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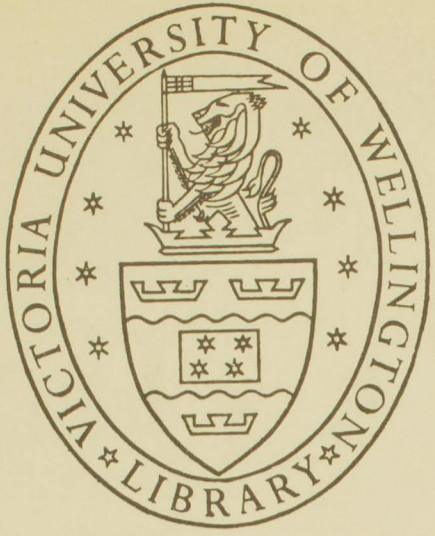
THE FRAUDULENT COMPANY - A CASE STUDY  
PACIFIC LEND LEASE LTD. (1963-1970).  
PROPOSALS FOR REFORM OF PROCEDURES  
FOR INVESTIGATING COMPANY FRAUDS.

By  
Peter E. C. DOONE.

A Research Paper submitted to the Faculty of  
Law, Victoria University Wellington in ful-  
filment of the requirements for the LLM unit  
of Commercial and Company Fraud: 1.10.75.

Supervisor: Mr. R. A. MOODIE.

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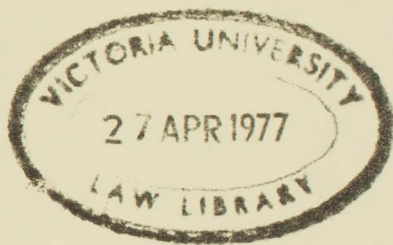
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8. Mr. E. GOULD, Official Assignee, Commercial Affairs Division, Justice Department Wellington.

INTRODUCTION.

This paper has been prepared with two objectives in mind. Firstly to identify and publicise a problem which trends in recent years have shown to be an increasing one, and secondly to discuss and evaluate more effective methods to surmount or at least control it.

The problem is that of the fraudulent company, or more specifically fraudulent individuals acting behind the shield of the corporate structure.

To this end a case study will be undertaken as illustrative of some of the devices of doubtful legality which are used in order to provide a profit for those associated with the running of a limited liability company. The fraudulent company generally will then be discussed followed by recommendations for improved machinery to combat such activity.

The paper is intended to be complementary to an associated paper by the same author.<sup>1</sup> The theme of that paper is that the law too easily and generously gives the privilege of limited liability to persons forming a company with no real supervision of the subsequent activities of that company. This has allowed a haven for the unscrupulous and fraudulent. The associated paper deals with proposed amendments to the law relating to companies while the present paper has the reform of the machinery for enforcement of those laws in mind.

The author is a detective in the Wellington C.I.B. but any views expressed in this paper are purely personal and in no way reflect those of the Police Department.

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1. The Private Company - Controls on Private Companies and their Directors. Selected areas for reform. P.E.C. DOONE, Research paper submitted to Victoria University Wellington 1975 towards LL.M degree.

PART ONE: PACIFIC LEND LEASE LTD; A CASE STUDY.

CHAPTER ONE: The company and its operations.

Pacific Lend Lease Ltd. (hereafter referred to as P.L.L. Ltd.) was a registered private company enjoying the privilege of limited liability which carried on business from 1963 until late 1970 when it collapsed financially. It was placed in receivership and subsequently liquidation. As a result of certain irregularities discovered by the receiver inquiries into the activities of the company and its officers were commenced by the police. These resulted in a number of charges being laid against persons including the directors.

The company operated principally from Auckland but branches were established in Hamilton and Palmerston North. It had two directors who will be referred to in the course of the paper as P, and T.

A capital of \$20,000.00 was subscribed and divided among a number of shareholders. Each share was valued at \$2.00. P, the principal director held 7,850 shares, his co director T 100, a company, T. INVESTMENTS LTD, of which T was the sole director, 50 and an associate of P who played no active role in the management of the company 2000.

At the date of receivership the capital of \$15,700.00 represented by P's shareholding had not been paid but the remainder of the shares were fully paid up.

The business of the company consisted of financing the leasing of motorvehicles by members of the public and commercial enterprises. The company commenced business with few capital or other resources and in order to facilitate the running of its operations the company advertised for and received cash investments from finance companies and private investors. These funds were



then used to finance the purchase of motor vehicles for leasing to its clients.

The market for leasing motorvehicles arose from the strict requirements laid down by the Government for the purchase of motor vehicles<sup>2</sup> which provided a minimum deposit varying from one half to two thirds of the total purchase price and a maximum period for the payment of the balance which varied from one to two years during the time the company operated.

The companies, finance organisations and private individuals which dealt with P.L.L. fell into one of two categories. Firstly those interested in investing money with the company and secondly those wishing to obtain the use of a motor vehicle without being bound by the strict requirements of the law relating to deposit and repayment under conventional hire purchase agreements.<sup>3</sup> I shall discuss the former category first.

P.L.L. advertised extensively in newspapers throughout New Zealand seeking investment funds and offering a high rate of interest; 10% flat which amounts to 19.6% compound. A sample of such advertisements is contained in appendix 1. Prospective investors were invited to write to the company in Auckland or one of its branches in Hamilton and Palmerston North for further details. The company replied with a four page brochure, a copy of which is attached as appendix 2. Its main points were:

(a) The purpose of the investment was to finance the leasing of motor vehicles to clients of the company.

(b) A minimum of \$1250.00 was required and thereafter multiples of \$50.00.

(c) The investment would be used to purchase a car which would be leased out to a particular client.

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2 Hire Purchase and Credit Sales Stabilisation Regulations 1957.

3 Ibid.

(d) The benefits under the lease would be assigned to the investor by a deed of assignment <sup>4</sup> which would be registered in the Supreme Court.

(e) The ownership in the vehicle would be vested in the investor.

(f) The company would guarantee payments in default of the lessee of income under the lease agreement.

(g) All investors deposits were to be paid into the company's investment account and held in Trust<sup>5</sup> for the investor until a motor vehicle lease assignment securing the investor's deposit was executed in his favour.

(h) Interest was payable from the date the investment was deposited with the company.

(i) Investors were to be free to surrender their investment on one months notice.

(j) All the expenses of administration of the agreement, and maintenance of the vehicle were to be the responsibility of the lessee. All the investor had to do was to provide the capital for which he would receive all the income that capital could return.

As a result of this advertising a steady flow of investment capital was received by P.L.L. Payments were made to investors on a monthly basis which included both principal repayment and interest.

