

Hon. Mr. Dick.

FIRE AND MARINE INSURANCE COMPANIES.

ANALYSIS.

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A BILL INTITULED

Title.

AN ACT relating to Fire and Marine Insurance Companies.

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

Short Title.

1. The Short Title of this Act is "The Fire and Marine Insurance Companies Act, 1880," and it shall come into operation on the 5 day of one thousand eight hundred and *eighty*.

Interpretation.

2. In this Act, if not inconsistent with the context,—

"Company" means any person or persons or association, corporate or unincorporate, who issue or are liable under any policies of fire or marine insurance within the colony, and includes companies established out of New Zealand as well as those established in New Zealand, and includes mutual associations as well as proprietary. 10

"Local company" means a company established within New Zealand.

"Foreign company" means a company established out of the colony. 15

"Policy" means any instrument whereby an agreement or contract for any fire or marine insurance is made or entered into.

"Policyholder" means the person who for the time being is the legal holder of a policy.

"Public Trustee" means the Public Trustee for the time being appointed under "The Public Trust Office Act, 1872." 20

"Court" means the Supreme Court of New Zealand.

"Registrar" means a Registrar of Joint-stock Companies under "The Joint Stock Companies Act, 1860," or any Act amending the same.

"Financial year" means each period of twelve months at the end of which the balance of the accounts of the company is struck, or, if no such balance is struck, then each period of twelve months ending with the thirty-first day of December. 25

Companies to have paid-up capital of not less than £50,000.

3. Every foreign company and every local company which is at present carrying on and continues to carry on, or which shall hereafter commence to carry on, within the colony, the business of fire or marine insurance, or of fire and marine insurance conjointly, shall, in the case of companies at the time of the coming into operation of this Act carrying on business in New Zealand, within twelve months after the commencement of this Act, or, in the case of companies commencing to carry on business in New Zealand after the coming into force of this Act, within twelve months after the commencement of business, as the case may be, have a paid-up and unimpaired capital or accumulated surplus funds invested in good and sufficient securities to the extent of not less than fifty thousand pounds. 30

Deposit of securities by companies established in the colony, and by companies established out of colony, and carrying on business in colony.

4. Every company established within the colony after the commencement of this Act, and every company established or to be established out of the colony, which shall, after the commencement of this Act, begin to carry on the business of fire or marine insurance, or of fire and marine insurance conjointly, within the colony, shall deposit with the Public Trustee securities to the unimpaired market-value of not less than ten thousand pounds : 40

Kind of securities.

Such securities shall be mortgages of real estate in New Zealand on which the money advanced does not exceed three-fourths of the value of the land, or bonds, debentures, or other securities issued by any of the Australasian Colonies under any Act of the Legislatures of such colonies respectively, or bonds, debentures, or other securities issued by any corporate body in New Zealand under the authority of any Act of the Legislature of New Zealand. 50

Securities to stand in name of Public Trustee.

5. All such mortgages, bonds, debentures, or other securities shall be conveyed, assigned, or transferred to the Public Trustee, or made to stand in his name, at the expense of the company depositing the same. 55

Fire and Marine Insurance Companies.

Deposit receipts in the name of the Public Trustee given by any bank in New Zealand incorporated or regulated by or under any Act of the Legislature of New Zealand, or approved of by the Public Trustee, shall be deemed a security deposited under this Act.

Deposit receipts given by bank in name of Public Trustee to be deemed a security.

5 **6.** Every company, whether established within or without New Zealand, which, before the passing of this Act, had commenced to carry on or had carried on the business of fire or marine insurance, or of fire and marine insurance jointly, in New Zealand, if it be intended to continue or if it continue to carry on such business in New Zealand, shall deposit, within *nine* months from the commencement of this Act, with such Public Trustee as aforesaid securities to the unimpaired market-value of ten thousand pounds of such kinds as aforesaid.

Deposit of securities by companies existing at time of passing of Act and continuing business.

