

1976/224

THE COMPANIES (WINDING UP) FEES REGULATIONS 1976

EDWARD DENIS BLUNDELL, Governor-General
By his Deputy, RICHARD WILD

ORDER IN COUNCIL

At the Government House at Wellington this 9th day of August 1976

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL BY HIS DEPUTY IN COUNCIL

PURSUANT to section 341 of the Companies Act 1955 (as amended by section 2 of the Companies Amendment Act (No. 2) 1971) and section 100A of the Judicature Act 1908 (as inserted by section 3 (1) of the Judicature Amendment Act (No. 2) 1968), His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Companies (Winding Up) Fees Regulations 1976.

(2) These regulations shall come into force on the day after the date of their notification in the *Gazette*.

2. Interpretation—Unless the context otherwise requires, words and expressions in these regulations shall bear the same meanings as in the Companies (Winding Up) Rules 1956*.

3. Fees of Court—(1) The Registrar shall receive and take in respect of the filing of a petition for the winding up of a company by the Court, or subject to the supervision of the Court, a fee of \$50:

Provided that no fee shall be received or taken for the filing of any such petition in any case in which the Official Assignee satisfies the Registrar that there are no immediately available assets out of which to pay fees.

(2) No other fees (except sheriff's fees) shall be payable in the Supreme Court in respect of matters or proceedings in that Court in relation to the winding up of companies.

(3) The fees to be taken in respect of proceedings in the Court of Appeal in relation to the winding up of companies shall be those prescribed by the Court of Appeal Fees Regulations 1975* in respect of proceedings in that Court.

4. Fees payable to Public Account—(1) The fees specified in the Schedule to these regulations shall be paid in respect of proceedings in the winding up of companies.

(2) Notwithstanding subclause (1) of this regulation,—

(a) Where the head office of a company is situate outside New Zealand and its liquidation takes place partly in New Zealand and partly elsewhere; or

(b) Where the Court has sanctioned a reconstruction of a company or a scheme of arrangement of its affairs; or

(c) Where for any other reason the Official Assignee satisfies the Minister of Justice that the fees would be excessive—

such reduction may be made in the fees specified in the Schedule to these regulations as may, on the recommendation of the Minister of Justice, be sanctioned by the Minister of Finance.

(3) Fees payable under this regulation shall be paid into the Public Account and form part of the Consolidated Revenue Account.

(4) Wherever practicable every fee shall be paid before the proceeding is had in respect of which the fee is payable.

5. Revocations and saving—(1) The following enactments are hereby consequentially revoked—

(a) Rule 187 of the Companies (Winding Up) Rules 1956†, and the Second Schedule to those rules:

(b) The Companies (Winding Up) Fees Regulations 1975‡.

(2) Notwithstanding the foregoing provisions of these regulations, regulations 3 and 4 of these regulations shall not apply in respect of any winding up of a company that was ordered by the Court before the date of commencement of these regulations, and the enactments specified in subclause (1) of this regulation shall apply in respect of any such winding up as if these regulations had not been enacted.

Reg. 4

SCHEDULE

FEES PAYABLE TO THE PUBLIC ACCOUNT

1. Where the Official Assignee acts as a provisional liquidator only—

(a) Where no winding-up order is made upon the petition, or where a winding-up order is rescinded, or all further proceedings are stayed prior to the summoning of the statutory meetings of the creditors and contributories—

Such amount as the Court may consider reasonable, to be paid by the petitioner or by the company, as the Court may

*S.R. 1975/129

†S.R. 1956/215

Amendment No. 1: S.R. 1972/33

‡S.R. 1975/128

SCHEDULE—*continued*

direct, in respect of the services of the Official Assignee as provisional liquidator:

- (b) Where a winding-up order is made but the Official Assignee is not continued as liquidator after the statutory meetings of creditors and contributories—

Such amount as the Court, on the application of the Official Assignee, may consider reasonable.

2. Where the Official Assignee acts as liquidator of the company and a special manager is appointed (to include the Official Assignee's services as provisional liquidator)—

Such amount as the Court, on the application of the Official Assignee, may consider reasonable.

3. In all other cases where the Official Assignee acts as liquidator of the company (to include his services as provisional liquidator)—

A fee according to the following scale on the net value of the assets realised by the Official Assignee, including the produce of calls on contributories but after deducting any sums paid to secured creditors out of the proceeds of or in respect of their securities:

On the first \$3,000 or fraction thereof: 15 percent, with a minimum of \$80:

On the next \$7,000 or fraction thereof: $7\frac{1}{2}$ percent:

On all further sums: 4 percent:

Provided that where any business of the company is carried on by the Official Assignee the gross receipts resulting therefrom shall be included in the amount on which the fee is computed.

4. Where the Official Assignee is appointed a receiver for or agent of debenture holders or secured creditors and collects, calls, or realises property for the debenture holders or secured creditors—

A fee (to be paid out of the proceeds of that property) according to the scale in clause 3 of this Schedule on the net value of that property including the produce of calls on contributories but after deducting any sums paid to other secured creditors out of the proceeds of or in respect of their securities:

Provided that where any business of the company is carried on by the Official Assignee for the debenture holders or secured creditors the gross receipts resulting therefrom shall be included in the amount on which the fee is computed.

5. Where the Official Assignee performs any special duties not provided for in the foregoing clauses—

Such amount as the Court, on the application of the Official Assignee, may consider reasonable.

6. Amounts actually disbursed for travelling, keeping possession, law costs, and other reasonable expenses of the Official Assignee.

7. For the audit of the Official Assignee's or liquidator's accounts by the Audit Office—

- (a) In all cases other than those specified in paragraph (b) of this clause, a fee according to the following scale on the amount on which fees are chargeable under clause 3 of this Schedule—

SCHEDULE—*continued*

On the first \$20,000 or fraction thereof: $1\frac{1}{2}$ percent, with a minimum of \$10:

On the next \$180,000 or fraction thereof: 1 percent:

On the next \$800,000 or fraction thereof: $\frac{1}{2}$ percent:

On the next \$1,000,000 or fraction thereof: $\frac{1}{4}$ percent:

Above \$2,000,000: $\frac{1}{8}$ percent.

- (b) Where the Official Assignee or liquidator is appointed a receiver for or agent of debenture holders or secured creditors and collects, calls, or realises property for the debenture holders or secured creditors—

A fee (to be paid out of the proceeds of that property) according to the scale in paragraph (a) of this clause on the amount on which fees are chargeable under clause 4 of this Schedule.

P. G. MILLEN,
Clerk of the Executive Council.

 EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations prescribe new fees for the services of the Official Assignee and the Audit Office in company winding up proceedings. The regulations do not apply in respect of winding up proceedings that were ordered by the Court before the commencement of the regulations.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 12 August 1976.

These regulations are administered in the Department of Justice.