The company had no difficulty in obtaining clients to lease the vehicles offered. Many clients were business firms who wanted the use of a number of vehicles but either did not wish to, or could not purchase them. The other category of client was the private individual who wished to have a car but who could not afford the necessary deposit.

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4 Sample copy attached as appendix 3.

5. **Emphasis added.**

To ensure a steady flow of clients to lease vehicles purchased with invested money P.L.L. operated in close association with a number of car dealers. The system had advantages for both P.L.L. and the car dealer concerned. If a purchaser approached a car dealer but did not have the required deposit for a particular vehicle the dealer would suggest that an alternative arrangement of leasing the vehicle could be arranged which would not require the otherwise substantial deposit. An explanation of how the lease was to operate was then given the prospective lessee. If the lessee was agreeable to the deal his particulars were communicated to P.L.L. Ltd. where one or other of the directors made a decision whether or not to accept the lessee as a client of the company. If a positive decision was made, which was almost always the case, P.L.L. purchased the car from the dealer, leased it to the lessee and assigned the interests under the lease to one of its investors. For the purpose of obtaining lessees P.L.L. supplied some of the car dealers with blank leasing agreements which were completed by the dealer and client and then forwarded to P.L.L.<sup>6</sup>

The conditions contained in the leasing agreements were extremely restrictive and weighted heavily in favour of the lessor. In fact the lease in its entirety can be described as oppressive towards the lessee. Its principal conditions were:

- (a) The term of the lease.<sup>7</sup>
- (b) The rental per year and per month.<sup>8</sup>
- (c) An irrevocable authority in writing authorising the lessee's bank to pay the monthly instalments to the lessor. This was to be collateral security for such payments and did not affect the lessee's liability to pay.<sup>9</sup>

- (d) The lessor may at reasonable times enter on land
- - - - -

6 A sample lease agreement is attached as appendix 4. These agreements were the standard ones used by P.L.L. throughout its operations.

7 Ibid. Term to be two years in this example.

8 Ibid. £690.00 and £57.50 respectively.

9 The terms bailor and bailee are used in the agreement but for the sake of simplicity lessor and lessee have been substituted.

where the vehicle is kept for the purpose of viewing and inspecting its condition.

(e) Lessee not to allow persons to drive the vehicle who donot hold an appropriate drivers licence or who are under the influence of liquor.

(f) Lessee to keep vehicle registered and ensure all persons using it comply with all statutory requirements affecting the vehicle.

(g) Lessee not to part with possession, sublet or assign any interest in the vehicle.

(h) Lessee to pay costs of fuel and maintenance.

(i) If the lessor is of the opinion that the lessee is not keeping the vehicle in good running order, repair and condition he may terminate the lease or alternatively remove and restore the vehicle at the lessee's expense and without affecting the lessee's obligation to pay rent. Lessor may retain possession of the vehicle until payment for repairs <sup>10</sup> has been made. This also does not affect the lessee's obligation to continue rental payments. Should the repairs not be paid for within seven days the lessee is required to pay interest of 50% per annum from the date the account was rendered until the date it is paid.

(j) The Lessee indemnifies the lessor against any loss of, or damage to the vehicle from whatever cause.

(k) Lessee to keep the vehicle insured.

(l) No claim against the lessor for inconvenience, loss, damage or injury caused through the vehicle suffering or developing any defect, fault or damage, shall be available to the Lessee.

(m) At the termination of the lease the lessor is to return the vehicle to the lessor.

(n) No warranty or condition, express or implied as to quality, description, fitness or otherwise accompanies the vehicle. Any representation made to the lessee and not evidenced in writing by the lessor is of no effect.

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10 The lessee has the obligation to pay for such repairs.  
Ante, p. 8 (h).

(o) Arrears in rent attract interest of 50% per annum. Similar interest is also payable by the lessee in respect of any payment incurred by the lessor in ensuring the observance of any covenant, agreement or condition to be complied with by the lessee.

(p) The lessor may repossess the vehicle without notice and may enter on any land for that purpose on any of the following grounds;

(i) The lessee defaults in punctual payments of monthly instalments or other monies payable under the instrument.

(ii) The judgement of any Court against the lessee remains unsatisfied for one day.

(iii) The lessee becomes bankrupt.

The lessee's liability for any breach remains unaffected by any repossession under these provisions.

(q) Lessee is liable to the lessor for all losses incurred in the event of a premature determination of the lease.

(r) Lessee to pay all costs of registration of the instrument.

(s) Lessee acknowledges that no contract or agreement has been made between him and the owner under which property in the vehicle will or may pass to him.

(t) Any repairs, accessories or goods supplied to the vehicle are deemed to become part of it.

(u) The lessee's rights against the lessor shall not extend to any assignee of the lessor's interest in the agreement and/or vehicle.<sup>11</sup>

(v) A 'residual value' is specified for the vehicle at the termination of the lease.<sup>12</sup> Provision is also made for the assessment of a market value, which is called a 'terminal value'. Any excess over the residual value up to the terminal value is paid to the lessee.

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11 An additional protection for the investor.

12 \$50.00 in the example contained in appendix 4. In most lease agreements studies \$50.00 was the standard sum provided for the residual value. In some leases however and not necessarily in respect of more expensive vehicles the residual value was quite substantial, often exceeding \$1000.00.

On the other hand should the residual value exceed the terminal value the amount of such excess is payable by the lessee to the lessor.

(w) The provisions for assessment of a terminal value for a vehicle are:

(i) The lessor and lessee may agree on a terminal value.

(ii) If no agreement is reached the lessee is at liberty to obtain written offers from any licensed motor vehicle dealer whose place of business is not more than ten miles from the Chief Post Office at Auckland at any time within seventy-two hours after the lessor and lessee have failed to agree.

(iii) If no such written offer is obtained then the figure nominated by the lessor is deemed to be the terminal value of the vehicle.

(x) Any amount payable by the lessee to the lessor under conditions in (v) and (w) above attract interest of 20% per annum from the third day after the amount is assessed until payment is made.

In addition to the cash payable under a lease the lessee was charged a service fee by P.L.L. This fee was designed to cover its administration costs and on the face of the company's operations was their only source of income; all investors funds were used in the purchase of a vehicle and the whole of the income earned under a lease was to be paid to the investor.<sup>13</sup> The fee was charged as a 10% 'deposit' of the total money payable under a particular lease.

