

[Extract from *Commonwealth of Australia Gazette*, No. 83, dated 13th December, 1934.]

# THE TERRITORY FOR THE SEAT OF GOVERNMENT.

No. 25 of 1934.

## AN ORDINANCE

To provide for the appointment of Receivers and Managers, and the protection of the assets, of certain Companies.

**B**E it ordained by the Governor-General in and over the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *Seat of Government Acceptance Act 1909* and the *Seat of Government (Administration) Act 1910-1933*, as follows:—

1. This Ordinance may be cited as the *Companies (Receiver and Manager) Ordinance 1934*. Short title.

2. In this Ordinance, unless the contrary intention appears— Definitions.

“Company” means any company in respect of which a receiver is appointed by or under this Ordinance;

“Receiver” means a receiver and manager appointed by or under this Ordinance, and includes any deputy receiver and manager so appointed;

“the Judge” means the Judge of the Court;

“the Court” means the Supreme Court of the Australian Capital Territory.

3.—(1.) The Public Trustee of the State of New South Wales (including any person from time to time acting as his deputy) is hereby appointed Receiver and Manager of the Company specified in the Schedule to this Ordinance. Appointment of Receivers and Managers and Deputy Receivers and Managers.

(2.) For the purpose of assisting the Receiver and Manager appointed by the last preceding sub-section, the Attorney-General may, by notice published in the *Gazette*, appoint any person to be the Deputy Receiver and Manager of the company specified in the Schedule to this Ordinance.

(3.) Such Deputy Receiver and Manager shall have all the powers, and may exercise all the functions of the Receiver.

(4.) Where the Attorney-General is satisfied that it is in the interests of the creditors of the company or of persons beneficially interested therein so to do, he may appoint any person to be the Receiver and Manager of any company, other than the company specified in the Schedule to this Ordinance, the affairs of which have been or are being investigated in pursuance of the *Companies (Investigation of Affairs) Ordinance 1934*.

5774.—PRICE 3D.

**Powers of Receiver.**

**4.** The Receiver of a company shall be the agent of the company and shall have power—

- (a) to take possession of, collect, and get in the assets of the company;
- (b) to carry on or concur in carrying on the business of the company;
- (c) to take any proceedings in the name of the company or otherwise;
- (d) to sell or dispose of or concur in selling or disposing of any of the assets of the company;
- (e) to make any arrangement or compromise which he thinks expedient in the interests of the company;
- (f) to retain the net proceeds of the business of the company or the net proceeds of any sale;
- (g) to defend in the name of the company or otherwise any proceedings that may be brought against the company or against himself;
- (h) to take possession of, collect, hold and dispose of all books, papers, documents, records and securities relating to or in the possession or under the control of the company or that should be in such possession or under such control;
- (i) to discharge any liabilities of the company;
- (j) to exercise any of the powers or rights of the directors of the company,

and shall have such other powers as are prescribed.

**Further powers of Receiver.**

**5.** In addition to the foregoing powers, the Receiver of a company shall have power to co-operate or act in conjunction with any person appointed by or under any Act of Parliament or Ordinance or Order of any Court of the Commonwealth or any State or Territory of the Commonwealth or of the Dominion of New Zealand as Receiver or Manager of the assets of the company, or with any person so appointed for the purpose of protecting any such assets.

**Application to court.**

**6.—(1.)** The Receiver of a company may apply by summons to the Court to determine any question relating to the company.

(2.) Every such determination shall be binding on the Receiver and on the company and on such other persons as are affected thereby, including all persons interested in the company.

(3.) The Court or a Judge may give directions at any time for service of the summons or of the determination on any person or persons or class of persons.

**No sale of assets without consent of Receiver.**

**7.** A sale of or dealing with any of the assets of any company whether held subject to any trust, mortgage, contract, or otherwise shall not be of any validity whatsoever except by or with the consent of the Receiver of the company and the powers of the directors of the company shall be suspended.

8. No action, suit, execution, or proceeding shall, except with the consent of the Attorney-General, be commenced or proceeded with against a company, save and except a suit or proceeding by a person claiming to rescind a contract with the company on the ground of fraud or misrepresentation to the extent only of a judgment order or declaration rescinding the contract.

Stay of proceedings.

9. A Receiver or any officer, servant, or agent of a Receiver shall not be liable to any person for any act or thing done or omitted to be done in exercise or purported exercise of any of the powers conferred by or under this Ordinance or for or in respect of any of the liabilities of any company.

Exemption from liability of Receiver, &c.

10. A Receiver of a company shall be entitled to reimburse himself, or pay or discharge out of the assets of or recover from the company as a debt, all expenses incurred in or about the execution of his powers under this Ordinance.

Expenses of Receiver.

11.—(1.) Any person who, with intent to delay or obstruct the carrying out by the Receiver of a company of any of his powers or functions under this Ordinance, destroys or alters or withholds from the Receiver (whether demand has been made therefor or not) any of the assets of the company or any book, paper, document, record or security relating to, or in the possession, or under the control of the company, or sends or attempts to send, or conspires with any other person to send, out of the Territory, any such asset, book, paper, document, record or security shall be guilty of an offence.

Delaying and obstructing Receiver.

Penalty: Imprisonment for five years.

(2.) If, in any prosecution for an offence against this section, it is proved that the person charged with the offence has destroyed or altered or withheld from the Receiver any of the assets of the company, or any book, paper, document, record or security in the possession or under the control of the company or has sent, or attempted to send, or conspired to send out of the Territory any such asset, book, paper, document, record, or security the onus of proving that in so doing he had not acted with intent to delay or obstruct the carrying out by the Receiver of any of his powers or functions under this Ordinance, shall be upon him.

12. Every Receiver shall, in respect of the operation of this Ordinance, furnish from time to time such information and make such reports to the Attorney-General as the Receiver thinks desirable or as the Attorney-General requires.

Reports by Public Trustee.

13. The Attorney-General may make regulations not inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed, or which

Regulations.

are necessary or convenient to be prescribed, for carrying out or giving effect to this Ordinance, and, in particular, for prescribing matters providing for and in relation to—

- (a) the powers that may be exercised by a Receiver under this Ordinance, whether ordinarily exercisable by a Receiver or Manager or not; and
- (b) the mode of service of any summons, determination, order, or direction of the Court or Judge under this Ordinance.

Discontinuance  
of application  
of Ordinance.

14. The provisions of sections three, four and five, sub-section (1.) of section six, sections seven and eight and paragraph (a) of section thirteen of this Ordinance shall cease to apply, in relation to a company, upon the publication in the *Gazette* of a declaration by the Attorney-General that it is no longer in the interests of the creditors of the company or of persons beneficially interested therein that the Receiver of the company should continue to act as such.

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THE SCHEDULE.

McInnes & Company Limited.

Dated this twelfth day of December, 1934.

ISAAC A. ISAACS

Governor-General.

By His Excellency's Command,

ROBERT G. MENZIES

for Minister of State for the Interior.

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