



ANNO DUODECIMO

ELIZABETHAE II REGINAE

A.D. 1963

No. 58 of 1963

An Act to amend the Regulations governing the Provident Fund and the Conditions and Rules governing the Women's Provident Fund of Elder Smith & Co. Limited and to extend the powers of the Trustees thereof respectively and for other purposes.

[Assented to 5th December, 1963.]

WHEREAS by a Deed dated the twenty-third day of December One thousand nine hundred and thirteen made between Elder Smith & Co. Limited (thereinafter called "the company") of the first part JAMES HARVEY and ALICK JAMES MURRAY Directors of the company and ALFRED HORSLEY CHAPMAN Secretary of the company of the second part and certain other persons of the third part a Provident and Guarantee Fund was established in connection with the business of the company for the purpose of providing pensions and other benefits for male employees of the company who became contributors to the said Fund upon their retirement from the service of the company and for their dependants in the event of their death AND WHEREAS the said Deed has been varied and altered by several Deeds of variation from time to time AND the name of the said Provident and Guarantee Fund has been changed to "The Provident Fund" and the regulations governing the same have been varied and altered from time to time by the said various Deeds of variation and the said Provident Fund is now held and administered by the present Trustees thereof namely Frederick Lloyd Dumas, Tom Elder Barr Smith, John Neil McEwin, Henry Norman Giles and Leslie Pearce upon and subject to the regulations governing the said Fund AND WHEREAS the whole of the issued shares of the company have been acquired by Elder

Preamble.

Smith Goldsbrough Mort Limited (a company duly incorporated and registered in accordance with the provisions of the Companies Act 1962) and it is proposed that the business of the company or the greater part thereof shall be taken over by or merged with the business of Elder Smith Goldsbrough Mort Limited and a substantial part of the said business has already been taken over by the said Elder Smith Goldsbrough Mort Limited and in consequence thereof it is intended that certain male employees of the company who are members of and contributors to The Provident Fund (in the Regulations governing that Fund and hereinafter called "officers") shall be transferred from the staff of the company to the staff of Elder Smith Goldsbrough Mort Limited AND WHEREAS under the said regulations officers under the said Fund who are transferred to the staff of Elder Smith Goldsbrough Mort Limited having thereby ceased to be in the service of the company will not be eligible to remain members of the said Fund and dependent upon the length of their service with the company will receive only a pension calculated as at the date of such transfer or a refund of their own contributions to the said Fund (with interest) and otherwise will lose all the benefits of their membership of the said Fund AND WHEREAS the company and the Trustees are desirous of preserving the rights of such officers in respect of the said Fund and for that purpose desire that the said Regulations be amended so as to allow such officers to continue their membership of the said Fund after transfer to the staff of Elder Smith Goldsbrough Mort Limited and it is also desired that the said Fund be continued as a Provident Fund for the benefit of male employees (both present and future) of Elder Smith Goldsbrough Mort Limited and its subsidiary companies and other companies associated with it in its business AND WHEREAS the said regulations make provision by Regulation 19 thereof for the acquisition absorption or taking over by the company of the business of or the amalgamation of the company with any other company firm or person and Regulation 20 of the said regulations makes provision for a case in which the company acquires a controlling interest in another company but no provision is made for the acquisition of the business of the company or any part thereof by another company or for the merger of the business of the company with that of another company AND WHEREAS Regulation 50 of the said regulations empowers the making of certain alterations to the said regulations as in the said Regulation 50 more particularly set forth but any alteration to the said regulations which would authorise the application or use of any part of the Fund for the provision of pensions or benefits for any persons other than male persons on the staff of the company who are contributors to the Fund and the wives widows and dependants of such persons is prohibited AND