From the conditions of the lease outlined it is apparent that a lessee is at a serious disadvantage vis-a-vis the lessor. He pays a 10% deposit, a high rental, all costs incurred under the agreement as well as running and maintenance costs in respect

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13

By virtue of the deed of assignment attached as appendix 3.

of the vehicle. He has no right to purchase the vehicle on the termination of the lease.<sup>14</sup> Instead a complex procedure is provided which may or may not result in a payment by the lessor to the lessee.<sup>15</sup> Heavy sanctions may be applied to the lessee in the event of even minor default by him and he may have the vehicle repossessed without notice on what may be spurious grounds. He has no remedy if this occurs but still remains liable for his lease payments. Finally he is charged what can only be described as an exorbitant rate of interest in respect of arrears in rent or other amounts which may become payable under the agreement.

It was only through this restrictive document that P.L.L. was able to offer such an apparently attractive investment scheme. As a result there was no shortage of investment finance from both private investors and finance companies.

Despite the unfavourable terms of the leasing agreements, such transactions became popular and there was no shortage of persons prepared to take out leases. As a result the business of the company expanded at a rapid pace.<sup>16</sup>

14            Ante, p.9 (s) - - - - -

15            Ante, pp. 9-10 (v) and (w);  
but these conditions are also restrictive and may be easily manipulated by the lessor in his favour especially with respect to lessees outside the Auckland metropolitan area as the written offer must be from a dealer within 10 miles of the Chief Post Office at Auckland and must be supplied within 72 hours of the parties failing to agree. What amounts to a "failure to agree" is very vague and not further defined. The result is that a lessor could act unilaterally after 72 hours and name any amount as the 'terminal value'.

16            As illustrative of the extent of the activities of P.L.L. the brochure attached as appendix 2 alleges that over the three year period prior to 1970 the company had arranged leases for a total sum well in excess of \$4,500,000 and the total number of vehicles leased was well into the thousands. (see under "General" p.1.)

The increase in the company's workload was not however accompanied by a sufficient expansion of staff or records system. This resulted in the directors being unable to maintain an adequate control of income and expenditure or to assess accurately the profitability or otherwise of their venture. Some records were kept by office staff of investments arriving at P.L.L. and also of leases undertaken and assigned to investors but virtually no accounting records were maintained. Four separate accounts with different banks were operated by the company, all being used as trading accounts. There was no "trust" account in the legal sense of the word where investors funds could be deposited until needed for the purpose of purchasing a car for leasing to a client. All investments were paid into one or other account and trading expenses paid from them. Practically, the only record of outgoing payments were cheque butts which in many cases were left blank.

The company continued to expand until 1969 when demand for leases and flow of investment capital began to decline. Expenses were however increasing at a more rapid pace. This latter aspect can be explained in part by the high depreciation on the vehicles leased together with a high proportion of prematurely determined leases. Although ample provision had been made under the leasing agreements to meet this contingency the company did not or could not proceed against defaulting lessees to recover their losses. The directors and staff continued to enjoy good salaries and there is evidence to suggest that both P and T drew considerable funds from the company which could not later be traced.

One factor which may have contributed to the decline in investment finance and the popularity of leasing motor vehicles was a decision of the Court of Appeal in respect to the validity of some leasing agreements under the Hire Purchase and Credit Sales Stabalisation Regulations 1957.<sup>17</sup> The relevant facts of the case are that during 1969 a number of firms operated a system for the purchase of a motor vehicle known as "lease to own" in an effort to avoid the strict requirements of the above regulations.<sup>18</sup>



Over a set period under the appearance of a leasing agreement rentals were in fact paid on a vehicle not merely for present hire but also by way of capital payments for the ultimate purchase of it. At the termination of the lease the lessee had the right to purchase the car for a nominated sum. In Quartel's case<sup>19</sup> Q took proceedings against a finance company to recover monies paid by him under a similar leasing agreement to that described above on the grounds that it was in fact a hire purchase agreement under the regulations<sup>20</sup> on the ground that it contained a provision under which the lessee may buy the goods or under which the property in the goods will or may pass to the lessee.<sup>21</sup> Alternatively he claimed the agreement was void by virtue of a separate regulation<sup>22</sup> on the ground that the transaction was for the purpose of or had the effect of directly or indirectly, defeating, evading, avoiding or preventing the operation of the Regulations.<sup>23</sup>

The Court of Appeal held that the lease was in fact void but only under Regulation 8<sup>24</sup> and not Regulation 2.<sup>25</sup>

19 Supra, n. 17.

20 Ante, n. 2. Regulation 2; "' Hire Purchase Agreement ' means any agreement for the bailment of goods under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee, whether on the performance of any act by the parties to the agreement or any of them or in any other circumstances; and includes any agreement for the bailment of goods, with or without expressly giving to the bailee an option to buy the goods, under which instalments are payable by the bailee during a specified or ascertainable period at the end of which the bailee may continue the bailment without any payment or subject to the payment of a nominal rent only."

21 Ibid.

22 Ante, n. 2. Regulation 8; "A person shall not -  
(a).... (b) Enter into any transaction or make any contract or arrangement, whether orally or in writing, for the purpose of or having the effect of, in any way, whether directly or indirectly, defeating, evading, avoiding or preventing the operation of these regulations in any respect."

23 Ibid.

24 Ibid.

25 Ante, n. 20.

The Court said that the arrangement was far removed from an ordinary hiring agreement. It was designed for and had the effect of enabling the disposal of second hand cars on terms which the law forbade.<sup>26</sup>

P.L.L. were confident however that their agreements were not void under the regulations quoted above,<sup>27</sup> no doubt on the ground that there was no agreement that the title to the vehicle which was the subject of a lease would or could pass to the lessee at the termination of the lease.<sup>28</sup> There were also other differences between P.L.L.'s leases and those which were the subject of analysis in Quartel's case<sup>29</sup> but these notwithstanding it could still be argued that the primary purpose of P.L.L.'s business was to defeat the intention of the Regulations.<sup>30</sup> In any event following the decision the volume of investments from finance companies and other commercial enterprises diminished with the result that P.L.L. greatly increased its efforts to attract private investment. Advertising was increased and further efforts were made in Hamilton and Palmerston North where branches had been established specifically for this purpose.

Despite these efforts which were partially successful in maintaining a flow of investment, the company experienced liquidity problems which had a number of consequences.

Firstly the quality of vehicle purchased and leased to secure investors funds deteriorated, particularly those assigned to private investors. This resulted in an increasing number of prematurely determined leases from dissatisfied lessees. In many cases the company's rights against these lessees were not enforced. Many of the vehicles repossessed were damaged to a greater or lesser extent and were worth considerably less than when purchased by P.L.L.

