

New Zealand.



ANALYSIS.

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1916, No. 1.—*Private.*

AN ACT to confer Powers upon the New Zealand Insurance Company Limited. Title.
[8th July, 1916.]

WHEREAS the New Zealand Insurance Company Limited, being a company duly incorporated under the Companies Acts in force in the Dominion of New Zealand, and having a subscribed capital of one million five hundred thousand pounds, divided into one hundred and fifty thousand shares of ten pounds each, upon which the sum of four hundred and fifty thousand pounds has been paid, and having its registered office at Auckland, in the said Dominion, is carrying on business as a fire, marine, accident, and indemnity insurance company: And whereas an application of the company for leave to alter its memorandum of association was confirmed by the Court of Appeal of New Zealand on the twenty-seventh day of July, nineteen hundred and eleven, and the company obtained power thereby (*inter alia*) to undertake and execute trusts of all kinds, and to act Preamble.

as trustee, executor, or administrator, receiver, guardian, committee, or in other fiduciary position, and generally to transact all kinds of trust and agency business, either gratuitously or otherwise: And whereas the company in exercise of such power has entered into and is now transacting in addition to its ordinary insurance business a trust and agency business: And whereas the company is desirous that it should have conferred upon it the powers and privileges hereinafter set forth in order to enable it to more effectually and usefully carry on the said trust and agency business which it is authorized to carry on under its memorandum of association:

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

- Short Title.** 1. This Act may be cited as the New Zealand Insurance Company Trust Act, 1916.
- Interpretation.** 2. In this Act, if not inconsistent with the context,—
 “Company” means the New Zealand Insurance Company Limited:
 “Manager” means the officer of the company for the time being in charge of or managing the trust department of the business of the company.
- Company may act as executor and obtain probate.** 3. Whenever the company shall be named as executor in the last will and testament, or in any codicil to the last will and testament, of any testator, it shall be lawful for the company, if it shall elect so to do, to be and act as executor; and the company shall be entitled to apply for and obtain probate of the will and codicil of the testator, and to perform and discharge all other the acts and duties of an executor as fully and effectually as a private individual may do when appointed executor.
- Company may not apply for and obtain letters of administration in any intestate estate.** 4. The power of the company to apply for and obtain probate of the will of any deceased person shall extend to and include the power to apply for and obtain letters of administration with the will of the deceased annexed, but nothing in this Act contained shall be deemed to confer upon the company any right to apply for and obtain letters of administration in any intestate estate.
- Court to act upon affidavit of director or manager in applications for probate.** 5. In all cases in which the company is empowered to apply for probate or for letters of administration of the estate and effects of any deceased person it shall be lawful for the Court in which or the officer before whom such application is made to receive and act upon an affidavit made by a director or by the manager of the company in place of any affidavit required by the said Court to be made by persons making application for probate or letters of administration.
- Assets of company to be liable for proper administration of estates.** 6. In all cases in which probate or letters of administration shall be granted to the company all the capital, both paid and unpaid, and all other assets of the company shall be liable for the proper administration of the estate committed to the company.
- Company may be appointed trustee, receiver, or committee of estate under acts relating to lunacy, &c.** 7. In all cases in which any Court of justice, or any person or persons, or any company or corporation having authority or power to appoint a trustee or trustees under any deed or will, or a guardian or trustee, or a receiver or a committee of the estate under any law now in force or hereafter to be in force in the Dominion relating to lunatics, shall see fit to appoint the company as trustee under any

such deed or will, or as guardian, or as trustee, or as receiver, or as committee of the estate under any such law relating to lunatics, it shall be lawful for the company to be so appointed, and to act until removed from such office as such trustee, guardian, receiver, or committee, and to perform and discharge all acts and duties pertaining to the position of trustee (under any such deed or will or under any such law as aforesaid), guardian, receiver, or committee; and the capital of the company, both paid and unpaid, and all other assets of the company shall be liable for the proper discharge of the duties committed to the company; and such liability of the capital and other assets of the company shall be deemed sufficient security for the discharge of such duties in place of the bond required from private persons when appointed as trustee, receiver, or committee.

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

Company may act under power of attorney by manager and any director or by two directors.

9. The provisions of section one hundred of the Property Law Act, 1908, and of section three hundred and six of the Companies Act, 1908, shall extend and apply, as the case may require, to every power of attorney by which the company is appointed by any person, company, or corporation; and a statutory declaration made at the time prescribed by the said sections by the manager and any director or by any two directors of the company that the company has not, to the best of the knowledge and belief of the persons making such declaration (as regards any power of attorney given to the company by an individual), received any notice or information of the revocation by death or otherwise of any such power of attorney, or (as regards any power of attorney given to the company by another company or corporation) of the revocation of such power of attorney, or of the winding-up or dissolution of the principal company or corporation, shall have the same force and effect as the declaration mentioned in the said section when made by a private individual acting under power of attorney.