10 **7.** If any securities deposited under this Act with the Public Trustee shall be, whilst so deposited, lost, stolen, destroyed, or damaged through the wilful neglect or default of such Public Trustee, the company making such deposit, and any other person interested therein, shall have the same remedies as are provided in section forty-three of "The Public Trust Office Act, 1872," with respect to persons suffering loss in respect of property in the Public Trust Office.

Remedy against Trust Office in case securities lost or destroyed.

20 **8.** Any company may from time to time, as it thinks fit, deposit with such Public Trustee as aforesaid securities of such kinds as aforesaid, or any other securities, to any amount the company thinks fit, besides and beyond securities to the value of the said sum hereby required to be deposited.

Voluntary deposit of securities.

25 **9.** The company shall receive the income from such deposit whether the same be compulsory or voluntary.

Company to receive income from deposits.

30 **10.** Any company may, at its own expense, on giving due notice to the Public Trustee, withdraw from his custody any securities so deposited, on depositing with him securities of an equal value, and in the case of compulsory deposit of such kinds as aforesaid; and any substituted securities shall, for all purposes, be treated as securities originally deposited.

Deposits may be withdrawn and others substituted.

35 **11.** In case of the depreciation of any deposited securities below the value which the company depositing the same is bound under this Act to deposit, the Public Trustee shall, by notice in writing, require such company within a time to be limited by him for that purpose to make good such deficiency, and may upon reasonable grounds extend such time.

Proceedings in case of depreciation of securities.

40 **12.** The Board appointed under "The Public Trust Office Act, 1872," shall be deemed to have made default in making its deposit, and such default shall be deemed to continue till such deficiency be made good.

Board to be judge of value of securities.

45 **13.** The Board appointed under "The Public Trust Office Act, 1872," shall, in any case, whether of original or substituted deposit, be the sole judge of the value of such securities for the purposes of such deposit, and its decision shall be final and conclusive on the company:

50 But such Board shall not be in any way liable to any legal proceedings in consequence of the insufficiency of such compulsory deposit as aforesaid arising from any error in the valuation by the Board of the securities deposited for that purpose.

Board not liable in case of error in valuation.

55 **14.** The Public Trustee shall, subject to the provisions of this Act, hold all such securities so deposited in trust for policyholders, being such in respect of policies or other contracts issued, granted, or entered into in the colony by the company making such deposit, whether such policies or contracts have been issued, granted, or entered into before or after the commencement of this Act:

Securities to be held in trust for policyholders.

But such securities shall not be subject to such trust with respect to policies or contracts which are not actually in force, or under which there is no legal

Proviso.

claim remaining unsatisfied, at the time when it is sought to have the benefit of the said trust in respect thereof.

Securities to be discharged from trusts in respect of liquidated or cancelled policies.

14. Upon any such policy or contract being liquidated, or being cancelled or annulled otherwise than by the insolvency or winding-up of the company, such securities shall stand discharged from any trust in respect thereof; but, until all obligations of the company in respect of such policies or contracts are cancelled, or annulled, or liquidated, such securities shall not be liable to be attached, levied upon, or be otherwise subject to any debts or claims against the company, whether such company be foreign or local. **5**

When company deemed insolvent.

15. A company shall be deemed to be insolvent within the meaning of this Act upon failure to pay any undisputed claim arising or loss insured against in New Zealand for the space of thirty days after such claim shall fall due or loss be payable, or after failure to pay any disputed claim arising or loss insured against in New Zealand after final judgment against the company in respect thereof, and tender to the company of a legal discharge for the like space, and, in either of such cases, after notice of such failure to the Colonial Treasurer shall have been given. **10 15**

Liquidator to be appointed.

16. Upon the insolvency of any company the Court or a Judge thereof shall appoint a Liquidator, who may be, if the Court or Judge shall think fit, the Liquidator (if any) appointed under a compulsory or voluntary winding-up of the company, if the same shall be wound up. **20**

Duties of Liquidator.