Secondly, with a decreasing ability to repay the

26 Supra, n. 17 at 945.

27 Ante, n. 20 and n. 22. 28 Ante, p. 9(s).

29 Supra, n. 17. 30 Ante, n. 2.

guaranteed return to investors, further avenues of raising finance were necessary. This was achieved in part by a greater effort through advertising to obtain investment finance. Another device used was the multiple assignment of the interest in one vehicle to a number of investors as security. This possibility existed due to the increasing number of leases which lapsed for one reason or another before their full term. An investor would specify the term for which he was prepared to advance money to the company. P.L.L. would then arrange for a lease to be executed for a corresponding period. During the latter stages when a lease lapsed the investor who had been assigned the interest under the lease was not informed. Instead P.L.L. would lease the vehicle to another lessee and assign the interest under that lease to a new investor. Some payments under the original lease were made to the first investor but it rapidly became obvious that one vehicle could not return sufficient capital to satisfy more than one investor. Subsequent inquiries revealed that the number of vehicles which were the subject of multiple assignment of leases amounted to several hundred and in some instances a single vehicle was the subject of up to nine leases all assigned to different investors.

As the company's liquidity problems deteriorated P.L.L. used another method of ensuring a continued flow of investment capital. This was to effect leases in respect of vehicles of little or no value and assign the interest thereunder to an investor for a sum grossly exceeding the value of the car. The company could not find bona fide lessees to take out such leases so the company employed the following method. P.L.L. would purchase a vehicle and execute a lease agreement with a company T. INVESTMENTS LTD. which was a shareholder in P.L.L. and of which one of the directors of P.L.L., T, was the sole director.<sup>31</sup> T would sign the lease on behalf of T. INVESTMENTS LTD. and P, the other director of P.L.L. signed on behalf of P.L.L. LTD. The interest under the lease was then assigned as security to an

investor. An example of this type of transaction was a 1956 Morris Minor which at the time of purchase by P.L.L. was valued at \$120.00. It was leased by T. INVESTMENTS LTD. for \$600.00 and the lease was assigned to an investor for that amount.

From July 1970 the financial position deteriorated rapidly. Investment funds were still being sought and received from private sources but were used to pay off existing debts and in most cases were never used to finance new leases which would be able to repay the investor. Funds were placed into one or other of the accounts and were almost immediately lost in company expenses or repaying existing creditors.

The situation became progressively worse until in November 1970 when the company was in a hopeless financial mess one of the directors P, placed it in receivership.

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CHAPTER TWO: In Liquidation. The subsequent police inquiry.

The appointed receiver of P.L.L. had in fact been associated with the company in discounting many of its lease agreements. He calculated the financial position of P.L.L. at that time as follows.

There were three debenture holders who were owed a total of \$30,000.00 on debentures held against P.L.L.'s assets.

Other secured creditors were owed \$5,300.00.

Ascertained unsecured creditors were owed \$239,912.00.

In addition there were a large number of partly secured creditors who held lease agreements which had been assigned to them but who did not receive sufficient from their security to cover the amount advanced to P.L.L. The total contingent liability arising from guarantees given by P.L.L. to creditors who had discounted their lease agreement could only be estimated at about \$3,000,000.00.

There were several preferential creditors for salaries, wages and income tax who were owed a total of \$1,485.66.

In contrast property owned by the company totalled \$59,012.00 but since the bulk of this property consisted of unsecured loans by P.L.L. some in respect of its directors, this property was only expected to produce about \$2,512.00.

Book debts owing to the company for repairs to lease vehicles and payments of outstanding lease instalments were estimated at \$500,000.00. The figure could only be estimated as there were no reliable records on which to assess a true figure and it was apparent that these debts could never be collected.

Unpaid calls on P.L.L.'s shares amounted to \$14,712.00 in respect of P, and \$66.00 in respect of T.<sup>32</sup>

In short, from a contingent liability of over three

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and a quarter million dollars, the company could not hope to settle as much as one half of one percent of its creditors and that would not even cover the preferential and secured creditors.

The company was subsequently placed in liquidation and such assets as were able to be realised paid to the secured creditors. As a result of a number of irregularities concerning investment money advanced to the company the Police commenced an inquiry early in 1971. The inquiry was initially handled by the Auckland Fraud Squad but when the extent of the investigation was realised a Detective Inspector and Detective Senior Sergeant were assigned on a more or less full time basis.

Numerous difficulties were encountered in the course of the investigation which was the first really extensive inquiry of this nature which had been undertaken by the Police in New Zealand. The first major problem was the lack of any meaningful books of account or other records of the company which could lead to an accurate reconstruction of the activities of the company. Some of these had never existed while others were alleged to have been lost in a burglary to the company's offices. Not surprisingly little co operation was obtained from the directors of the company who immediately sought legal advice. Some of the staff who had worked with P.L.L. disappeared and could not be located.

The second major problem was the fact that the potential witnesses and complainants were scattered throughout New Zealand which necessitated files being forwarded to many C.I.B. offices for inquiry. Some witnesses were willing to assist while others were not and the result was a considerable delay in completing the investigation.

It was an impossible task to reconstruct the entire operations of the company so only a few lines of inquiry in relation to which criminal charges could be more easily proved were selected. These were:

(a) Theft by misappropriation<sup>33</sup> in respect of money

received by P.L.L. in their last few months of operation which should according to their brochure<sup>34</sup> have been held in trust for the investor until a lease agreement had been assigned to him. In fact this money was used for general trading purposes and as most accounts were consistently overdrawn such funds were lost immediately they were deposited.

(b) Theft as a servant<sup>35</sup> in respect of the manager of the Hamilton branch of P.L.L. who had retained investment funds contrary to the terms of the brochure<sup>36</sup> for his own purposes. The money retained was in fact owed to him by P.L.L. but that did not justify his misappropriating those funds to another company of which he was the director.

(c) Obtaining investment money by false pretences<sup>37</sup> on the basis of representations made by P.L.L. in its advertising that they could guarantee a return at a time when the directors of the company must have known it to be insolvent.

(d) Further false representations in relation to the value of some vehicles which were subject to lease agreements between P.L.L. and T. INVESTMENTS LTD.<sup>38</sup>

(e) Theft as a servant<sup>39</sup> in relation to expenditure by both T and P of company funds for purposes unconnected with company business. Inquiries into this aspect revealed an extraordinary number of cash cheques drawn by both directors with blank and incorrectly entered butts.

