Act to the issue of the prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus,— 40

every person who is a promoter or manager of the syndicate, except any person without whose knowledge or consent the

prospectus was issued, and any other person who authorised the issue of the prospectus shall be liable to indemnify the person named as aforesaid or whose consent was required as aforesaid, as the case may be, against all damages, costs, and  
5 expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion in the prospectus of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any action or legal proceeding brought against him in respect  
10 thereof:

Provided that a person shall not be deemed for the purposes of this subsection to have authorised the issue of a prospectus by reason only of his having given the consent required by section 12 of this Act to the inclusion in the prospectus of a  
15 statement purporting to be made by him as an expert.

(5) For the purposes of this section the expression "promoter" includes any person who was a party to the preparation of the prospectus or of the portion of the prospectus containing the untrue statement.

**20 15. Criminal liability for mis-statements in prospectus—**

(1) Where a prospectus that is issued includes any untrue statement, any person who authorised the issue of the prospectus shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for a term not exceeding 2  
25 years or to a fine not exceeding \$5,000, or to both, unless he proves either that the statement was immaterial or that he had reasonable grounds to believe and did, up to the time of the issue of the prospectus, believe that the statement was true.

(2) A person shall not be deemed for the purposes of this section to have authorised the issue of a prospectus by reason only of his having given the consent required by section 12 of this Act to the inclusion in the prospectus of a statement purporting to be made by him as an expert.

35 (3) This section is in addition to and not in derogation of section 250 of the Crimes Act 1961.

**16. Limitation of liability for prospectus—**(1) No person who contravenes subsection (1) of section 4 of this Act by reason of non-compliance with paragraph (d) of subsection  
40 (2) of that section, or who contravenes subsection (1) of section 5 of this Act, shall incur any liability for such contravention if—

- (a) As regards any matter not disclosed in a prospectus, he proves that he did not know of it, and could not by reasonable inquiries have known of it; or
  - (b) He proves that the contravention arose from an honest mistake of fact on his part; or 5
  - (c) The contravention was in respect of matters which in the opinion of the Court dealing with the case were immaterial, or was otherwise such as ought, in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused. 10
- (2) No trustee of a syndicate shall be liable for any omissions or mis-statements by any other person in a prospectus.
- (3) Nothing in this section shall limit or diminish any liability which any person may incur under any other rule of law. 15

**17. Restrictions on door to door sales—**(1) No person shall go from house to house issuing any prospectus.

(2) In this subsection, the term "house" does not include an office used for business purposes, or any other premises used by the occupier wholly or partly for the purpose of carrying on any trade, business, profession, or calling. 20

(3) Every person who contravenes any provision of this section or who incites, causes, or procures any person to contravene any provision of this section, commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$1,000. 25

(4) Where a person convicted of an offence under this section is a company (whether a company within the meaning of the Companies Act 1955 or not), every director and every officer concerned in the management of the company shall be guilty of the same offence, unless he proves that the act constituting the offence took place without his knowledge or consent. 30

(5) Where any person is convicted of having issued a prospectus in contravention of the provisions of this section the Court before which he is convicted may order that any contract made as a result of the prospectus shall be void and, where it makes any such order, may give such consequential directions as it thinks proper for the repayment of any money or the 35 40

retransfer of any interest. Where an order is made under this subsection (whether with or without consequential directions), an appeal against the order and the consequential directions, if any, shall lie to the Supreme Court.

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## PART II

## DEED OF SYNDICATE

**18. Contents of deed**—(1) Every deed of syndicate shall specify—

- (a) The name of the syndicate:
- 10 (b) A place of business in New Zealand where the register of members may be inspected, and communications and notices may be addressed and served:
- (c) The duration (if ascertainable) of the syndicate:
- (d) The objects for which the syndicate is established:
- 15 (e) The total amount that is to be subscribed to the syndicate (whether in cash or any other consideration):
- (f) The amount that each member of the syndicate is to subscribe to the syndicate (whether in cash or any other consideration), and the extent of any further
- 20 liability of that member to contribute any amounts to the syndicate:
- (g) A date by which the amount referred to in paragraph (e) of this subsection is to be subscribed:
- (h) The manner in which profits, gains, and losses are to be
- 25 apportioned between the members of the syndicate:
- (i) The consequences of the death or bankruptcy, or (in the case of a member that is a company) the liquidation, of a member of a syndicate in relation to his interest in the syndicate and in relation to the inter-
- 30 ests of the other members:
- (j) The limitations or restrictions (if any) on the right of a member of a syndicate to freely dispose of his interest in the syndicate, including any option that any person may have to acquire that interest:
- 35 (k) Where there are any such limitations or restrictions, the formula that is to be used to value the interests of the members of the syndicate:
- (l) The indemnities (if any) that each member of the
- 40 syndicate is required to give to any other members or to any managers of the syndicate:
- (m) The number of votes that each member of the syndi-

cate shall have when any question is to be decided by a special resolution, or a poll is demanded on any question:

(n) The maximum amounts that any manager or managers may expend on behalf of the syndicate without the express approval of a resolution of the members. 5

(2) Every deed of syndicate shall contain a covenant on the part of every member of the syndicate requiring him, in the conduct of the affairs of the syndicate, to act in good faith for the benefit of the whole syndicate. 10

**19. Appointment of managers**—(1) No deed of syndicate shall provide for the appointment of any member of the syndicate as its sole manager.

