



ANALYSIS

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1979, No. 8

An Act to make special provision for the protection of depositors and creditors of the Public Service Investment Society Limited and its associated companies, and for matters incidental thereto [28 June 1979]

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 Public Service Investment Society Management Act 1979.

(2) This Act shall be deemed to have come into force at 9 p.m. on the 28th day of June 1979.

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

“Court” means the Supreme Court of New Zealand:

“Minister” means the Minister of Justice:

“Property” means land, money, goods, things in action, goodwill, and every valuable thing, whether real or personal, and whether situated in New Zealand or elsewhere; and includes obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property:

“Society” means the Public Service Investment Society Limited, a society registered under the Industrial and Provident Societies Act 1908:

“Statutory manager” or “manager”, in relation to any body corporate, means the manager appointed for the time being in respect of that body corporate by or under section 5 of this Act; and (subject to section 5 (1) of this Act) includes a deputy statutory manager; and “management” has a corresponding meaning.

(2) For the purposes of section 4 of this Act a company shall be deemed to be associated with another company if, under section 7 of the Income Tax Act 1976, the 2 companies are deemed to be under the control of substantially the same persons or to consist of substantially the same shareholders.

3. Act to bind the Crown—This Act binds the Crown.

4. Application of Act—This Act shall apply to the following bodies corporate—

- (a) The Public Service Investment Society Limited, a society registered under the Industrial and Provident Societies Act 1908:
- (b) The companies specified in the Schedule to this Act:
- (c) Any other company incorporated in New Zealand which is associated with any of the companies specified in the Schedule to this Act and to which the Governor-General, by Order in Council, has declared that this Act shall apply.

5. Statutory managers in respect of bodies corporate to which Act applies—(1) Except as otherwise provided in this Act or while the Order in Council (if any) applying this Act to any company otherwise provides, there shall be a statutory manager of all the bodies corporate to which this Act applies, and there may also be appointed by the Minister

in respect of those bodies corporate a deputy statutory manager who shall have (subject to the control of the manager) all the powers and functions of the manager in respect of those bodies corporate.

(2) The first statutory manager in respect of the bodies corporate to which this Act applies shall be,—

(a) In respect of the Society and of any company named in the Schedule to this Act, Robert William Stannard of Wellington, Chartered Accountant, who shall become the manager of the Society and of each such company without further appointment than this paragraph:

(b) In respect of any other company to which this Act applies, the person appointed as statutory manager in respect of the company by the Order in Council declaring that this Act shall apply to that company and made under section 4 of this Act or (where that Order does not provide for any such appointment) the person first appointed as statutory manager in respect of the company by any subsequent Order in Council.

(3) Every statutory manager or deputy statutory manager shall hold office at the pleasure of the Minister, who may from time to time appoint a different or an additional person as statutory manager or deputy statutory manager.

6. Moratorium—(1) After the commencement of this Act, no person shall,—

(a) Bring or continue any action or other proceedings against any body corporate to which this Act applies, except with the leave of the Court:

(b) Issue any execution, attach any debt, or otherwise enforce or seek to enforce any judgment or order obtained in respect of any body corporate to which this Act applies:

(c) Petition for the winding up of any body corporate to which this Act applies:

(d) Foreclose, enter into possession, distrain for rent, sell, appoint a receiver, or take or continue any power or rights whatsoever under or in pursuance of any mortgage, charge, debenture, instrument, or other security over the property of any body corporate to which this Act applies.

(2) Subject to the provisions of this Act, nothing in subsection (1) of this section shall affect the existence of any security over the property of any body corporate to which this Act applies or its priority in relation to other debts.

(3) Where money due to any person by way of wages or salary or superannuation was paid direct to the Society on or after the 25th day of June 1979, or is paid direct to the Society after the commencement of this Act, by or on behalf of the employer or former employer of that person pursuant to an order given by that person before the 25th day of June 1979, nothing in subsection (1) of this section shall apply in respect of any money so paid and any money so paid shall be held on trust by the Society for that person.

