



ANALYSIS

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1990, No. 36

An Act to enable a private company to be incorporated under the Companies Act 1955, and to vest the assets and liabilities of the State Insurance Office and the State Insurance General Manager in that company, and to repeal the State Insurance Act 1963

[22 June 1990

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the State Insurance Act 1990.

(2) Except as provided in sections 22, 23, and 24 of this Act, this Act shall come into force on the date on which it receives the Royal assent.

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

“Appointed day” means the date appointed by the Governor-General by Order in Council under section

6 of this Act as the date on which the State Insurance undertaking shall vest in the company:

“Company” means the company incorporated in accordance with section 4 of this Act:

“Contract” includes a contract of insurance or reinsurance:

“Instrument” includes—

(a) Any instrument (other than this Act) of any form or kind that creates, evidences, modifies, or extinguishes rights, interests, or liabilities or would do so if it or a copy of it were lodged, filed, or registered under any enactment; and

(b) Any judgment, order, or process of a court:

“Instrument by way of security” has the meaning assigned to it in section 2 of the Chattels Transfer Act 1924:

“Land” has the meaning assigned to it in section 2 of the Land Transfer Act 1952:

“Liabilities” means liabilities, debts, charges, duties, and obligations of every description (whether present or future, actual or contingent, and whether payable or to be observed or performed in New Zealand or elsewhere):

“Ministers” means the Minister of Finance and the responsible Minister:

“Property” means property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal and, without limiting the generality of the foregoing, includes—

(a) Choses in action and money:

(b) Goodwill:

(c) Rights, interests, and claims of every kind in or to property, whether arising from, accruing under, created or evidenced by or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent, or prospective:

“Responsible Minister” means the Minister for the time being responsible for the company:

“Rights” means all rights, powers, privileges, and immunities, whether actual, contingent, or prospective:

“Security” means a mortgage, submortgage, charge (whether legal or equitable), bond, stock, debenture, bill of exchange, promissory note, guarantee, indemnity, defeasance, hypothecation, instrument by way of security, lien, pledge, or other security for the

payment of money or for the discharge of any other obligation or liability and in any case whether upon demand or otherwise, whether present or future and whether actual or contingent, and includes an acknowledgment of debt (whether or not otherwise secured) and an agreement or undertaking to give or execute whether upon demand or otherwise any of the foregoing:

“State Insurance General Manager” means the person holding office as the General Manager of the State Insurance Office and constituted as a corporation sole under the State Insurance Act 1963:

“State Insurance Office” means the State Insurance Office established under the State Insurance Act 1963:

“State Insurance undertaking” means the property, rights, liabilities, and reserves of the State Insurance Office and the State Insurance General Manager in that person’s capacity as the State Insurance General Manager.

Cf. 1989, No. 81, s. 2

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

4. Incorporation of company—(1) Notwithstanding the State Insurance Act 1963 and any other enactment or rule of law, the Ministers may form and register, under the Companies Act 1955, a private company limited by shares that—

- (a) Has the name “State Insurance Limited”; and
- (b) Has a memorandum of association and articles of association in such form as the Ministers may determine.

(2) All the shares in the capital of the company shall, on its incorporation, be subscribed for by the Ministers on behalf of the Crown equally.

(3) On the appointed day all the shares in the capital of the company subscribed for in accordance with subsection (2) of this section and any other securities issued by the company to the Ministers before the appointed day shall be deemed to have been allotted as fully paid up to each Minister equally.

(4) Nothing in section 60 of the Companies Act 1955 (which relates to returns of allotments and prescribes the documents that must be delivered to the Registrar of Companies when shares are allotted for a consideration other than cash) shall apply to shares which are deemed to have been allotted pursuant to subsection (3) of this section.

(5) Nothing in this section prevents the name of the company being changed in accordance with the provisions of the Companies Act 1955.

Cf. 1989, No. 81, s. 4 (1)

5. Crown shareholding—(1) Each Minister may, from time to time, on behalf of the Crown, subscribe for or otherwise acquire securities in the capital of the company in addition to the shares subscribed for under section 4 of this Act.