WHEREAS if the said regulations are not amended in the manner hereinbefore recited then upon the transfer of all the present members of the said Fund to the staff of Elder Smith Goldsbrough Mort Limited the said Fund will be without members or contributors and the said Fund will have failed in its purpose and subject to payment of any pensions then subsisting will have to be wound up and distributed which would not be in the interests of the officers or their dependants AND WHEREAS in the year One thousand nine hundred and thirty-eight a Fund known as the "Women's Provident Fund" was established in connection with the business of the company for the purpose of providing pensions for certain members of the female staff of the company and in the year One thousand nine hundred and forty-nine the conditions and rules of the said Women's Provident Fund were set out in a Deed which is dated the twelfth day of July One thousand nine hundred and forty-nine and is expressed to be made between the company of the one part and PHILIP ALBERT MARTIN MCBRIDE FREDERICK LLOYD DUMAS TOM ELDER BARR SMITH and REGINALD WALTER SEEDSMAN of the other part AND WHEREAS by four several Deeds dated respectively the second day of September One thousand nine hundred and fifty-eight, the seventeenth day of October One thousand nine hundred and sixty-one, the fifth day of December One thousand nine hundred and sixty-one and the fifteenth day of January One thousand nine hundred and sixty-three the conditions and rules of the said Women's Provident Fund were varied and the said Women's Provident Fund is now held and administered by the present trustees thereof namely Frederick Lloyd Dumas, Tom Elder Barr Smith, John Neil McEwin, Henry Norman Giles and Leslie Pearce upon and subject to the conditions and rules of the said Women's Provident Fund AND WHEREAS the said Women's Provident Fund consists wholly of moneys contributed by the company from time to time and of legacies and gifts to the said Women's Provident Fund and the investments thereof and accumulations of income and no contributions to the said Women's Provident Fund are or have been made by members of the female staff of the company AND WHEREAS the conditions and rules of the said Women's Provident Fund provide (*inter alia*) that all moneys forming portion of that Fund shall be used solely for the benefit of female members of the staff of the company AND WHEREAS in consequence of the acquisition by the said Elder Smith Goldsbrough Mort Limited of the whole of the issued shares of the company and the proposal that the business of the company or the greater part thereof shall be taken over by or merged with the business of the said Elder Smith Goldsbrough Mort Limited as hereinbefore recited it is intended that certain of the women now on the staff of the

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company shall be transferred to the employ of the said Elder Smith Goldsbrough Mort Limited AND WHEREAS women now on the staff of the company who are transferred to the employ of the said Elder Smith Goldsbrough Mort Limited will thereupon cease to be on the staff of the company and (save in the case of any woman who at the date of transfer has completed fifteen years' service with the Company and is aged fifty-five years or upwards) they will not be entitled to receive any benefit from the said Women's Provident Fund AND WHEREAS in further consequence of the matters aforesaid it is also intended that after the commencement of this Act the company will not take any further females into its employ and it is anticipated that from time to time the moneys and investments of the said Women's Provident Fund will become more than adequate to pay and discharge all pensions for the time being subsisting and to make proper provision for any pensions which may subsequently become payable pursuant to the said conditions and rules to women for the time being still on the staff of the company and that in due course the stage may be reached when there will be no former female employees of the company entitled to a pension and no women on the staff of the company AND WHEREAS the said Elder Smith Goldsbrough Mort Limited proposes to establish in connection with its business a Fund for the purpose of providing pensions and other benefits for female employees of that company and its associated companies AND WHEREAS it is considered desirable that the rights of women now on the staff of the company to receive pensions pursuant to the said conditions and rules should be preserved to them notwithstanding that they may be transferred to the employ of the said Elder Smith Goldsbrough Mort Limited and also that any surplus moneys or investments of the said Women's Provident Fund from time to time remaining after making provision for all pensions for the time being subsisting and for all pensions which may subsequently become payable pursuant to the said conditions and rules should be transferred to the trustees of the Fund to be established by the said Elder Smith Goldsbrough Mort Limited for the benefit of female employees as aforesaid or should be applied for the purpose of establishing such a Fund to the end that such surplus moneys or investments should be used for purposes as near as the circumstances will admit to those for which the same were originally intended AND WHEREAS for the reasons aforesaid it is desirable to authorise such amendments of and additions to the regulations governing the Provident Fund and to the conditions and regulations governing the Women's Provident Fund as are hereinafter set out: NOW THEREFORE BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:—