(2) No deed of syndicate shall provide for the appointment of any manager or managers of the syndicate otherwise than in accordance with subsection (3) or subsection (4) of this section. 15

(3) A deed of syndicate may provide for appointment of a manager or managers of the syndicate by the members in general meeting, in which case the deed shall also contain the following provisions: 20

(a) That any such manager shall be appointed for a period specified in the deed (being a period not exceeding 3 years):

(b) That the members may at any time, by a special resolution in general meeting, remove any such manager for misconduct, neglect, breach of duty (whether statutory or otherwise), or any other good cause: 25

(c) That if for any reason there is a vacancy in the office of any such manager, the members of the syndicate at any general meeting may by resolution appoint another person to fill the vacancy for the remainder of the term of the manager vacating office: 30

(d) That unless he sooner vacates office, any such manager shall continue to hold office, notwithstanding the expiry of his term of appointment, until his successor comes into office: 35

(e) That the members of the syndicate shall from time to time, by a resolution in general meeting, determine the remuneration (if any) that is to be paid to any such manager. 40



(4) A deed of syndicate may contain a provision directly appointing any manager or managers of the syndicate, in which case the deed shall also contain the following provisions:

- 5 (a) That any such manager shall be appointed for a period specified in the deed (being a period not exceeding 3 years):
- 10 (b) That the members may at any time, by a special resolution in general meeting, remove any such manager for misconduct, neglect, breach of duty (whether statutory or otherwise), or any other good cause:
- 15 (c) That subsequent appointments of any manager or managers shall be made by the members of the syndicate in general meeting:
- 20 (d) Either a provision specifying the remuneration (if any) of every manager, or a provision that the members shall from time to time by a resolution in general meeting determine the remuneration (if any) that is to be paid to him.
- (5) Nothing in subsection (3) or subsection (4) of this section shall prevent a manager from being reappointed.
- (6) Nothing in this section shall apply to a special partnership.

25 **20. Trustees**—(1) Without prejudice to the requirements of this Act as to the appointment of a statutory trustee of a syndicate, a deed of syndicate may provide for the appointment of a trustee of the syndicate for any other purpose.

30 (2) Where a deed of syndicate provides for the appointment of a trustee other than a statutory trustee, it shall also provide that—

- 35 (a) The trustee shall be either a trustee corporation within the meaning of the Trustee Act 1956, or a company or bank approved for that purpose by the Secretary for Justice, either generally or in respect of a particular syndicate:
- (b) The trustee may nominate another company in which shall be vested the property of the syndicate:
- 40 (c) No company shall be so nominated by the trustee unless the trustee is the registered holder or beneficial owner of all the shares in that company:

(d) Upon the nomination of any such company by the trustee, the nominated company shall thenceforth be jointly and severally liable with the trustee for the due and faithful performance and observance by each of them of all the duties and obligations imposed on the trustee in relation to the syndicate by this Act and under any other rules of law. 5

(3) Nothing in this Act shall prevent the appointment of the statutory trustee of a syndicate as a trustee of the syndicate for any other purpose. 10

**21. Void provisions in deed**—No deed of syndicate shall contain any provision that has the effect of—

- (a) Conferring any irrevocable power of attorney on any manager of the syndicate; or
- (b) Exempting any trustee or manager of the syndicate, or any director or employee of that trustee or manager, from liability for breach of trust where it or he fails to show the degree of care and diligence required of it or him in that capacity, having regard to the provisions of this Act or the deed and the powers, authorities, or discretions conferred thereby; or 15 20
- (c) Indemnifying any such trustee, manager, director, or employee from any such liability,—

and a provision in a deed of syndicate shall be void to the extent that it has any such effect. 25

**22. Registration of deed**—(1) Every deed of syndicate shall come into effect when it is registered under this section, and not otherwise.

(2) No deed of syndicate shall be registered on or after the operative date specified in it. 30

(3) For the purpose of registration under this section, the deed of syndicate shall be lodged with the District Registrar.

(4) A true copy of the deed of syndicate shall also be filed with the District Registrar.

(5) Where the District Registrar is satisfied that— 35

- (a) The deed is in a form that has been approved by the Registrar under section 9 of this Act; and
- (b) The total amount that, under the deed, is to be subscribed to the syndicate has been so subscribed; and
- (c) The deed has been duly executed by all the subscribers; 40  
and

(d) Where applicable, the deed has been duly stamped,—  
but not otherwise, he shall register the deed.

(6) The District Registrar shall endorse on the deed the fact that it has been registered, and shall return it.