(2) Any money required to be paid by a Minister to subscribe for or acquire securities issued by the company shall be paid out of the Crown Bank Account from money appropriated by Parliament for the purpose.

(3) Securities of the company in the name of a person described as the responsible Minister or the Minister of Finance shall be held by the person who is for the time being the responsible Minister or who holds the office of the Minister of Finance, as the case may be.

(4) Notwithstanding any other enactment or rule of law, it shall not be necessary to complete or register a transfer of securities issued by the company consequent upon a change in the person who is the responsible Minister or the person who holds office as the Minister of Finance, as the case may be.

(5) Each Minister may exercise all the rights and powers attaching to securities issued by the company held by that Minister.

Cf. 1989, No. 81, s. 8

6. Undertaking of State Insurance General Manager and State Insurance Office to vest in company—On a date to be appointed by the Governor-General by Order in Council, the State Insurance undertaking shall vest in the company.

Cf. 1989, No. 81, s. 5

7. Consequential provisions on transfer of undertaking—Without limiting the generality of section 6 of this Act, the following provisions shall have effect on and from the appointed day:

- (a) A reference (express or implied) to the State Insurance General Manager or the State Insurance Office in any other Act, or in any regulation, order, or notice made or given under any enactment, or in any instrument, register, record, notice, security, document or communication, made, given, passed, or executed

before or after the appointed day, shall be read and construed as a reference to the company:

- (b) All contracts, agreements, conveyances, deeds, leases, licences, and other instruments, undertakings, and notices (whether or not in writing), entered into by, made with, given to or by, or addressed to the State Insurance General Manager or the State Insurance Office (whether alone or with any other person) before the appointed day and subsisting immediately before the appointed day shall, to the extent that they were previously binding on and enforceable by, against, or in favour of the State Insurance General Manager or the State Insurance Office, be binding on and enforceable by, against, or in favour of the company as fully and effectually in every respect as if, instead of the State Insurance General Manager or the State Insurance Office the company had been the person by whom they were entered into, with whom they were made or to or by whom they were given or addressed, as the case may be:
- (c) A security held by the State Insurance General Manager or the State Insurance Office as security for a debt or other liability to the State Insurance General Manager or the State Insurance Office incurred before the appointed day shall be available to the company as security for the discharge of that debt or liability and, where the security extends to future or prospective debts or liabilities, shall be available as security for the discharge of debts or liabilities to the company incurred on or after the appointed day; and, in relation to a security, the company shall be entitled to all the rights and priorities however arising and shall be subject to all liabilities to which the State Insurance General Manager or the State Insurance Office would have been entitled or subject if this Act had not been passed:
- (d) Any action, arbitration or proceedings or cause of action which, immediately before the appointed day, is pending or existing by, against, or in favour of the State Insurance General Manager or the State Insurance Office or to which the State Insurance General Manager or the State Insurance Office is a party may be prosecuted, and without amendment of

any writ, pleading or other document, continued and enforced by, against or in favour of the company.

Cf. 1989, No. 81, s. 6 (a)-(d), (g)

8. Certain matters not affected by transfer of undertaking—Nothing effected or authorised by this Act—

- (a) Shall be regarded as placing the State Insurance General Manager or the State Insurance Office, or the company, or any other person in breach of contract or confidence or as otherwise making any of them guilty of a civil wrong; or
- (b) Shall be regarded as giving rise to a right for any person to terminate or cancel any contract or arrangement or to accelerate the performance of any obligation; or
- (c) Shall be regarded as placing the State Insurance General Manager or the State Insurance Office, or the company, or any other person in breach of any enactment or rule of law or contractual provision prohibiting, restricting, or regulating the assignment or transfer of any property or the disclosure of any information; or
- (d) Shall release any surety wholly or in part from any obligation; or
- (e) Shall invalidate or discharge any contract or security; or
- (f) Shall affect any action or proceedings against the Crown commenced before the 30th day of September 1990 that relate to the State Insurance Office.

Cf. 1989, No. 81, s. 7 (1)

9. Books and documents to remain evidence—(1) Any document, matter, or thing, which, if this Act had not been passed, would have been admissible in evidence in respect of any matter for or against the State Insurance General Manager or the State Insurance Office shall, on or after the appointed day, be admissible in evidence in respect of the same matter for or against the company.