To assist in the inquiry the accounts of the company were reconstructed as far as possible from bank records and an analysis of these revealed that the company was insolvent at least in 1969 and one expert opinion was that the company ceased to be a viable proposition financially shortly after it commenced business in 1963 but due to the high rate of investment capital flowing in,

34 See appendix 2. 35 Crimes Act 1961 s. 227(b)ii.  
36 Ante, n. 34. 37 Crimes Act 1961 s. 246.  
38 Ante, pp. 15-16. 39 Ante, n. 35.

it was seven years before the company finally collapsed. This opinion is corroborated by the receivers calculation of contingent debts at the date of receivership amounting to more than three and a quarter million dollars and virtually no realisable assets.

The investigation took two years to complete and involved detectives from all over New Zealand. It was fortunate that the officer in charge of the case was a law graduate as well as an experienced detective and was able to understand as well as effectively deal with the complex issues involved.

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CHAPTER THREE: Court Proceedings.

The charge against the manager of the Hamilton branch of P.L.L. was dealt with separately from the main group of charges in respect of the directors of the company P.L.L. and is of little consequence for the purposes of this paper.

The Lower Court hearing against P and T took four weeks and involved hundreds of witnesses from throughout the country. Both were charged with a considerable number of charges from each category above<sup>40</sup> and were sent on to the Supreme Court for trial. The number of indictments dealt with at the trial was reduced to about half those at the preliminary hearing as precedent was produced that no more than twenty eight indictments could be proceeded with at any one trial. With this in mind I now turn to a brief discussion of each category of charges against the directors of P.L.L. LTD.

THEFT BY MISAPPROPRIATING PROCEEDS HELD UNDER  
A DIRECTION.

Both P and T were charged with 20 counts under this section.<sup>41</sup> The offence comprises five separate ingredients;

(a) It must be proved that each accused received a valuable security. In this instance a cheque is a valuable security by definition.<sup>42</sup>

(b) That the cheques were received with a direction that the proceeds should be applied to a particular purpose specified in that direction.

(c) That the accused applied the proceeds to another purpose contrary to that direction.

(d) That the misappropriation or misapplication was done fraudulently.

40 Ante, chapter two, pp. 18-19.

41 Crimes Act 1961 s. 224. 42 Crimes Act 1961 s. 2.

(e) That if the proceeds were applied as in (c) above this was done in violation of good faith.

The basis of these charges was that the company and as the accused were the directors, they had received investment monies under a written direction contained in the brochure<sup>43</sup> that the proceeds were to be applied to the purchase of motor vehicles to be later leased and assigned to an investor. A further direction was that the investment was to be held in trust for the investor until an assignment of a lease was made to him. In neither case was this true. A breakdown of the four accounts operated by P.L.L. revealed that all were in fact trading accounts which were used to pay the general creditors of the firm as well as investors. This was particularly true with respect to the investments which were the subject of the indictments against the accused. These were never used to purchase motor vehicles but in most cases were lost immediately by being paid into already overdrawn accounts. Neither direction was, therefore, complied with.

The Crown further alleged that the circumstances of the receipt and the subsequent disposal of the investment funds was sufficient to prove the violation of good faith and fraudulent elements.

The defence advanced by the accused rested on two grounds. Firstly that nothing done by them had been dishonest or fraudulent. They admitted to being grossly inefficient and muddled businessmen without any meaningful system of office management but denied throughout any imputation of lack of bona fides.

Secondly that the investments referred to in the indictments had not in fact been physically received by the accused as they had been channelled through the Hamilton office of P.L.L. to the office secretary in Auckland without being actually handled by either accused. Hence the first element of receipt was not

established.

The accused T was able to rely on these defences to a greater extent than P, as T was the minority shareholder and subordinate director. He alleged that he acted on P's instructions and had a lesser degree of knowledge and control of the company's operations than P.

To rebut the first ground the Crown was able to adduce evidence to show a number of incorrectly filled cheque butts which purported to have been used for the purpose of arranging leases but had in fact been used for private purposes by both accused, but more particularly P. The jury was left to decide the motive and intent behind such action.

With respect to the second ground the Crown alleged that proof of physical receipt was unnecessary; all that need be shown was the company received the cheques, the accused were in control of the company and that they knew that investment funds were being received on a regular basis. The trial judge McMULLIN J. directed the jury that such proof was insufficient to establish the element "receives". But, he said, it was not necessary to prove that each accused had physically received and handled each of the investment cheques;

"...mere receipt in the office in Hamilton or Auckland  
"is not enough, if the receipt was only by some member  
"of the office staff in the course of business and the  
"handling of the cheques or cheque is not enough to  
"fix criminal liability on the accused. Nor would it  
"be sufficient if you were to say 'Well, they ought to  
"have known of the receipt of the cheques', because we  
"are not here to consider whether they ought to have  
"known, we are here to consider whether they knew or  
"must have known..... That does not mean to  
"say that an accused have to be shown to have had a  
"specific cheque in his hand or his pocket or to have  
"debated about that cheque. It would be sufficient

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"if it were demonstrated to your satisfaction that  
"the accused, taking the case of each, had it in his  
"personal power or control. It is sufficient if the  
"girl in the office, having got the cheque, said to  
"one of the accused, 'I have got so and so's cheque,  
"what shall I do with it, it is an investment rec-  
"eived through Hamilton?' ..... a sufficient  
"measure of receipt or control would be exercised  
"if the particular accused to whose attention the  
"receipt of that particular investor's cheque was  
"drawn said 'Put it in such and such account,' or  
"'do so and so with it.'" 44

A third, but not so important ground for defence was on the basis that in some cases the investor did not know or intend the investment to be used in terms of the directions contained in the brochure. This was apparent from the evidence of some investors at the trial who were not concerned how their investment was utilised so long as they received the promised return. How then, maintained the defence, could there be a direction from the investor in these circumstances? This would appear to be a correct analysis as it is difficult to see how a direction could be said to exist if the investor did not intend to invest on the basis of that direction. This fact was not referred to by McMULLIN J. in his summing up and in fact the jury convicted on some counts where the investor in evidence had said that he was not necessarily advancing the money on the terms in the brochure that it be kept in trust and only used for the purchase of a motor vehicle for leasing purposes. Conversely they did not convict in relation to indictments where the investor did invest solely on the terms outlined. This was probably due to the fact they were not satisfied in relation to one or more of the other elements of the offence. This point has been raised as it is illustrative of the difficulty facing the Crown in presenting

a case as complex as this one to a jury in terms that they, as laymen, can readily comprehend and fairly adjudicate upon.

In the present instance the jury convicted P on 8 counts and acquitted T on all 20.