1. This Act may be cited as the "Elder Smith & Co. Limited Provident Funds Act, 1963". Short title.

2. In this Act—

Interpretation

"the company" means Elder Smith & Co. Limited :

"The Provident Fund" means the Provident Fund established and administered in connection with the business of the company for the purpose of providing pensions and other benefits for male employees of the company more particularly described in the preamble to this Act :

"the regulations" means the regulations governing The Provident Fund :

"The Women's Provident Fund" means the Fund established and administered in connection with the business of the company for the purpose of providing pensions for certain members of the female staff of the company more particularly described in the preamble to this Act :

"the Principal Deed" means the Deed dated the twelfth day of July, One thousand nine hundred and forty-nine, setting out the conditions and rules of the Women's Provident Fund.

3. Regulation 1 of the regulations is amended—

Amendment of
regulation 1 of
The Provident
Fund.

(a) by inserting after the word "company" in the definition of "Officer" or "Officers" therein the words "or of an associated company" ;

(b) by inserting after the definition of "The U.K. Fund" therein the following definitions :—

"the company" means and includes Elder Smith & Co. Limited and any successor company referred to in Regulation 49a which pursuant to that Regulation shall become "the company" for the purposes of these Regulations :

"associated company" means

(a) any company of which the company is a subsidiary or which is a subsidiary of the company or a subsidiary of a company of which the company is a subsidiary and which has entered into a covenant with the Trustees to be bound by these Regulations as an associated company ;

(b) any company in which the company holds an interest and which the Board with the assent of the Trustees has declared to be an associated company and which has entered into a covenant with the Trustees to be bound by these Regulations as an associated company.

For the purposes of these regulations a company shall be deemed to be a subsidiary of another company if it is a subsidiary of that other company within the meaning of the Companies Act, 1962, of the State of South Australia or any other Act amending the same or substituted therefor and for the time being in force.

New Regulations for The Provident Fund.

4. The following regulations are inserted in the regulations after Regulation 49 :—

49a. (a) If the business or a substantial part of the business of the company shall be or shall have been acquired by or merged with the business of another company (hereinafter referred to as the "successor company") with a view to such business or such part thereof being carried on by the successor company the company and the Trustees may enter into a deed with the successor company which shall provide that the successor company shall take the place of the company in relation to the Fund and that the Fund shall be continued upon the terms of the said Deed dated the 23rd day of December 1913 (hereinafter referred to as "the original Trust Deed") and of these Regulations (as amended from time to time) and that the successor company shall be bound thereby in the same manner as if the successor company were a party to the original Trust Deed in the place of the company and upon the execution of such deed the company shall cease to be "the company" for the purposes of the original Trust Deed and of these Regulations but may become an associated company and the powers authorities and discretions by the original Trust Deed or by these Regulations conferred upon the company and the Board of Directors thereof shall cease to be exercisable by the company or the Board of Directors thereof and the successor company shall become and be deemed to be "the company" for the purposes of the original Trust Deed and of these Regulations and be bound thereby accordingly and the powers authorities and discretions by the original Trust Deed or by these

Regulations conferred upon the company and the Board of Directors thereof shall thereafter be exercisable by the successor company and the Board of Directors thereof respectively.

(b) The powers and authorities given by this Regulation may be exercised notwithstanding that the company may be in course of being wound up and the Board of Directors of the company in office at the commencement of the winding up may notwithstanding such winding up continue to act for the purposes of this Regulation.

(c) The provisions of this Regulation shall apply *mutatis mutandis* if and so often as the business or a substantial part of the business of a successor company shall be acquired by or merged with the business of another successor company.

49b. If an officer is transferred from the employment of the company to that of an associated company or vice versa or from the employment of one associated company to that of another associated company then for the purposes of these Regulations the continuity of his service shall be deemed not to have been broken by reason only of such transfer and the period of his service with the company (hereinafter referred to as "the transferor company") by which he was employed immediately before the transfer (including any period of service with some other company which by virtue of this Regulation is deemed to have been service with the transferor company) shall be deemed to be service with the company to whose employment he is transferred. All provisions of these Regulations referring to an officer leaving the service of the company or of an associated company shall be read subject to the provisions of this Regulation.