- 5     **23. Variation of deed**—(1) Subject to this section, a deed of syndicate that has been registered under section 22 of this Act may from time to time be varied in accordance with law.
- (2) Every such variation shall come into effect when it is registered under this section, and not otherwise.
- 10    (3) No such variation shall be registered unless it is in a form that has been approved under this section by the Registrar.
- (4) For the purpose of approval under this section, a form of variation of a deed of syndicate shall be lodged with the  
15 Registrar, and a true copy of the variation shall also be filed with him.
- (5) Where the Registrar is satisfied that, if the variation were executed in the form in which it is submitted to him, the deed of syndicate (as so varied) would comply with this  
20 Part of this Act and would not contain any provision that is contrary to this Act, but not otherwise, he shall—
- (a) Approve the form of variation of the deed; and  
      (b) Endorse such approval on the form of variation, and on the copy; and
- 25    (c) Return the approved form of variation.
- (6) For the purpose of registration under this section, the variation of deed of syndicate shall be lodged with the District Registrar, and a true copy of the variation shall also be filed with him.
- 30    (7) Where the District Registrar is satisfied that—
- (a) The variation is in a form that has been approved by the Registrar under this section; and  
      (b) In any case where the effect of the variation is to increase the total amount that is to be subscribed to the syndicate, that amount has been so subscribed; and  
35       (c) The variation has been executed by all the persons who are required to execute it; and
- (d) Where applicable, the variation has been duly stamped,—  
40 but not otherwise, he shall register the variation.
- (8) The District Registrar shall endorse on the variation the fact that it has been registered, and shall return it.

(9) No provision in a registered deed of syndicate that specifies any matter referred to in paragraphs (c) to (m) of subsection (1) of section 18 of this Act may be varied unless every party to the deed who is a member of the syndicate executes the variation.

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### PART III

#### MANAGEMENT AND ADMINISTRATION OF SYNDICATES

**24. Application of this Part—**(1) This Part of this Act shall apply to every syndicate—

- (a) Whose deed of syndicate has appointed or provides for the appointment of any manager or managers; or
- (b) Which has a manager or managers.

(2) This Part shall apply notwithstanding any provision to the contrary in any deed of syndicate or in any other instrument.

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(3) For the purposes of this section, a prospectus does not include an invitation referred to in subsection (3) of section 4 of this Act.

**25. Duties of managers—**(1) Every manager of a syndicate shall have the following duties:

20

- (a) To use his best endeavours and skill to ensure that the affairs of the syndicate are conducted in a proper and efficient manner:
- (b) To use due diligence and vigilance in the exercise and performance of his functions, powers, and duties as a manager:
- (c) To duly account to the members of the syndicate for all money that he receives on behalf of the syndicate:
- (d) Not to pay out or invest or apply any money belonging to the syndicate for any purpose that is not directed by or authorised in the deed of syndicate:
- (e) To make available on demand to—
  - (i) Any member of the syndicate; or
  - (ii) Any trustee of the syndicate or its nominated company—
 for the inspection of any such person the whole of the books and papers in the manager's possession or control that relate to the affairs of the syndicate:

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35

- (f) To make available on demand to any trustee of the syndicate or its nominated company such information as that trustee or nominated company requires with respect to all matters relating to the syndicate:
- 5 (g) To supply to the members of the syndicate, in general meeting, such oral or written information relating to the affairs of the syndicate as any member has given him reasonable notice to supply:
- 10 (h) On the request in writing of not less than 3 members of the syndicate, or one-tenth of the members, whichever is the greater, to summon an extraordinary general meeting of the syndicate in accordance with section 36 of this Act.
- (2) Every manager of a syndicate shall have the same  
15 liability for any acts and omissions by him in the exercise and performance of his functions, powers, and duties as manager as he would have if he exercised and performed those functions, powers, and duties as a trustee of the property of the syndicate.

**26. Powers of trustees**—(1) Every trustee of a syndicate  
20 (other than a statutory trustee) may—

- (a) Refuse to act on any direction of any manager or managers of the syndicate (not being a direction made by the direction or with the authority of all the  
25 members of the syndicate) to acquire any property for the syndicate or to dispose of any property of the syndicate if, in the opinion of the trustee conveyed in writing to the manager or managers, the proposed acquisition or disposal is not in the interests of the members of the syndicate:
- 30 (b) Enforce in its own name any of the duties of a manager of the syndicate specified in paragraphs (c), (d), (e), and (f) of subsection (1) of section 25 of this Act:
- 35 (c) Whenever it thinks fit, summon an extraordinary general meeting of the syndicate in accordance with section 36 of this Act.
- (2) No trustee shall be liable to any manager or member of a syndicate for refusing under subsection (1) of this section to act on any direction given by any manager or managers of  
40 the syndicate.