FALSE PRETENCES.

Both accused were charged with five counts of false pretences and the accused P was charged with two further counts alone.

Three elements are required to be proved;

(a) A false pretence;<sup>45</sup>

(b) That an investor was induced to accept a valuable security in consideration for the sum invested;<sup>46</sup>

(c) An intention to defraud the investor; i.e. an intention that he be deceived into a position whereby he might lose his investment.<sup>47</sup>

The facts surrounding these charges were that the accused T was the sole director of a company formed by him known as T INVESTMENTS LTD.<sup>48</sup> This company, through T entered into five lease agreements with P.L.L. LTD. In effect P and T arranged and signed the leases. Most of the vehicles which were the subject of these leases were old, in poor condition and worth very little. They were assigned at an inflated value in order to apparently secure an investor's interest. The Crown alleged that in reality T. INVESTMENTS LTD. had not leased the vehicles and was not in a position to make the repayments stipulated under the lease. They alleged the leases were merely sham transactions entered into for the purpose of making it appear that security had been given to an investor for his funds which were in fact used for other purposes. Some of the vehicles were not in fact used by the lessee. The false representation relied upon was

45 Defined as a false representation by words or conduct made with a fraudulent intent to induce the person to whom it is made to act upon it - Crimes Act 1961 s. 245(2)

46 The deed of assignment is a valuable security. Ibid, s. 2.

47 Ibid, s. 246.

48 Refer discussion and example ante, pp. 15-16.

that P.L.L. through the accused had alleged the investors money was secured whereas in actual fact it was not and could never hope to produce the promised income. That the investors were induced to invest in reliance of the false representation can be inferred from the facts. If they had known the true facts surrounding these transactions they would in all probability not have advanced funds to the company.

The jury convicted both accused on 4 of the 5 counts in this category.

The two further counts of false pretences against P alone were based on separate grounds. The first related to his accepting an investment in October 1970 of \$2,500.00. It was alleged that by so accepting he was representing that the company was in a financial position that it could repay the principal and interest at one months notice. As this was two weeks before the receiver was appointed and at the time all the accounts were overdrawn resulting in cheques not being met, P must have known that the company would be unable to meet its commitments to this investor. These facts it was alleged amounted to an intention to defraud.

The second count arose from the fact that the company, through P assigned as security to an investor a car that had been sold outright to a client and not leased to him. The company, therefore, had no further interest in the vehicle which they could assign to the investor. The false representation relied upon was the representation that P.L.L. still had rights in the car which they could assign. It was alleged that this was done fraudulently by P. and that the representation induced the investor to advance money to the company.

The jury acquitted P on both these charges, apparently because they found that he had acted foolishly and not fraudulently.

The final count, against P alone, was one of theft as a servant from the company. The basis of this count was that the company as a separate legal entity actually employed P, despite the fact that P was the major shareholder and dominant

force behind the enterprise.<sup>49</sup> It was alleged that P had written cheques from the company funds and applied them to purposes wholly outside the company's operations to the detriment of the interests of the other shareholders. The expenditure related to a number of overseas trips and repairs to two launches owned by him. This was related to a separate enterprise organised by P to search for shipwrecks in the Pacific in order to recover their alleged treasure. P maintained that this venture was embarked upon in order to save P.L.L. from collapse. It is not intended to discuss the elements of theft in relation to this count as it was a fairly straightforward case of this type and P was duly convicted.

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This principle was firmly established in the House of Lords in Salomon v Salomon & Co. [1897] A.C. 22.

CHAPTER FOUR: Conclusions.

The preceding case study is illustrative of the apparent ease by which a company can continue in business over a relatively long period of time while incurring considerable losses. Further it shows how individuals behind the company veil can engage in fraudulent practises at the expense of investors, creditors and consumers. Finally it demonstrates the mammoth task faced by an investigator when making inquiries into the activities of a failing and/or fraudulent company.

The number of convictions entered against those associated with P.L.L. did not reflect the extent of the fraudulent activity carried on in the name of the company. For a variety of reasons, some of which have been already discussed, further charges were not laid against the directors of the company, or against the company itself. Documentary evidence had been destroyed or had never existed; witnesses were scattered throughout the country and other logistical difficulties prevented further criminal proceedings. The inquiry also indicated that in this country such large scale and complex investigations into company frauds are at the embryo stage. This is due in part to the fact that such frauds have been largely unknown until recent years but contributing to this has been an unwillingness by some sections of the Police to undertake investigations into suspected fraudulent activity by a company. This attitude does not reflect a conscious failure to fulfil the obligations of the Police but it indicates a lack of understanding that criminal frauds were being perpetrated behind the corporate shield. When complaints of this nature were made by the public to members of the C.I.B. in many instances potential complainants were assured that the activity complained of was not a criminal offence but something which should be settled civilly between the parties respective solicitors. While this was true in



some instances, in others even blatant frauds went uninvestigated.

The reader should not conclude that the Police are not prepared to undertake this type of investigation but it is clear that until recently the Department was not motivated or equipped to carry out large scale inquiries into suspected company frauds. As will be seen in later parts of this paper some progress has been made but the complete answer has not yet been found.<sup>50</sup>

A further conclusion which can be drawn from this case study is that some aspects of the law are deficient in that P.L.L. was able to carry on its business for so long and incur huge losses.<sup>51</sup>

The solutions to these problems will not be easy to find but it is submitted that a greater concentration on a preventive role together with more effective machinery for investigating breaches of the law will go some way towards alleviating present difficulties.<sup>52</sup>

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50           Post, part three.

51           The criminal law in general does not pose many significant problems in this area. Most of the difficulties arise from insufficient controls on the activities of companies and their directors. A separate paper has been submitted on this aspect - refer ante, p. 3.

52           This theme will be expanded in part three of the paper.

PART TWO: THE FRAUDULENT COMPANY GENERALLY.

CHAPTER ONE: Methods of Company Fraud.

In analysing a subject as broad as the present one, cognisance must be taken of the different types of corporate structure which lend themselves to varying types of fraudulent practises and other abuses.

One type of company are those similar to P.L.L. LTD. These are the smaller private companies in which the issue of shares is limited to those who are in some way closely connected with the company's operations. They are created in the main by one or two businessmen to undertake a specified venture or ventures and overall control is usually vested in one or two directors. There are few differences between these companies and ordinary trading partnerships with the exception of the consequences of incorporation. <sup>53</sup>

A second category comprises the medium size company both public and private in which there is a substantial element of both external investment both privately and through the stock market and internal ownership or control.