(2) In this section, “document” has the same meaning as in section 2 (1) of the Evidence Amendment Act (No. 2) 1980.

Cf. 1989, No. 81, s. 9

10. Use of certain words—(1) Nothing in any other enactment or rule of law prevents—

- (a) The use by the company or by a related company of the word “State” or the words “State Insurance”;

(b) The use before the close of the 31st day of December 1990 by the company or a related company of the words "State Insurance Office" or "State Insurance General Manager" in substitution for the name of the company or related company in a document or form that is printed or that is partly printed and partly written.

(2) Without limiting section 7 of this Act, a reference in a document or form to which subsection (1) (b) of this section applies to the words "State Insurance Office" or "State Insurance General Manager" shall be deemed to be a reference to the company or a related company, as the case may be.

(3) For the purposes of this section, the expression "related company" has the same meaning as in section 2 (5) of the Companies Act 1955.

11. Registers—(1) No Registrar of Deeds or District Land Registrar or any other person charged with the keeping of any books or registers shall be obliged solely by reason of the foregoing provisions of this Act to change the name of the State Insurance General Manager or the State Insurance Office to that of the company in those books or registers or in any document.

(2) The presentation to any registrar or other person of any instrument, whether or not comprising an instrument of transfer by the company,—

(a) Executed or purporting to be executed by the company; and

(b) Relating to any property held immediately before the appointed day by the State Insurance General Manager or the State Insurance Office; and

(c) Containing a recital that that property has become vested in the company, by virtue of the provisions of this Act—

shall, in the absence of evidence to the contrary, be sufficient proof that the property is vested in the company.

Cf. 1989, No. 81, s. 10

12. Employees and agents of State Insurance Office not personally liable—No person who, at any time before the appointed day, held office as the General Manager of the State Insurance Office or who was an employee, agent, or representative of the State Insurance Office, shall, in the absence of fraud or unless the act or omission amounted to an offence, be personally liable in respect of any act or thing done

or omitted to be done by him or her in the exercise or bona fide purported exercise of any authority conferred by or pursuant to the State Insurance Act 1963.

Cf. 1963, No. 38, s. 11

13. Taxes and duties—(1) For the purposes of the Inland Revenue Acts, and any other enactment that imposes or provides for the collection of a tax, duty, levy, or other charge,—

- (a) The State Insurance General Manager, the State Insurance Office, and the company shall be deemed to be the same person with effect at and from the appointed day; and
- (b) In respect of the liability for and the assessment, determination, or imposition of taxes, duties, levies, or other charges accruing as from the appointed day under any such enactment, all transactions entered into by, and acts of, the State Insurance General Manager or the State Insurance Office before the appointed day shall be deemed to have been entered into by, or to be those of, the company and to have been entered into or performed by the company at the time when they were entered into or performed by the State Insurance General Manager or the State Insurance Office.

(2) For the purposes of the Goods and Services Tax Act 1985, the company is not a public authority as defined in section 2 of that Act.

(3) For the purposes of subsection (1) of this section, the expression “Inland Revenue Acts” means the Acts specified in the First Schedule to the Inland Revenue Department Act 1974.

(4) For the purposes of section 188 of the Income Tax Act 1976 (which relates to the carrying forward of losses) any loss incurred by the State Insurance General Manager or the State Insurance Office in any income year before the appointed day shall, so far as it has not been deducted from or set off against assessable income in any subsequent income year, be deemed to have been incurred by the company and as if at all times during the period commencing with the beginning of the first income year in which any such loss was incurred and ending immediately before the appointed day, shares in the company carrying—

- (a) The right to exercise not less than 40 percent of the voting power in the company; and

- (b) The right to receive not less than 40 percent of the profits that may be distributed by the company; and
- (c) The right to receive not less than 40 percent of any distribution of the paid-up capital of the company,—were held directly by the Ministers.

(5) Nothing in section 394M of the Income Tax Act 1976 shall limit the amount of any refund to be paid to the company of income tax paid by the State Insurance General Manager or the State Insurance Office.