7. Conduct of business during statutory management—While any body corporate to which this Act applies remains under the management of a statutory manager appointed by or under this Act, it shall not be lawful or competent for any director, manager, or other person to be engaged in the management or conduct of that body corporate, or to act as its agent or servant, save with the permission of the statutory manager and so far as that permission extends.

8. Board of Management and directors—(1) Every person who, immediately before the commencement of this Act, held office—

(a) As a member of the Board of Management of the Society; or

(b) As a member of a District Committee of the Society,—shall cease to hold that office upon the commencement of this Act.

(2) Upon the commencement of the application of this Act to any company, the directors thereof holding office immediately prior thereto, including the directors of any local Board, shall cease to hold office.

(3) During the period while this Act continues to apply to the Society or to any company, no person shall, during that period, be elected or appointed—

(a) A member of the Board of Management of the Society;
or

(b) A member of a District Committee of the Society; or

(c) A director of a company to which this Act applies.

9. Duties and functions of manager—(1) In the exercise in relation to any body corporate of the powers and functions conferred upon the manager by this Act, it shall be the duty of the manager to take possession of and protect the property of the body corporate, to manage the same, and (having due regard to the rights and interests of all creditors, members, and shareholders) to pay the liabilities of each body corporate.

(2) Nothing in this section shall limit the powers expressly conferred on the manager by section 10 of this Act.

10. Powers of manager—The manager (if any) in respect of any body corporate to which this Act applies shall have all the powers of the Board of Management or Board of Directors, as the case may require, and the members in general meeting of the body corporate and notwithstanding the provisions of the rules of the Society or the articles of the company may exercise alone all such powers.

11. Duty to deliver books and property to manager—(1) It shall be the duty of all persons having possession and control of any books or records or documents or other property, whatsoever and wheresoever situated, belonging to any body corporate to which this Act applies forthwith after the passing of this Act in the case of the Society or of any company specified in the Schedule to this Act, or forthwith after the first manager (if any) is appointed in respect of any other company to which this Act applies, to deliver or yield up possession of all such books, records, documents, or other property as aforesaid to the manager in respect of the body corporate or to his authorised agent.

(2) If any person fails for 14 days to comply with the requirements of subsection (1) of this section, he commits an offence, and is liable on summary conviction to a fine not exceeding \$500 and to a further fine not exceeding \$10 for every day after the expiration of those 14 days during which the offence has continued.

(3) If any person fails to comply with the requirements of subsection (1) of this section, the manager may at any time certify the failure to the Court (whether or not an offence has been committed under subsection (2) of this section), and the Court may thereupon inquire into the matter of the failure and, after hearing any witnesses who

may be produced against or by or on behalf of the alleged offender, and after hearing any statement which may be offered in defence, may punish the offender in like manner as if he had been guilty of contempt of the Court.

(4) It shall be no defence to any proceedings under this section that the person in possession or control of any property as aforesaid is or was a trustee of the property for the Society or any company to which this Act applies or entitled to a lien or other charge over the property, or was a receiver or manager of the property.

(5) The rights of any person who, in accordance with this section, delivers any property to the manager in respect of the Society or any company to which this Act applies or his authorised agent shall continue while the management continues as if the person had not so delivered the property; and on the termination of the management, subject to the provisions of this Act and unless the Court otherwise orders, the property shall be returned to the person who delivered it or to someone who derives a right to possession of the property from that person. The provisions of this subsection shall apply whether the person who delivers the property is a receiver or manager, or a person entitled to a lien or charge in respect of the property, or any other person having any rights whatsoever in respect thereof.

12. Protection of manager, etc.—(1) For the purposes of this Act the manager in respect of any body corporate to which this Act applies shall be deemed to be an agent of that body corporate and in the exercise of his powers and functions under this Act shall have all the privileges and be entitled to the same protection as a member of the Board of Management or a director has under any rule of law or under any Act or pursuant to the rules or articles of the body corporate.

(2) No such manager shall be liable for any acts done by him in good faith in the exercise of his powers and functions as manager, and every such manager shall be indemnified out of the property of the body corporate in respect of all liabilities properly incurred.