**27. Duties of trustees**—Every trustee of a syndicate (other than a statutory trustee) shall—

- (a) Use due diligence and vigilance in the exercise and performance of its functions, powers, and duties and to ensure that obligations of every manager under this Act and the deed of syndicate are complied with: 5
- (b) Cause to be kept, either by itself or by the manager or managers, proper books of account in respect of the syndicate. 10

**28. Register of members**—(1) Every syndicate shall cause to be kept a register of its members, stating the following matters:

- (a) The name, address, and occupation of every person who is a member of the syndicate: 15
  - (b) The date on which each person is entered on the register as a member:
  - (c) The date on which each person ceases to be a member:
  - (d) The amount contributed to the syndicate by each member in respect of his interest. 20
- (2) The register shall be kept at the place of business of the syndicate, by the secretary of the syndicate or, if there is no secretary, by the manager or managers, and shall be open to inspection at all reasonable times by any member or creditor of the syndicate, and by the Registrar and the District Registrar. 25

(3) If subsection (1) or subsection (2) of this section is not complied with in respect of a syndicate, every manager or member of the syndicate who knowingly causes or permits such non-compliance shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding \$50 for every day on which the offence has continued. 30

**29. Accounts**—(1) The manager or managers of every syndicate shall cause to be kept proper books of account, in which shall be kept full, true, and complete accounts of the affairs and transactions of the syndicate. 35

(2) The books of account shall be kept at the place of business of the syndicate, and shall be open to inspection at all reasonable times by any member of the syndicate, and by the Registrar and the District Registrar. 40

(3) If any manager of the syndicate fails to take all reasonable steps to secure compliance by the syndicate with the requirements of this section, or has by his own wilful act or omission been the cause of any default by the syndicate there-  
 5 under, he shall be guilty of an offence and shall in respect of each offence be liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$1,000:

10 Provided that in any proceedings against a person in respect of an offence under this section consisting of a failure to take reasonable steps to secure compliance by the syndicate with the requirements of this section, it shall be a defence to prove that he had reasonable grounds to believe and did believe that a competent and reliable person was charged  
 15 with the duty of seeing that those requirements were complied with and was in a position to discharge that duty.

**30. Syndicate to have separate bank account**—(1) The manager or managers of every syndicate shall establish an account to be kept in the name of the syndicate at such bank  
 20 as he or they may from time to time decide.

(2) All money that is received by any person on behalf of the syndicate shall be paid as soon as practicable into the bank account.

(3) Any manager who fails to comply with subsection (1)  
 25 of this section commits an offence and is liable on summary conviction to a fine not exceeding \$1,000.

(4) Any person who fails to comply with subsection (2)  
 of this section commits an offence and is liable on summary  
 30 conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$5,000.

**31. Annual accounts and reports**—(1) The manager or managers of every syndicate shall, before the second annual general meeting, cause a statement of the duly audited accounts of the syndicate since the date that the deed of  
 35 syndicate came into effect to be prepared up to a date not more than 3 months earlier than the date of the meeting.

(2) The manager or managers of every syndicate shall, before every subsequent annual general meeting, cause a statement of the duly audited accounts of the syndicate since the  
 40 date to which the last accounts were made up to be prepared up to a date not more than 3 months earlier than the date of the meeting.

(3) In every case, the manager or managers shall also cause to be prepared a report of the activities of the syndicate for the period concerned, and of the nature and condition of all property held by the syndicate.

(4) A copy of each document shall be sent to each member of the syndicate before the meeting, and the documents shall be laid before the meeting. 5

(5) The members of a syndicate by special resolution may extend the time in which the manager or managers must comply with any provision of this section. 10

(6) Every statement of accounts shall give a true and fair view of the state of affairs of the syndicate as at the end of the financial year to which it relates.

(7) A copy of the auditor's report required by section 35 of this Act shall be annexed to the statement of accounts prepared under this section and to every copy of that statement issued, circulated, or published. 15

(8) The statement of accounts, the report of the manager or managers, and the auditor's report shall be open to inspection at the meeting and at all reasonable times at the place of business of the syndicate by any member of the syndicate, and by the Registrar and the District Registrar. 20

(9) Every manager of a syndicate who fails to comply with any of the provisions of this section commits an offence and is liable on summary conviction to a fine not exceeding \$5,000. 25

**32. Appointment and remuneration of auditors—**(1) Every syndicate shall have an auditor or auditors, who shall be appointed either directly by a provision in the deed of syndicate or by a resolution of the members in general meeting. Where the auditors are to be appointed in general meeting, the first auditors shall be appointed at the first annual general meeting of the syndicate. 30

(2) Subject to subsection (4) of this section, the auditors shall hold office for such term as may be specified in the deed or as the members of the syndicate in general meeting may determine. 35

(3) The appointment of a partnership by the firm name to be the auditors of a syndicate shall be deemed to be the appointment of all the persons who are partners in the firm at the time of the appointment. 40

(4) The members of the syndicate may at any annual general meeting, or at any extraordinary general meeting



called for that purpose, by resolution remove any auditor from office and appoint any other auditor to hold office in his place for such term as they shall determine.

5 (5) Twenty-eight days' notice shall be required for a resolution in general meeting removing any auditor of the syndicate from office.

(6) On receipt of notice of such an intended resolution, the manager or managers of the syndicate shall forthwith send a copy of the notice to the auditor who shall be entitled to attend  
10 the meeting and make representations on his own behalf.