Certain provisions of the Property Law Act, 1908, and the Companies Act, 1908, to apply.

10. In all cases in which the personal attendance of an executor, administrator, trustee, receiver, committee, or guardian is required in a Court of justice or elsewhere the company shall be entitled to make such attendance in the person of the manager of the company; and the personal duties of executor, administrator, trustee, receiver, committee, or guardian may be discharged on behalf of the company by the manager; and such manager shall be responsible in his own proper person by process of attachment, commitment for contempt, or by other process to all Courts having jurisdiction over the matter for the proper discharge of such duties and for obedience to the orders and decrees of such Courts, as well by the company as by the said manager, and by all officers of the company; but, notwithstanding such personal liability of the said manager, the capital, both paid and unpaid, and all the assets of the company shall remain liable for any

Manager may attend on behalf of company, and shall be personally responsible to Court.

pecuniary loss which may be occasioned or may happen through the imperfect or improper discharge or through the neglect of the company or of any of its officers of an act or duty in respect of any office, appointment, or engagement held or entered upon by the company.

Company to be paid a commission on moneys received.

11. The company shall be entitled to receive, in addition to all moneys properly expended by it and chargeable against the estates placed under the administration and management of the company, a commission to be fixed from time to time by the board of directors of the company, but not to exceed in any case five pounds for every one hundred pounds received by the company as executor, administrator, trustee, receiver, committee, or guardian, or as an attorney acting under power of attorney; and such commission shall be payable out of the moneys or property committed to the management of the company, and shall be received and accepted by the company as a full recompense and remuneration to the company for acting as such executor, administrator, trustee, receiver, committee, guardian, or attorney; and the company shall be entitled to transact the insurance business in connection with any estate it may for the time being be administering, and receive in respect thereof all premiums properly chargeable therefor, in the same manner as it would have been entitled to do if it had not been a trustee of such estate:

Provided that the commission to be charged by the company shall not exceed in each estate the amount of the published scale of charges of the company at the time when such estate was committed to the company, nor shall this enactment prevent the payment of any commission or remuneration directed by a testator in his will in lieu of the commission to be charged by the company.

Company may be removed from office by Court.

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

Order for account on application of trustee, *cestui que trust*, &c.

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

company to furnish an account, it shall be lawful for the said Court or Judge to dismiss the application, and the said Court or Judge shall have power in all cases to make such order as to costs either against the company or against the applicant, or as to payment of costs out of the estate, as to the said Court or Judge shall seem right.

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

Supreme Court or Judge may order audit in any estate in hands of company.

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

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

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

16. So long as any estate in respect of which the company is executor, administrator, or trustee shall remain in whole or in part unadministered it shall not be lawful to proceed to wind up the company voluntarily, unless with the sanction of the Supreme Court or of a Judge of such Court; and it shall be lawful for any person interested in such estate or who may have any claim in respect thereof to apply to the Supreme Court or to a Judge of such Court in a summary way to restrain the winding-up voluntarily of the company, and the said Court or Judge shall in any and every such case have power to make such order in the matter as the circumstances of each case shall appear to such Court or Judge to require.

Voluntary winding-up of company may be restrained by Supreme Court or Judge.

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

Moneys remaining unclaimed in the hands of the company for six years to be paid into the Public Account.

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

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

Incorporation and powers of company, except so far as specifically altered, to remain.

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

Company to be subject to future acts for control without compensation.

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

Saving powers of Supreme Court as to trusts.

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

Schedule.

SCHEDULE.

I, _____, manager, do solemnly and sincerely declare—

1. That the liability of the members is limited.
2. That the capital of the company is £ _____, divided into _____ shares of _____ each.
3. That the number of shares issued is _____.
4. That calls to the amount of £ _____ per share have been made, under which the sum of £ _____ has been received.
5. That the amount of all moneys received on account of estates is £ _____.
6. That the amount of all moneys paid on account of estates is £ _____.
7. That the amount of the balance held to the credit of estates under administration is £ _____.
8. That the liabilities of the company at the close of its financial year—to wit, the _____ day of _____ last—were—
 - Debts owing to sundry persons by the company, viz.,—
 - On judgment, £ _____
 - On specialty, £ _____
 - On notes or bills, £ _____
 - On simple contracts, £ _____
 - On estimated liabilities, £ _____
9. That the assets of the company on that day were—
 - Government securities, £ _____
 - Bills of exchange and promissory notes, £ _____
 - Cash at bankers, £ _____
 - Other securities, £ _____

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act of the General Assembly of New Zealand intituled the Justices of the Peace Act, 1908.