(6) Nothing in section 394E of the Income Tax Act 1976 applies to a refund of income tax paid to the company of income tax paid by the State Insurance Office or the State Insurance General Manager.

(7) For the purposes of Part XIIA of the Income Tax Act 1976—

- (a) No credits shall arise to be recorded in the company's imputation credit account in respect of income tax that may be paid by the company in respect of the sale before the appointed day by the State Insurance General Manager of shares held on the 3rd day of May 1990 by the State Insurance General Manager:
- (b) No debits shall be recorded in the company's imputation credit account in respect of a refund to the company of income tax paid by the company in respect of the sale before the appointed day by the State Insurance General Manager of shares referred to in paragraph (a) of this subsection.

Cf. 1989, No. 81, s. 12

14. Industrial agreement to continue—(1) The agreement made between the State Insurance General Manager, the Public Service Association, and the State Services Commission relating to the terms and conditions of employment of the employees of the State Insurance Office registered with the Arbitration Commission and in force immediately before the appointed day, shall, on and after the appointed day, be deemed to have been made between the company and the Public Service Association and shall continue in force in relation to the employees of the company according to its terms.

(2) While a Minister holds any shares in the capital of the company the company shall, before entering into any agreement under Part VII of the Labour Relations Act 1987,

consult with the State Services Commission over the conditions of employment to be included in the agreement.

Cf. 1989, No. 81, s. 13

15. Union coverage—(1) The Public Service Association shall, on the appointed day, be the union under the Labour Relations Act 1987 that has coverage of employees of the company.

(2) The Registrar of Unions under the Labour Relations Act 1987 shall, as soon as possible after the appointed day and with effect from that day, amend the membership rule of the Public Service Association to include within its coverage all employees of the company.

(3) The Registrar of Unions shall, when making the amendment required by subsection (2) of this section, amend the membership rule of the union that is registered under the name "FINSEC" to ensure that its coverage does not extend to employees of the company.

(4) In making the amendments required by subsections (2) and (3) of this section, the Registrar may describe the workers concerned by reference only to their employer.

(5) The provisions of the Labour Relations Act 1987 relating to union coverage shall, after the appointed day, apply according to their tenor.

16. Employment deemed to be continuous—
Notwithstanding any other provision of this Act—

- (a) On the appointed day each employee of the State Insurance Office shall become an employee of the company but, for the purposes of every enactment, law, award, determination, contract, and agreement relating to the employment of each such employee, the contract of employment of that employee shall be deemed to have been unbroken and any period of service with the State Insurance Office recognised by that Office as continuous service shall be deemed to have been a period of service with the company:
- (b) The terms and conditions of employment of each such employee shall, until varied, be identical with the terms and conditions of that employee's employment with the State Insurance Office immediately before the appointed day and be capable of variation in the same manner:
- (c) No such employee shall be entitled to receive any payment or other benefit by reason only of that

employee ceasing by virtue of this Act to be an employee of the State Insurance Office.

Cf. 1986, No. 129, s. 7

17. Certain provisions of State Sector Act 1988 to apply to company—On and after the appointed day, while a Minister holds any shares in the capital of the company,—

(a) The provisions of subsections (1) and (2) of section 56 of the State Sector Act 1988 shall apply to the company and, in the application of those subsections,—

(i) The reference in subsection (1) to the expression “a Department” shall be construed as a reference to the company; and

(ii) The reference in subparagraph (iii) of paragraph (d) of subsection (2) to the expression “Public Service” shall be construed as a reference to the company:

(b) The provisions of subsections (1) and (3) of section 58 of the State Sector Act 1988 shall apply to the company and, in the application of subsection (1) of that section,—

(i) The reference to the expression “a Department” shall be construed as a reference to the company; and

(ii) The reference in paragraphs (a) and (b) of that subsection to the expression “the Department” shall be construed as a reference to the company.