(7) The fees and expenses of the auditors of a syndicate shall be fixed either by a provision in the deed of syndicate, or by the members of the syndicate in general meeting, or in such  
15 other manner as the members in general meeting may determine.

**33. Disqualifications for appointment as auditor—**(1) No person who, by virtue of section 165 of the Companies Act 1955, is not qualified for appointment as the auditor of a company shall be qualified for appointment as auditor of a  
20 syndicate.

(2) Every unqualified person who acts as auditor of a syndicate commits an offence and is liable on summary conviction to a fine not exceeding \$1,000.

(3) If a syndicate appoints any unqualified person to be an  
25 auditor the appointment shall be void, and every member of the syndicate who knowingly authorises or permits the appointment shall be liable on summary conviction to a fine not exceeding \$1,000 and to a further fine not exceeding \$50 for every day on which the unqualified person acts as auditor of  
30 the syndicate.

**34. Auditors' report—**(1) The auditors shall make a report to the members of the syndicate on the accounts examined by them, and the report shall state—

(a) Whether they have obtained all the information and  
35 explanations that they have required:

(b) Whether, in their opinion, proper books of accounts have been kept in respect of the syndicate, so far as appears from their examination of those books:

(c) Whether, in their opinion, according to the best of their  
40 information and the explanations given to them and as shown by the books of the syndicate, the statement of accounts is properly drawn up so as to give

a true and fair view of the state of the syndicate's affairs at the end of the financial year to which the statement relates:

(d) Whether, in their opinion, according to the best of their information and the explanations given to them, the statement of accounts gives the information required by this Act in the manner so required. 5

(2) The auditors' report shall be read before the syndicate in general meeting.

(3) Every auditor of a syndicate shall have a right of access at all times to the books and papers of the syndicate, and shall be entitled to require from any trustee, manager, or employee of the syndicate such information as he thinks necessary for the performance of his duties. 10

(4) The auditors of a syndicate shall be entitled to attend any general meeting of the syndicate, and to receive all notices of and other communications relating to any general meeting which any member of the syndicate is entitled to receive, and to be heard at any general meeting that they attend on any part of the business of the meeting that concerns them as auditors. 15 20

(5) Every trustee, manager, or employee of a syndicate, who refuses or fails without lawful justification, the proof of which shall lie on him, to allow any auditor access to any such books or papers in his custody or power, or to give any such information possessed by him as and when required, or who otherwise hinders, obstructs, or delays an auditor in the performance of his duties or the exercise of his powers, commits an offence and is liable on summary conviction to a fine not exceeding \$1,000, and to a further fine not exceeding \$50 for every day on which the offence has continued. 25 30

**35. Meetings—**(1) Every syndicate shall in each year hold a general meeting of its members as its annual general meeting, in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it. 35

(2) The first annual general meeting shall be held within 28 days after the date on which the syndicate first becomes subject to this Part of this Act.

(3) Each subsequent annual general meeting shall be held not later than 15 months after the date of the preceding annual general meeting. 40

(4) Every general meeting of the members of a syndicate, other than an annual general meeting, shall be an extraordinary general meeting.

**36. Notice of meetings**—(1) A general meeting of a syndicate shall be called by not less than 14 clear days' notice in writing.

(2) The notice shall state the date, time, and place of the meeting and the proposed business of the meeting, and a copy of the notice shall be sent to every member of the syndicate, but an accidental omission to give such notice to any member shall not invalidate the proceedings of the meeting.

(3) Notice of every general meeting or adjourned general meeting shall be given in the same manner to every trustee and every manager of the syndicate.

**37. Procedure at meetings**—(1) At any general meeting of a syndicate, 3 members or one-third of the members of the syndicate (whichever is the larger number) present personally or by proxy shall be a quorum.

(2) The members present shall elect one of their number to be chairman at the meeting.

(3) At any general meeting—

(a) Where any question is to be decided by a unanimous resolution, each member present personally or by proxy shall be entitled to 1 vote:

(b) Where any question is to be decided by a special resolution, or a poll is demanded on any question, the number of votes that each member shall have shall be determined by the provisions in the deed of syndicate:

(c) In all other cases, each member present personally or by proxy shall have 1 vote, and the chairman shall also have a casting vote.

(4) Where 2 or more members are jointly entitled to exercise a vote or votes at any general meeting, the vote or votes may be exercised by any of them in the absence of the others.

(5) Every trustee and every manager of a syndicate shall be entitled to attend every meeting of the syndicate and to be heard on any matter that concerns him as trustee or manager.

**38. Proxies**—(1) Any member of a syndicate entitled to attend and vote at a meeting of the syndicate may appoint any other person (whether a member or not) as his proxy to attend and vote in his place at the meeting.

(2) Where 2 or more members of a syndicate who are jointly entitled to exercise a vote or votes at a meeting wish to appoint a proxy to attend and vote in their place at the meeting, they shall jointly appoint a person (whether one of themselves or not, and whether a member or not) as their proxy. 5

(3) Every proxy shall be appointed in writing.

(4) Every proxy shall have the same rights to attend and vote, and to speak at the meeting, as the member.