A third category includes the larger public companies or modern corporations which have enormous assets and employ often thousands of people in various capacities. <sup>54</sup>

All the above categories have differing divisions between

53            These are; a seperate legal personality, limited liability and a few obligations such as the filing of certain documents with the Companies Office and the keeping of proper books of account.

54            This division of types of companies is taken from an analysis by Tom Hadden in his article "The Control of Company Fraud" PEP Vol XXXIV No. 503 September 1968; but it is submitted that such an analysis is applicable to New Zealand.

ownership and control. Ownership in all companies is vested in the shareholders. It is the traditional myth of company law that shareholders have control over a company's affairs. Control for practical purposes is exercised on behalf of the shareholders by directors and managers of a company. These persons may or may not be shareholders in the particular company. In the smaller private company those in control will invariably be the majority shareholders but in the large public corporation they will in most cases be minority shareholders.

The point to be drawn from this is that the traditional attitude of the law, derived from "laissez faire capitalism" has been to leave the control of the affairs of a company in the hands of the shareholders. As is frequently the case however, such control has proved ineffective with resultant losses to innocent creditors, investors, employees and even the public at large. <sup>55</sup>

The types of fraud which may be committed within the above classes of company can be divided into various categories.

The first may be classified as "trading frauds". These are devices employed to obtain investment and credit in usually speculative enterprises to make a quick profit for the promoters at the ultimate expense of investors and creditors. This type of activity is most often found in the smaller private company. Not all companies are formed with such frauds in mind but having been in business for a period employ dubious methods for continued profitability. An ideal example of this type of company is P.L.L. LTD.

A prevalent example of trading fraud found overseas is known as the 'long firm fraud'. A small private company is formed to trade in retail selling of goods. Supplies are obtained on credit from wholesalers and initially the company may pay its debts regularly in order to obtain further and higher credit. The company then disposes of its goods at a very cheap price. The members of the company then disappear with their "profits" at the expense of the creditors. As a variation of this theme the company's premises

may be mysteriously set fire to with a claim by the members of the firm that the property already disposed of has been destroyed.

There have been no proven cases of such fraud in New Zealand but there have been several cases in Auckland in recent years where this has been suspected but following a fire to the premises nothing could be proved.<sup>56</sup>

A variation of this type of fraud is the straight insurance fraud where goods are reported either stolen or destroyed by fire in order to obtain a substantial insurance settlement. Such cases do occur in this country from time to time but again are difficult to prove.

A further example is the 'franchise' fraud where a company purports to supply an exclusive franchise to members of the public for a substantial fee, which allegedly gives them the sole right to market a particular product in a defined area. The company guarantees to supply the goods and arrange the market for the purchaser of the franchise. The purchase price includes an initial supply of the product but most of the fee is for the purchase of the right to sell in a particular area. The end result is that the company has no right to a franchise for either the product or the market and the product itself is of poor quality and overpriced. There have been several instances of this recently in New Zealand<sup>57</sup> but in these circumstances it is difficult and often impossible to prove a fraudulent intent on the part of those promoting the scheme.

An allied manoeuvre is the sale of the right to install and receive the profits on a vending machine. In one recent case a company was installing hairdrying machines which operated with a coin in the slot. They sold the proceeds of the machine to more than one person alleging that each had the sole right to collect the income from each machine.

A second category may be classified as "market frauds".

56 Although relatively unknown in New Zealand this type of fraud is prevalent in the United Kingdom. In 1964 London alone had 65 cases under investigation involving property worth £1,500,000.G.O. (per Hadden, ante, n. 54 at 294.)

57 Per Official Assignee, Wellington.

Included here is the manipulating of the stock market by unscrupulous persons for personal gain. This may be achieved by the use of confidential information acquired by close contact with a company which affects the value of that or some other company's shares. Even more blatant is the deliberate spreading of false rumours to make a profit from the trading of shares. An example of the latter occurred only a few years ago when a company reported the discovery of platinum at one of its mining sites. Subsequent analysis revealed that the samples allegedly found were refined to New Zealand standard specifications and could not therefore have been natural ore. By the time this was discovered a considerable amount of speculative trading had occurred with the shares of the company.

Another device is the publication of false and misleading information either in a prospectus or otherwise in order to obtain investment finance which is quickly dissipated.<sup>58</sup> Although the law purports to cover this eventuality by provisions against misstatements in prospectuses<sup>59</sup> there is often a fine line between what is accurate and what is misleading, false or deceptive.

A third category may be referred to as "management frauds" which cover those cases where persons in control of a company siphon funds from the company for their own purposes. This covers activity from ingenious defalcations to skilled stripping of a company's assets by a director to the extent it becomes insolvent. Many of these manoeuvres can be and are hidden by skilled accounting or simply destruction of records.

Inevitably the above outlined categories of company and types of fraud will overlap to some extent. The reason they have been discussed is to enlighten the reader to the vast opportunities offered the unscrupulous and fraudulent through skillful use of the corporate structure. In some instances corrupt practises may not amount to criminal fraud while in others what is obviously fraud will not for a variety of reasons be able to be proved. One common factor which emerges is that all such investigations require

58            Again P.L.L. LTD. provides a good example.

59            Crimes Act 1961 s. 250 and Companies Act 1955 s. 53.

meticulous and skilled inquiry. The distinction between merely a sharp business practise and actual fraud is a very fine one and the law quite properly allows the Courts a wide discretion to evaluate at what point criminal liability will occur. It is however submitted that the problems posed by the fraudulent company and fraudulent persons operating behind a company have for too long been ignored in this country. This would not be so bad in itself if the reasons for such lack of effort had been in any way justifiable. Instead the usual reaction from the business community following the collapse of a company with overtones of fraud is one of "Well we can tolerate a little of this sort of thing and we can't interfere with the rights of the honest businessman."

It is submitted that adequate protection against fraudulent business practises could become a reality and without impinging unreasonably on the rights of any class of citizen. At present the pendulum is swinging too much in favour of the fraudulent and other dubious businessmen.

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PART THREE:      MACHINERY FOR INVESTIGATION  
OF COMPANY FRAUDS.

CHAPTER ONE:      The New Zealand System.

Two agencies have primary responsibility for such investigations; the Commercial Affairs Division of the Justice Department, and the Fraud Squads of the Criminal Investigation Branch of the Police Department.

The traditional role of the Justice Department in relation to company affairs has been a mere passive oversight of the incorporation of a company followed by a filing of documents supplied as required by the Companies Act. Only on isolated occasions was any inquiry made to establish the veracity of the information forwarded by a company. In the case of a private company,<sup>60</sup> details of business required to be disclosed are very few. In the majority of the smaller private companies the annual return contains only a list of directors and secretary, a resolution authorising payment of directors remuneration and a resolution not to have their accounts audited.

