

Public Service Investment Society Limited Act 1998

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**An Act to enable The Public Service Investment Society Limited
to be registered as a company under The Companies Act 1993**

Preamble

WHEREAS:

- A. The Public Service Investment Society Limited is a society incorporated under The Industrial and Provident Societies Act 1908 with approximately 130,000 members:

- B. The society wishes to be registered as a company under The Companies Act 1993 with the initial shares in the company held by the members of the society:
- C. Section 14A of the Industrial and Provident Societies Act 1908 enables industrial and provident societies to be registered as companies, but requires an application for registration as a company to be signed by all the initial shareholders:
- D. It is impracticable for the society to obtain the signatures of all its members to an application for registration as a company:
- E. Registration of the society as a company in accordance with section 14A of the Industrial and Provident Societies Act 1908 may result in the company becoming liable for the payment of taxes and duties:
- F. It is not considered appropriate that liability for taxes and duties should be incurred as a result solely of a change in the legal status of the society:
- G. The society wishes that provision is made for other matters in connection with its registration as a company:
- H. Legislation is the only means by which the society can be registered as a company conveniently and without the risk of adverse tax and other consequences:
- I. The objects of this Act can be attained only by legislation:

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

1 Short Title

This Act may be cited as the Public Service Investment Society Limited Act 1998.

2 Interpretation

In this Act, unless the context otherwise requires,—

Board means the board of the society

Company means the company that exists on the registration of the society as a company in accordance with this Act

Instrument includes—

- (a) An instrument 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 an Act; and

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

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

Property means real or personal property; and includes—

(a) Choses in action and money:

(b) Goodwill:

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

Rights means rights, powers, privileges, and immunities, whether actual, contingent, or prospective

Security—

(a) Means a mortgage, charge (whether legal or equitable), 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 an obligation or liability and whether on demand or not, present or future, actual or contingent; and

(b) Includes an agreement or undertaking to give or execute whether on demand or not any of the things referred to in paragraph (a):

Society means The Public Service Investment Society Limited, a society registered under The Industrial and Provident Societies Act 1908

Undertaking means the property, rights, and liabilities of the society.

3 Society may decide to be registered as company

(1) The society may, by special resolution, decide to apply to be registered as a company under The Companies Act 1993.

- (2) The special resolution must be passed in the manner prescribed by section 14 of the Industrial and Provident Societies Act 1908.

4 Registration as company

- (1) The board may, at any time, deliver to the Registrar of Companies a copy of the special resolution and an application for registration under section 12 of the Companies Act 1993.
- (2) Section 12(1)(d) of the Companies Act 1993 (which requires the initial shareholders to consent in writing to becoming shareholders) does not apply to the application. Instead, the application and any other documents required to accompany it may be signed by 2 members of the board.
- (3) The Registrar of Companies must—
 - (a) Register the application; and
 - (b) Issue a certificate of incorporation.
- (4) The registration of the society ceases on its registration as a company and must be cancelled by the Registrar of Industrial and Provident Societies.

5 Undertaking of society belongs to company

On the registration of the company, the undertaking of the society belongs to and vests in the company.

6 Relationship with depositors

- (1) On and from the registration of the company, the relationship between the society and a depositor or an investor becomes the same relationship between the company and the depositor or investor.
- (2) The same rights and liabilities, including rights of set-off, continue to exist as between the company and the depositor or investor as existed between the society and the depositor or investor immediately before registration.

7 Status of contracts and other instruments

Contracts, agreements, guarantees, conveyances, deeds, leases, licences, and other instruments, undertakings, and notices (whether in writing or not), entered into by, made

with, given to or by, or addressed to the society (whether alone or with another person) before the registration of the company and subsisting immediately before registration are binding on, enforceable by, against, or in favour of the company, as if the company and not the society 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.

8 Status of securities

- (1) A security held by the society for a debt or other liability to the society incurred before registration of the company is available to the company as security for the discharge of that debt or liability and, if it extends to future or prospective debts or liabilities, is available as security for the discharge of debts or liabilities to the company incurred on or after registration.
- (2) The company is entitled to the same rights and priorities and is subject to the same liabilities in relation to the security as the society.

9 References to society in existing instruments

A reference (express or implied) to the society in an instrument made, given, passed, or executed before the registration of the company is a reference to the company.

10 Continuation of legal and other proceedings

- (1) An action, arbitration, proceeding, or a cause of action that was pending or that existed by, against, or in favour of the society or to which the society was a party before the registration of the company may be continued and enforced by, against, or in favour of the company.
- (2) It is not necessary to amend an application, notice, or other document to do so.

11 Effect of this Act and things done under it

Nothing in this Act and nothing done under this Act—

- (a) Places the society, the company, or any other person in breach of contract or confidence or makes any of them liable for a civil wrong; or

- (b) Entitles a person to terminate or cancel a contract or arrangement or to accelerate the performance of an obligation; or
- (c) Places the society, the company, or any other person in breach of an enactment, a rule of law, or a provision of a contract that prohibits, restricts, or regulates the assignment or transfer of property or the disclosure of information; or
- (d) Releases a surety from an obligation; or
- (e) Invalidates or discharges a contract or security.

12 Employees

- (1) On the registration of the company, each employee of the society becomes an employee of the company.
- (2) For the purposes of an enactment, rule of law, contract, or agreement relating to the employee, the contract of employment of the employee must be treated as unbroken and a period of service with the society must be treated as a period of service with the company.
- (3) The terms and conditions of employment of the employee must remain the same as the terms and conditions of his or her employment with the society immediately before the registration of the company, but they may be varied in the same manner.
- (4) An employee is not entitled to receive a payment or benefit because he or she has, as a result solely of this Act, ceased to be an employee of the society.
- (5) This section applies despite anything else in this Act.

13 Taxes and duties

- (1) For the purposes of the Inland Revenue Acts (as that term is defined in section 3 of the Tax Administration Act 1994),—
 - (a) The society and the company are the same person; and
 - (b) A transaction entered into by, and an act of, the society must be treated—
 - (i) As having been entered into by, or as an act of, the company; and

- (ii) As having been entered into, or performed by, the company at the time it was entered into, or performed by, the society.
- (2) A person must be treated as having held a voting interest or a market value interest in the company at all times from the time the person became a member of the society if—
 - (a) The person acquired the voting interest or the market value interest in the company after its registration; and
 - (b) Immediately prior to the cancellation of the registration of the society the person was a member of the society and the interest in the company was acquired solely by virtue of that membership.
- (3) The terms **voting interest** and **market value interest** have the same meanings as they have in The Income Tax Act 2004.

Subsection (3) was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

14 Application of sections 14A and 14B of Industrial and Provident Societies Act 1908

Sections 14A and 14B of the Industrial and Provident Societies Act 1908 do not apply to the society or the company.

15 Private Act

This Act is a private Act.