(5) Nothing in this section shall authorise any member to appoint more than 1 person to be his proxy at the same meeting. 10

**39. Polls**—(1) Any member of a syndicate present personally or by proxy at a general meeting, before or after any question has been put to the meeting, shall have the right to demand a poll on the question. 15

(2) Subsection (1) of this section shall not apply to any question as to an election of a chairman of a meeting or as to an adjournment of a meeting.

(3) Every poll shall be taken in accordance with the directions of the chairman. 20

(4) In the case of an equality of votes in a poll on any question, the question shall be deemed not to have been carried.

**40. Special resolutions**—A resolution shall be a special resolution when it has been passed by a majority of not less than 50 percent of the members of the syndicate representing not less than 75 percent of the total voting rights of all the members of the syndicate. 25

**41. Resolutions agreed to unanimously**—Notwithstanding any other provision in this Act, where any question is to be determined by the members of a syndicate, a resolution in writing, signed or assented to by letter by every member of the syndicate, shall be as valid and effective as if it had been passed at a meeting of the syndicate duly convened and held. 30 35

**42. Minutes**—(1) Every syndicate shall cause minutes of all proceedings of general meetings to be entered into books to be kept for that purpose at the place of business of the syndicate, and the books shall be open at all reasonable times for inspection by any member, and by the Registrar and the District Registrar. 40

(2) Where there is more than one manager of a syndicate, the managers shall cause minutes of all proceedings at their meetings to be entered in books kept for that purpose at the place of business of the syndicate, and the books shall be open  
5 at all reasonable times for inspection by any member.

(3) If subsection (1) of this section is not complied with in respect of a syndicate, every member of the syndicate who knowingly causes or permits such non-compliance shall be guilty of an offence and shall be liable on summary conviction  
10 to a fine not exceeding \$500.

(4) If subsection (2) of this section is not complied with in respect of a syndicate, every manager of the syndicate who knowingly causes or permits such non-compliance shall be guilty of an offence and shall be liable on summary con-  
15 viction to a fine not exceeding \$500.

#### PART IV

##### MISCELLANEOUS PROVISIONS

**43. Dissolution of syndicate**—(1) On application by any member of a syndicate (other than a partnership or a special  
20 partnership), the Supreme Court or, subject to subsection (2) of this section, a Magistrate's Court, may declare a dissolution of the syndicate as if it were a partnership to which section 38 of the Partnership Act 1908 were applicable, the members of the syndicate were partners, the deed of syndicate  
25 were a partnership agreement or contract, and the interests in the syndicate were shares in a partnership, and the other provisions of that Act as to the dissolution of such a partnership shall apply to the syndicate accordingly.

(2) A Magistrate's Court shall have jurisdiction for the  
30 purposes of subsection (1) of this section in any case where the total assets of the syndicate do not exceed \$3,000.

**44. Actions by and against syndicates**—Every syndicate (other than a partnership or a special partnership) may sue and be sued, and any judgment may be enforced against it,  
35 as if it were a partnership trading under the name specified in the deed of syndicate.

**45. Certain syndicates to have trustees—**(1) This section shall apply where—

- (a) A prospectus issued in respect of a syndicate includes a statement to the effect that an undertaking has been or will be given by any person to the syndicate to purchase at a future date any property owned or to be acquired or proposed to be acquired by the syndicate; and 5
- (b) The undertaking is given; and
- (c) The undertaking is binding on the person by whom it is given. 10

(2) Subject to subsection (4) of this section, if the person giving the undertaking is a company—

- (a) The undertaking shall be deemed to be an invitation to the public to deposit money with the company; 15 and

- (b) The amount of the purchase price specified in the undertaking shall be deemed to be a deposit of money by the syndicate with the company—

and subsections (7) to (11) of section 48A of the Companies Act 1955 shall apply in respect of the deposit with the necessary modifications, except that no document issued in accordance with the said subsection (7) shall be treated as a debenture, nor shall the syndicate be treated as a debenture-holder, for any purposes other than those subsections of that section and sections 95A to 96 of that Act. 20 25

(3) Subject to subsection (4) of this section, in every other case (except where the person giving the undertaking is a person to whom, by virtue of section 3 of the Protection of Depositors Act 1968, that Act does not apply)— 30

- (a) The undertaking shall be deemed to be an invitation to the public to deposit money with the person giving it; and

- (b) The amount of the purchase price specified in the undertaking shall be deemed to be a deposit within the meaning of the Protection of Depositors Act 1968 by the syndicate with the person giving the undertaking— 35

and the provisions of that Act (other than sections 8 and 9) shall apply with the necessary modifications. 40

(4) Notwithstanding subsections (2) and (3) of this section, where the property in respect of which the undertaking is given is real property, the expression "the amount of the purchase price" shall for the purposes of those sub-  
 5 sections mean the amount (if any) by which the actual purchase price specified in the undertaking exceeds two-thirds of the value of the property as stated in the prospectus issued in respect of the syndicate. If the actual  
 10 purchase price specified in the prospectus does not exceed two-thirds of such value, this section shall not apply.