17. Such Liquidator shall forthwith call upon such company, within a time to be fixed by the Court or a Judge, to furnish a statement, to be verified on oath, of all outstanding policies in New Zealand, and shall publish a notice calling upon all policyholders to submit and prove their claims; such notice to be advertised in such newspapers and in such manner as shall be prescribed by the Judge, who shall have the power from time to time to extend the time for the proof of such claims, or any of them. **25**

Rights of parties and Liquidator.

And in respect of such claims the parties shall have the right of contesting the same, and the Liquidator shall have the same powers in respect thereof, subject to the same right of appealing to the same tribunals, as they would respectively have in the case of a voluntary or compulsory liquidation of the company. **30**

Insurers entitled to claim for part of premium paid.

18. The parties insured shall be entitled to claim for a part of the premium paid proportionate to the unexpired period of their policies respectively, and such return premiums shall rank with judgments recovered and claims accrued in the distribution of the assets. **35**

Duty of Liquidator.

19. The Liquidator shall prepare a schedule of all judgments, claims, and liabilities of the company in respect of such policies, and file the same in the Supreme Court; and shall cause the securities held by the Public Trustee to be sold in such manner, after such notice and formalities, as the Court or a Judge shall direct. **40**

And the proceeds thereof, after paying the expenses incurred, shall be by the Liquidator distributed among the claimants according to such schedule, and the balance (if any) surrendered to the company. **45**

Policyholders not barred from taking action against company.

20. If any loss shall be sustained or any claim shall arise after the statement of outstanding policies has been obtained from the company as hereinbefore provided, and before the final order of the Court for the distribution of the proceeds of the securities, or, if the proceeds of the securities shall be insufficient to cover in full all claims recorded in the schedule, the policyholders shall not be barred from any recourse they may have in law or equity against the company issuing the policy other than that for a share in the distribution of the proceeds of the securities held for such company by the Public Trustee. **50**

21. Whenever any company liable to make deposit as by this Act provided shall be insolvent within the meaning of this Act, or whenever the securities deposited by such company shall be so depreciated as no longer to have the requisite value as by this Act provided, and the Public Trustee shall have notified the same to such company or its duly authorized agent, or, whenever notice shall have been given to the Colonial Treasurer under section sixteen of this Act, so that the amount of securities deposited by such company is liable to be reduced by the sale of any portion thereof, such company shall be deemed to have made default in complying with the provisions of this Act. Default in complying with provisions of Act, what constitutes.
22. In no case shall the interest on the securities deposited by any company be paid to such company so long as such company shall be in default within the meaning of this Act, nor in case of any depreciation in value of the securities deposited with the Public Trustee below the value which the company is under this Act bound to deposit, until such depreciation be made good. When company in default, interest on securities to be withheld.
- But in the case herein provided for such interest shall only be payable to the Public Trustee.
23. No Registrar shall hereafter issue a certificate of incorporation to a local company, except upon proof that such compulsory deposit as aforesaid has been made. Certificate of incorporation not to issue till proof supplied that compulsory deposit made.
24. The certificate of the Public Trustee to the effect that such compulsory deposit has been made shall be sufficient proof for this purpose, and every company making such deposit shall be entitled to such certificate. Certificate of Public Trustee sufficient proof of deposit.
25. Such deposit may be made by the subscribers of the memorandum of association of the company, or any of them, in the name of the proposed company; and such deposit, upon the incorporation of the company, shall be deemed to have been made by, and to be part of the assets of the company. Deposit may be made in name of proposed company.
26. Any company which may have made a voluntary deposit of securities under this Act may, on the following conditions being complied with, withdraw from such deposit any or all the securities so deposited :—
- (1.) On the expiration of a notice in writing, which shall be given to the Public Trustee by the company at least six months before the intended withdrawal ; Company may withdraw voluntary deposit.
- (2.) On satisfying the Public Trustee that, after the proposed withdrawal has been made, the remainder of the securities left on deposit will be equal in value, as estimated by the Trustee, to a sum sufficient to reinsure all the outstanding policies of such company. Conditions of withdrawal.
27. Any company which may have made a compulsory deposit of securities under this Act may, on ceasing to carry on the business of fire or marine insurance, or of fire and marine insurance conjointly, in New Zealand, and on the following conditions being complied with or performed, withdraw from such deposit any or all of the securities so deposited :—
- (1.) On the expiration of a notice in writing, which shall be given to the Public Trustee by the company at least twelve months before the intended withdrawal ; and Company may withdraw compulsory deposit when ceasing to carry on business.
- (2.) On satisfying the Public Trustee that, from the time of giving such notice until the date of the intended withdrawal, the company has not issued any new policies, or otherwise carried on the business of fire or marine insurance, or of fire and marine insurance conjointly ; that all policies have expired ; and that the company has no outstanding liabilities within the colony. Conditions of withdrawal.
- The Public Trustee shall cause every notice so given as in this section provided, and also his decision with regard to every such proposed withdrawal, to be published, at the cost of the company, in such manner as he may think fit.
28. No company, having given any such notice as in the preceding section provided, shall thereafter recommence to carry on the business of fire or marine
- After notice given of withdrawal of compulsory deposit.