5. Regulation 50 of the regulations is amended by inserting the words "or to an associated company" immediately after the words "the company" in sub-paragraph (e) thereof.

Amendment of Regulation 50 of The Provident Fund.

6. The Principal Deed as amended by the four several Deeds referred to in the Preamble to this Act is amended as follows, that is to say:—

Amendment of conditions and rules of The Women's Provident Fund.

(a) By inserting at the end of clause 1 thereof the following definition—

"associated company" means and includes any company of which the company is a subsidiary or which is a subsidiary of the company or of a company of which the company is a subsidiary. A company shall be deemed to

be a subsidiary of another company if it is a subsidiary of that other company within the meaning of the Companies Act, 1962, of the State of South Australia or any other Act amending the same or substituted therefor for the time being in force. ;

- (b) by striking out paragraph (e) of clause 4 thereof ;
(c) by inserting therein after clause 5 thereof the following clause :—

5a. If a woman on the staff of the company shall be transferred from the employment of the company to that of an associated company then for the purposes of these presents she shall not be deemed by reason only of such transfer to have left the service of the company and the continuity of her service shall be deemed not to have been broken by reason of such transfer nor by any subsequent transfer to the service of the company or of another associated company and the period of her service with any such associated company shall be deemed to be service with the company. ;

- (d) by inserting therein after clause 10 thereof the following clause :—

11. If at any time the Board shall be of opinion that the moneys in the fund are more than sufficient to provide for payment of the pensions then payable hereunder to women who were formerly on the staff of the company and to provide for the pensions that may become payable in the future to women then on the staff of the company or who are then on the staff of an associated company and by virtue of the provisions of clause 5a. are deemed still to be in the service of the company the Board may give notice in writing of such its opinion to the Trustees and thereupon the following provisions shall have effect :—

- (a) the Trustees shall set aside a portion of the moneys in the fund or of the investments thereof sufficient to answer the pensions then payable hereunder and the pensions which may thereafter become payable to women then on the staff of the company or of an associated company as aforesaid and the moneys or invest-

ments so set aside shall be retained by the Trustees and applied by them from time to time in payment of such pensions ;

- (b) the balance of the fund or of the investments thereof shall be paid or transferred by the Trustees to the trustees of any fund which shall have been established by Elder Smith Goldsbrough Mort Limited for the purpose of providing pensions benefits or retiring allowances for female employees of that company and its associated companies or at the discretion of the trustees may be applied by them for the purpose of establishing such a fund ;
- (c) as and when any pensions referred to in sub-paragraph (a) hereof shall cease to be payable so much of the moneys and investments retained pursuant to sub-paragraph (a) hereof as shall not be required to answer any subsisting pensions and any pensions which may thereafter become payable as aforesaid shall be disposed of by the Trustees in the manner set forth in sub-paragraph (b) hereof ;
- (d) the amount to be retained by the Trustees pursuant to sub-paragraph (a) hereof and the amount from time to time to be disposed of pursuant to sub-paragraph (c) hereof shall be determined by an actuary appointed by the Board and the Trustees shall not retain a smaller amount or (as the case may be) dispose of a larger amount than shall be so determined ;
- (e) if at any time or times after notice shall have been given to the Trustees as aforesaid the moneys retained by them shall prove insufficient for payment in full of the pensions for the time being payable hereunder the deficiency shall be made good by the company ;

(f) if and when all pensions payable hereunder shall have ceased and there shall be no woman on the staff of the company and no woman on the staff of an associated company who by virtue of the provisions of clause 5a. shall be deemed still to be in the service of the company any moneys or investments remaining in the hands of the Trustees shall be disposed of by the Trustees in the manner provided in sub-paragraph (b) hereof and the fund shall be wound up.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

EDRIC BASTYAN, Governor.