(5) For the purposes of this section, the purchase price specified in an undertaking includes all money that the person giving the undertaking guarantees as part of the undertaking that the syndicate will receive from the property  
 15 between the time that the undertaking is given and the time that it is performed.

**46. General provisions as to promoters, trustees, and managers—**(1) No person who—

- (a) Has been convicted of an offence against this Act; or  
 20 (b) Whether before or after the commencement of this Act, has been convicted of any crime specified in sections 250 to 257 or sections 263 to 281 of the Crimes Act 1961; or

(c) Is an undischarged bankrupt—  
 25 shall act without the leave of the Supreme Court as a promoter, trustee, or manager of a syndicate in respect of which a prospectus has been issued, or as a director or officer concerned in the management of any promoter, trustee, or manager of such a syndicate.

(2) Every person who contravenes subsection (1) of this section commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$1,000 or to both.

(3) Every promoter of a syndicate shall, in addition to his  
 35 duties, obligations, and liabilities under this Act, have all the duties, obligations, and liabilities that a promoter of a company has at common law.

(4) Section 111 of the Insolvency Act 1967 is hereby consequentially amended by adding to subsection (1) the  
 40 following paragraph:

"(d) Acting as a promoter, trustee, or manager of a syndicate to which subsection (1) of section 46 of the Syndicates Act 1972 applies."

**47. Registers**—Every District Registrar shall keep such registers as he considers necessary, in which shall be registered all documents required by this Act to be registered by him.

**48. Power of officers to refuse to accept inaccurate documents**—If the Registrar or a District Registrar is of the opinion that any document submitted to him under this Act—

- (a) Contains any matter contrary to law; or
- (b) Does not comply with this Act; or
- (c) Has not been duly completed; or
- (d) Contains any misdescription, error, alteration, or erasure—

he may, without prejudice to any other power or duty conferred or imposed on him under this Act, refuse to register or receive the document, and he may request either that the document be appropriately amended or completed and submitted to him again or that a fresh document be submitted in its place.

**49. Appeals**—(1) Any person who is aggrieved by—

- (a) The refusal of the Registrar to approve a form of deed of syndicate or form of variation of such a deed;
- (b) The refusal of a District Registrar to register any deed of syndicate, prospectus, or variation of a deed of syndicate; or
- (c) Any other refusal, act, or decision of the Registrar or a District Registrar under this Act—

may within 14 days after being notified of such refusal, act, or decision, or within such further time as the Supreme Court may allow, appeal against the refusal, act, or decision to that Court.

(2) On hearing the appeal, the Supreme Court may confirm the refusal, act, or decision, or may give such directions or make such other determination as the Court thinks fit.

**50. Service of documents**—(1) Any notice or other document that is required or authorised by this Act to be served on any person may, without prejudice to any other method of service, be served by posting it by registered letter—

- (a) To his last known place of abode or business; or
- (b) In the case of a manager of a syndicate, to the place of business of the syndicate; or



(c) In the case of a member of a syndicate in respect of which a register must be kept under section 28 of this Act, to the address of the member specified in the register.

5 (2) A notice or document so posted shall be deemed to have been served at the time when the registered letter would in the ordinary course of post be delivered.

**51. Fees—**(1) There shall be paid to the Registrar in respect of the matters mentioned in the Third Schedule to  
10 this Act the fees specified in the table contained in that Schedule.

(2) Where the Registrar or any other officer is empowered by this Act to do any act for which a fee is payable, he may refuse to do that act until the fee is paid.

15 (3) All fees paid to the Registrar under this Act shall be paid into the Public Account and shall form part of the Consolidated Revenue Account.

(4) The Governor-General may from time to time, by Order in Council, add to the table of fees contained in the  
20 Third Schedule to this Act or revoke or amend any item in that table.

**52. Regulations—**The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

25 (a) Fixing the maximum rates of remuneration that may be paid to any managers of a syndicate or class of syndicate under the provisions of any deed of syndicate:

30 (b) Providing for such other matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

**53. Amendments to other enactments—**(1) Section 2 of the Unit Trusts Act 1960 is hereby amended by inserting in the definition of the term "unit trust" in subsection (1), after the  
35 words "members of the public", the words "and not as an association".

(2) Part II of the First Schedule to the Summary Proceedings Act 1957 is hereby amended by inserting, after the item

relating to the Summary Proceedings Act 1957, the following item:

"The Syndicates Act <u>1972</u> "	15 (1)	Untrue statement in prospectus."
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**54. Existing syndicates**—(1) The terms on which all interests are acquired, held, and disposed of in any syndicate in respect of which a prospectus has been issued before the commencement of this Act may, notwithstanding any provision to the contrary in any deed, instrument, or agreement, be varied or supplemented by a deed made between all the members of the syndicate so as to enable a deed of syndicate in respect of that syndicate to be registered under this Act. 5  
10

(2) On the registration of the deed of syndicate, this Act shall apply as if a prospectus had been issued in respect of the syndicate after the commencement of this Act. 15

(3) Nothing in this section shall affect the contractual rights of any other person against the members of a syndicate.