company not to carry on business.	insurance, or of fire and marine insurance conjointly, in New Zealand, unless it shall first make the compulsory deposit provided for in the <i>fourth</i> section of this Act, as in the case of a company beginning to carry on such business after the commencement of this Act; but such new deposit shall be treated as a separate deposit from any securities remaining deposited under the last <i>two</i> preceding sections of this Act:	5
Proviso.	Provided that the receipt of premiums or other moneys in respect of policies made before such notice and the discharge of liabilities thereon, and the doing of other Acts relating to such policies, shall not be deemed to be a carrying on of business within the meaning of this section.	10
Fire insurance policies not to extend over fifteen months.	29. No company within the meaning of this Act shall hereafter issue any policy of insurance against fire within the colony to extend over a period of more than fifteen months from the date of the commencement thereof.	10
Statements to be made by companies.	30. On the coming into operation of this Act every local company and every foreign company shall, at the expiration of each financial year of such company, prepare a statement of its affairs in the form contained in the Schedule hereto.	15
Statements to be verified, printed, and deposited with Public Trustee.	31. Every such annual statement shall be verified by the statutory declaration of the principal officer of the company making such statement, and shall be printed; and the original, so verified as aforesaid, together with a printed copy thereof, shall be deposited with the Public Trustee within six months of the close of such financial year.	20
Public Trustee to make report on statement.	32. The Public Trustee shall make such report to the Colonial Treasurer on such statement as he may think fit, and the Colonial Treasurer may publish every such report in the <i>New Zealand Gazette</i> .	25
Copy of statement to be sent to shareholders, &c.	33. A printed copy of such annual statement as aforesaid shall be forwarded by the company, by post or otherwise, on application, to every shareholder or policy-holder of the company.	25
Foreign companies to appoint agents, upon whom process may be served.	34. Every foreign company which is now carrying on the business of fire or marine insurance, or of fire and marine insurance conjointly, and intends to continue to carry on such business within the colony, shall, within <i>nine</i> months after the coming into operation of this Act, and every foreign company which, whether already established or hereafter to be established, shall after the coming into operation of this Act intend to commence to carry on the business of fire or marine insurance, or of fire and marine insurance conjointly, within the colony, shall, before such commencement, by an instrument in writing under the common seal of the company, attested by two directors and the Secretary of the company, and verified by a statutory declaration attested before a notary public, in writing appoint a person resident therein as general Agent, upon whom all lawful processes against the company may be served with like effect as if the company existed in this colony.	30 35 40
Terms of appointment.	Such writing or power of attorney shall declare at what place within the colony the office of such general Agent shall be established, and shall stipulate and agree, on the part of the company making the same, that any lawful process against such company which is served on such general Agent or at his office shall be of the same legal force and validity as if served on such company.	45
Duplicate power of attorney &c., to be filed in office of Public Trustee.	35. A duplicate of such writing or power of attorney, attested and verified in manner aforesaid, together with a copy of the charter, Act of Parliament, deed, or memorandum of association or other document creating or authenticating the existence of such company, and of the regulations of such company, verified by statutory declaration as aforesaid, shall be filed in the office of the Public Trustee.	50
Certified copies sufficient proof of appointment.	Copies of such writing or power of attorney certified by him shall be sufficient evidence in proof of the appointment and authority of such general Agent.	50