(3) No action or proceeding shall be brought or commenced against any such manager except by leave of the Court and subject to such terms as the Court may impose.

13. Expenses of administration—All costs, charges, and expenses properly incurred by a manager appointed by or under this Act in the exercise, in relation to any body corporate to which this Act applies, of his powers and functions under this Act (including such fees, commission, or other remuneration as may be approved by the Minister in respect of the services of the manager) shall be payable out of the property of the body corporate in priority to all other claims.

14. Determination of management—(1) Every body corporate to which this Act applies shall remain subject to management under this Act from the time when the first manager in respect thereof is appointed in accordance with section 5 of this Act until the management ceases in accordance with this Act, whether or not there is for the time being a manager in office in respect thereof.

(2) A body corporate shall cease to be subject to management under this Act if the Governor-General, by Order in Council, so provides.

15. Report to Minister—(1) As soon as possible after taking up his appointment, the first statutory manager shall report to the Minister on the affairs of each body corporate to which this Act applies showing at the date of his appointment, the particulars of the body corporate's assets, debts, and liabilities, the names, addresses, and descriptions of its creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as the manager thinks fit or the Minister requires.

(2) The statement of affairs shall be accompanied by any comments that the manager sees fit to make thereon.

(3) A copy of every report and financial statement presented to the Minister pursuant to this section shall be lodged by the manager with the Registrar of Industrial and Provident Societies or the Registrar of Companies, as the case may require.

16. Offence to destroy or alter records—(1) If any director, officer, servant, or agent of any body corporate to which this Act applies, or any other person,—

(a) With intent to defeat the purposes of this Act, destroys or alters any book, document, or record of any such body corporate, or sends or attempts

to send out of New Zealand any such book, document, or record, or any property of any description belonging to or in the disposition or under the control of any such body corporate; or

- (b) Fails or refuses to answer to the best of his knowledge and ability any question which he may be asked by the manager in relation to any such book or document or record or property, or wilfully gives a false answer to any such question,—

he commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$5,000 or to both.

(2) If in any prosecution for an offence alleged to have been committed against this section it is proved that the person charged with the offence has destroyed or altered any book, document, or record as aforesaid, or has sent or attempted to send or conspired to send out of New Zealand any such book, document, or record, or any other thing, the onus of proving that in so doing he had not acted in contravention of this section shall lie on him.

(3) The First Schedule to the Summary Proceedings Act 1957 is hereby amended by inserting, in its appropriate alphabetical order in Part II, the following item:

"The Public Service Investment Society Management Act 1979	16	Destroying or altering records."
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17. Duty to report offences—If it appears to any manager appointed under this Act that any person has been guilty of any offence against this Act, or any other offence in relation to any body corporate to which this Act applies, he shall report the matter to the Solicitor-General.

18. Advances of fees of manager, etc.—(1) With the consent of the Minister of Finance, there may be advanced, out of money in the Consolidated Account appropriated by Parliament for the purpose, to any person who is a manager of any body corporate to which this Act applies, such amounts as the Minister may approve in respect of remuneration or allowances due to that person or expenses incurred by that person.

(2) All money so advanced to any such person shall be refunded to the Crown out of money payable to that person in respect of the body corporate, and the Crown shall have

all the rights of the person to whom the advance was made to receive and recover any such money. All money so refunded to the Crown shall be credited upon receipt to the Consolidated Account.

19. Notification of appointment of manager—The manager in respect of any body corporate to which this Act applies shall notify the Registrar of Industrial and Provident Societies or the Registrar of Companies, as the case may require, of his appointment as manager and of the termination of his appointment.

Section 4 (b)

SCHEDULE

COMPANIES TO WHICH ACT APPLIES

Avalon Wine and Spirits Limited.
Bishop & Co Limited.
Investment Travel Limited.
J. McIlraith & Co. Limited.
Newmans Travel Service Limited.
C. S. Passmore Limited.
Pubvest Holdings Limited.
Pubvest Securities Limited.
Walker's Travel Centre (1972) Limited.
Wellington Marine's Boatshed Limited.
Wellington Marine's Dive Centre Limited.

This Act is administered in the Department of Justice.