**SCHEDULES**

**FIRST SCHEDULE**

**Section 3**

**SYNDICATES EXEMPT FROM APPLICATION OF ACT**

1. Every syndicate whose sole undertaking is the practice, conduct, or operation of any profession, occupation, or business that may in law only be practised, conducted, or operated by persons having or possessing specified qualifications.

**SECOND SCHEDULE**

**Section 10**

**PARTICULARS TO BE INCLUDED IN PROSPECTUS**

1. The date of the prospectus.
2. The name and address of every promoter of the syndicate and, where the promoter is a company, the name and address of every director of that company.
3. The amount (if any) paid or payable as a procurement or promoting fee, and the nature and value of any other benefits given or intended to be given to every promoter.
4. The name and address of every person by whom the preliminary expenses have been paid or are payable.
5. Where the syndicate is to meet the preliminary expenses, sufficient details of those expenses to enable a prospective investor to estimate their amount.
6. Such particulars as are sufficient to disclose the true nature and objects of the syndicate.
7. The operative date of the deed of syndicate.
8. The duration, if ascertainable, of the syndicate or, if the duration is not ascertainable, that fact.
9. The financial details of the undertaking, including any improvements to the property to be acquired.
10. Where any undertaking involves the raising of capital by way of mortgage, the name and address of every proposed mortgagee, the nature, term and rate of interest of every mortgage, any unusual terms, conditions or covenants, and the provision made to accumulate funds for the repayment of such mortgage or, if no provision is made, that fact.
11. The nature and price of any property to be purchased or acquired or proposed to be purchased or acquired, specifying separately the amount paid or payable for goodwill.
12. The name and address of the vendor of such property and, where the vendor is a company, the name and address of every director of that company.
13. Where such property is real or leasehold property, the address, legal description, and area; the number of buildings existing on or comprising such property; and the respective areas of those buildings.

SECOND SCHEDULE—*continued*

14. Where any building is to be constructed on such property, a general description of that building; the estimated cost of demolishing any existing buildings on the site; the estimated cost of construction; and the name and address of the proposed builder (except where tenders are to be called for the work).

15. The name and address of every trustee of the syndicate; the amount paid or payable to him for his services; and where that trustee is a company, the name and address of every director of that company.

16. The total amount that shall be subscribed before the deed of syndicate shall become operative.

17. The name and address of every manager and proposed manager of the syndicate, and if any such person is a company the name and address of every director of that company.

18. Where any manager is to be appointed, details of his proposed remuneration.

19. The date of, parties to, and general nature of every material contract.

20. The times and places at which such contracts or copies thereof may be inspected.

21. The conditions on which members' interests in the syndicate may be transferred.

22. Where any undertaking consists of rights or interests in or arising out of an investment in property that ordinarily depreciates in value through use or effluxion of time, such particulars as are sufficient to disclose the true particulars of the provision made for the replacement of such property and the source or sources from which replacement is to be made or from which the cost of replacement is to be met.

23. The provision that is to be made for the payment of rates, taxes, maintenance, insurance, and other outgoings on the property to be purchased or acquired, or proposed to be purchased or acquired, and the persons by whom these are payable.

24. The provision that is to be made for reserves and the nature of them.

25. Where the value of any property to be purchased or acquired is calculated on the annual rental of that property, details and values of furnishings, or fittings or services to be provided and forming part of the annual rental.

26. The interest (direct or indirect) of every promoter or manager of the syndicate in any property to be purchased or acquired or proposed to be purchased or acquired by the syndicate.

27. Short particulars of any transactions relating to any such property which was completed within the 2 preceding years (including the purchase price on any sale), and where the vendor was a company the name and address of every director of any such company.

28. The interest (direct or indirect) of every promoter or manager of the syndicate in any company or firm engaged or to be engaged on behalf of the syndicate to provide any goods or services.

29. Where any scheme, venture, or enterprise provides for an undertaking or option to be given to any person to purchase all or any of the

SECOND SCHEDULE—*continued*

property of the syndicate, the purchase price to be paid or, if no purchase price is fixed, details of how the property is to be valued for the purposes of the sale; the period within which the option is to be exercised; the means whereby the proposed purchaser intends to finance the purchase; and the security, if any, for due performance.

30. A valuation of the real and personal property that is to be purchased or acquired or is proposed to be purchased or acquired, and a report on the value of proposed improvements, such valuation and report to have been given not more than 6 months before the date of issue of the prospectus in the case of real or leasehold property by a registered valuer and in any other case by an independent person who is competent to value such property.

31. Whether all necessary planning permissions and consents have been obtained and all planning requirements have been met and, if not, that fact.

32. Where planning permission or consent has been given on conditions, those conditions.

33. Where any licence or permit is required to carry on any undertaking, whether or not that licence or permit has been obtained.

THIRD SCHEDULE

Section 51

TABLE OF FEES TO BE PAID TO REGISTRAR OF COMPANIES

	\$
1. For approving the form of a deed of syndicate .....	10.00
2. For registering any document .....	2.00
3. For approving the form of a variation of a deed of syndicate .....	2.00