Cf. 1989, No. 81, s. 14

18. Contributors to Government Superannuation Fund—(1) Any person who, immediately before the appointed day, was an officer or employee appointed under the State Sector Act 1988 and was a contributor to the Government Superannuation Fund under the Government Superannuation Fund Act 1956 shall, if the person becomes an employee of the company be deemed to be, for the purposes of the Government Superannuation Fund Act 1956, employed in the Government service so long as that person continues in the service of the company and the Government Superannuation Fund Act 1956 shall apply to that person in all respects as if the service with the company were Government service.

(2) Subject to the Government Superannuation Fund Act 1956, nothing in subsection (1) of this section shall entitle any such person to become a contributor to the Government Superannuation Fund after that person has once ceased to be a contributor.

(3) For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with subsection (1) of this section, to a person who is in the service of the company and is a contributor to the Government Superannuation Fund the term “controlling authority”, in relation to that person, means the company.

Cf. 1989, No. 81, s. 15

19. Application of State-Owned Enterprises Act 1986—

(1) On and after the appointed day, while a Minister holds any shares in the capital of the company, Part III of the State-Owned Enterprises Act 1986 shall apply to the company and for that purpose the company shall be deemed to be a State enterprise within the meaning of section 2 of that Act.

(2) On a date on which Part III of the State-Owned Enterprises Act 1986 ceases to apply to the company—

(a) The Audit Office shall cease to be the auditor of the company and every subsidiary of the company:

(b) Any person or firm holding office as an additional auditor of the company or any subsidiary of the company under section 19 (3) of that Act shall cease to hold that office:

(c) The directors of the company and of every subsidiary of the company shall appoint an auditor or auditors of the company and of every subsidiary of the company and every such appointment shall be deemed to have been made by the directors to fill a casual vacancy in the office of auditor under section 163 (5) of the Companies Act 1955.

Cf. 1989, No. 81, s. 17

20. Application of Fourteenth Schedule to Income Tax Act 1976—(1) On and after the appointed day, while the Ministers hold shares in the capital of the company, the company shall be deemed to be a company that is named in the Fourteenth Schedule to the Income Tax Act 1976 (as substituted by section 23 of the State Services Conditions of Employment Amendment Act 1987).

(2) The Fourteenth Schedule to the Income Tax Act 1976 (as so substituted) is hereby amended, which amendment shall have effect on the appointed day, by omitting the item “The State Insurance General Manager”.

21. Application of Ombudsmen Act 1975—(1) On and after the appointed day, while the Ministers hold not less than

50 percent of the shares in the share capital of the company, the company shall be deemed to be a person named in Part II of the First Schedule to the Ombudsmen Act 1975.

(2) The First Schedule to the Ombudsmen Act 1975 is hereby amended, which amendment shall have affect on the appointed day,—

(a) By omitting from Part I the item “State Insurance Office”;
and

(b) By omitting from Part II the item “The State Insurance Investment Board”.

22. Income Tax Act 1976 amended—(1) Section 208 of the Income Tax Act 1976 is hereby amended by repealing subsection (2).

(2) This section shall come into force on the appointed day.

23. Consequential amendments—(1) The enactments specified in the First Schedule to this Act are hereby amended in the manner indicated in that Schedule.

(2) This section shall come into force on the appointed day.

24. Repeals—(1) The enactments specified in the Second Schedule to this Act are hereby repealed.

(2) This section shall come into force on the appointed day.

SCHEDULES

FIRST SCHEDULE ENACTMENTS AMENDED

Section 23

Title of Enactment	Amendment
1982, No. 181—The Accident Compensation Act 1982	By repealing paragraph (c) of subsection (2) of section 4.
1988, No. 20—The State Sector Act 1988	By omitting from the First Schedule the item "State Insurance Office".
1989, No. 44—The Public Finance Act 1989	By omitting from the definition of the term "department" in section 2 (1) the words "the Public Trust Office, or the State Insurance Office", and substituting the words "or the Public Trust Office".

SECOND SCHEDULE ENACTMENTS REPEALED

Section 24

1963, No. 38—The State Insurance Act 1963. (R.S. Vol. 13, p. 611).

1986, No. 65—The State Insurance Amendment Act 1986.

1989, No. 44—The Public Finance Act 1989: So much of the First Schedule as relates to the State Insurance Act 1963.

This Act is administered in the Treasury.