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- 36.** The said agency shall be continued while any liability remains outstanding against the company within the colony, and the power shall not be revoked until the same power is given to another, and a like copy filed in manner aforesaid. Service of any process, notice, or otherwise upon the said Agent shall be deemed sufficient service upon the company. Continuance of agency.
- 37.** Every company which makes default in complying with any of the requirements of this Act, shall be liable to a penalty not exceeding *one hundred* pounds for every day during which the default continues ; and, in the case of a foreign company, the general agent shall be liable to such penalty as well as the company. Penalty for noncompliance with Act.
- 38.** Every company which makes default in complying with the provisions of this Act shall not only be liable to the penalties above-mentioned, but may also, if it be made to appear to a Judge of the Court that such default has continued for a period of three months, by such Judge be prohibited from transacting business within the colony either absolutely or for a time, as such Judge may think fit. Such absolute or temporary prohibition shall be published in one or more newspapers as such Judge shall direct. Companies may be prohibited from transacting business, if Act not complied with.
- 39.** If any such company, or any person as agent for any such company, or otherwise for or on behalf of any such company, shall after such absolute prohibition, or during any such temporary prohibition, receive any application for any fire or marine insurance, or accept any premium for any fire or marine insurance, or otherwise carry on any business of fire or marine insurance within the colony, such company and person shall respectively be liable to a penalty not exceeding *two hundred and fifty* pounds for each and every act done in breach of this provision. Penalty for carrying on business after same prohibited.
- 40.** If any statement or other document required by this Act is false in any particular to the knowledge of any person who signs or deposits the same, such person shall be liable, on conviction thereof on indictment, to fine and imprisonment, or, on summary conviction thereof, to a penalty not exceeding *one hundred* pounds. Penalty for falsifying statement, &c.
- 41.** The Public Trustee shall be entitled to charge such commission and receive such fees or other remuneration for the use of his office in respect of business transacted under this Act as he would be entitled to charge or receive in respect of property placed in the Public Trust Office. Public Trustee entitled to charge for business done under Act.
- 42.** The Public Trustee may appoint an actuary for the purpose of assisting him in any duty imposed upon him under this Act, and the expense attending such appointment shall be borne by the company whose affairs have rendered such appointment necessary. Public Trustee may appoint actuary when necessary.

SCHEDULE.

Schedule.

STATEMENT of the affairs of the [*corporate name of company*] for the financial year of the company ended _____, one thousand eight hundred and eighty-

1. State whether the company is incorporated or unincorporated.
2. State whether mutual or proprietary.
3. State the date of organization or incorporation.
4. State whether with limited or unlimited liability.
5. State capital of the company, nominal.

6. State capital of the company, paid up.
7. State amount of reserve funds.
8. State amount of premiums received during past twelve months for fire and marine insurance after deduction of re-insurances.
9. State amount of losses on account of fire and marine insurances during same period, after deduction of re-insurances.
10. State outstanding losses on account of fire and marine insurances, specifying,—
 - (a.) Those due and unpaid ;
 - (b.) Those adjusted and not due ;
 - (c.) Those in suspense and awaiting further proof ;
 - (d.) Losses resisted ;
 - (e.) All other claims against the company.
11. Give the like information as is required under questions 7, 8, 9, and 10, with regard to business in New Zealand alone.
12. Total amount insured in New Zealand.
13. Amount of reinsurances in New Zealand.

NOTE.—The answers should be numbered to accord with the numbers of the corresponding questions.