When a company collapsed the Official Assignee would make some inquiry if required as to the company's affairs. His duty is primarily one on behalf of the creditors to obtain the best return possible for them, and any suspicious activity by the company is of importance only in so far as it does not adversely affect the interests of creditors. This conflict of duty prevented further investigation and possible prosecution in some cases of suspected fraud.<sup>61</sup>

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60            Other than a "non exempt private company" i.e. one which solicits and receives investment from the public - refer **Companies Act 1955, ss. 48A and 354.**

61            Per Official Assignee, Wellington.

Other factors contributing to this situation were a lack of staff both in numbers and of sufficient expertise to undertake such inquiries. The result was the occasional action for fraudulent trading<sup>62</sup> or misfeasance<sup>63</sup> taken against a director or promotor of a company. These were not always successful which sometimes dampened enthusiasm by the Department to bring further actions. Settlements between offending directors and their creditors has become more frequent in recent years.

When a blatant case of fraud was detected this was reported to the Police for investigation by them.

In more recent years the Department has expressed a willingness to adopt a more positive approach in policing the activities of all types of company. The Secretary of Justice made a number of submissions on this subject to the Macarthur Committee on Company Law in 1970. In response, the Committee issued an interim report on this issue in 1971. The problem existing at that time was summarised in the report;

"We should mention here the cogent evidence given by  
"the Official Assignee at Wellington. This experienced  
"officer told us that he had (in August 1970) approx-  
"imately 40 companies under winding-up administration.  
"He stated that in almost every case there were un-  
"satisfactory features surrounding the company's  
"activities, the incurring of debts, and the keeping  
"of records. However, there was prospect of a pros-  
"ecution for offences in only three cases. He comm-  
"ented that his office lacked investigating staff and  
"that it was not possible for him to conduct the close  
"examination that was really required in connection  
"with the affairs of those companies. We may note  
"in passing that in addition we have had some evidence  
"that unsatisfactory features in relation to manage-  
"ment were disclosed not infrequently in the course  
"of creditors' voluntary liquidations; but that in



"such cases the creditors were generally unwilling to incur the costs of proceedings against the directors or other persons concerned, who thus escaped punishment altogether. " <sup>64</sup>

At that time the Companies Office was attached to the Lands and Deeds Division of the Justice Department and was separate from the section handling bankruptcy work.

In an attempt to effectively counter the existing problems the Committee recommended the implementation of a number of reforms to the existing machinery for the investigation of offences committed by companies and their officers. These were:

(a) That the divisions dealing with the Companies Register, bankruptcies and company liquidations be merged into a new Commercial Affairs Division of the Justice Department. <sup>65</sup>

(b) That this division should be strengthened by recruiting a number of persons including some qualified accountants and legal personnel who could undertake investigatory work and prosecutions in relation to suspected breaches of the law by companies or their management. <sup>66</sup>

(c) In the case of minor offences under the Companies legislation the Department itself could conduct a prosecution. For more serious offences, such as those laid indictably under the Crimes Act 1961 the Crown Prosecutor would be engaged. <sup>67</sup>

(d) The investigators appointed to the Commercial Affairs Division would work in conjunction with the Police and the Crown Solicitor. <sup>68</sup>

The Committee's conclusion, relying on representations made to it by the Justice Department, <sup>69</sup> was that an enlarged Companies Office would be the principal weapon to deal with all offences relating to company affairs, though it would liaise with and receive assistance where required from the Police.

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64 Interim Report of the Macarthur Committee on Company Law, published 1971. at para 44.

65 Ibid, at para 45. 66 Ibid, at para 48.

67 Idem. 68 Idem.

69 No submissions had been made at that time by the Police.

This conclusion is apparent from several comments made by the Committee;

"..... there are also indictable offences which may be  
"committed in connection with company matters. Some  
"... are created by the Companies Act 1955...; and  
"others .. by the Crimes Act 1961.... if the comm-  
"ission of one of the more serious types of offence is  
"suspected, the Department of Justice is compelled to  
"rely initially on information supplied by complainants  
"or available from records filed in the Companies Office  
"which may be incomplete. The Secretary of Justice in-  
"formed us that in cases of this kind the Police are  
"often asked to make inquiries and he said 'They are  
"always willing to help but they lack personnel skilled  
"in commercial investigations and the assistance they  
"can give is necessarily limited.' ..... In our  
"opinion the investigation into suspected frauds and  
"the detection and prosecution of offenders is a task  
"which could and should be carried out by skilled in-  
"vestigators appointed to the staff of the Companies  
"Office. " <sup>70</sup>

For reasons which will be presently outlined, it is submitted that the Macarthur Committee was overstating the importance of the role of the Companies Office and under rating the potential of the Police when making the observations outlined above.

In response to the Committee's interim report the Commissioner of Police made a number of submissions with respect to the respective roles of the Police and Justice Departments in this area. Briefly summarised these were:

(a) The department shared the Committee's view that more positive steps were required to be taken to detect, investigate and prosecute any fraudulent acts committed by companies and their management. Also shared was the need for skilled investigators to

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inquire into suspected frauds of this nature.

(b) That the past practice of undertaking investigations only in response to a specific complaint should change to an attitude of positive policing of company activity in order not only to detect, but also to protect investors and creditors from commercial frauds. To achieve this objective close co operation was required between the Companies Office and the Police Department.

(c) A clear distinction was seen as to which matters would be investigated by Police Department, effectively fraud squad, personnel and those to be undertaken by an enlarged Companies Office. The former would be responsible for the investigation and prosecution of the more serious criminal offences committed in relation to the affairs of a company. These include all offences under the Crimes Act 1961 as well as certain offences under the Companies Act 1955.<sup>71</sup> The Companies Office on the other hand would be responsible for policing the provisions of the Companies Act which fell short of criminal fraud.<sup>72</sup> There would be a considerable area in which both agencies had an interest and for this reason close liaison and co-operation is essential.

(d) The Police Fraud Squads would nevertheless be responsible to Police administration and not the Registrar of Companies, so that a decision to commence a criminal investigation into a company's affairs, the manner in which it is carried out and the decision whether or not to bring a criminal prosecution against the company or any of its officers, would ultimately be resolved by and be the responsibility of the Police Department.

(e) To this end the Department proposed to establish in the main centres as required Fraud Squads which would be equipped with skilled investigators who were also qualified lawyers to undertake such investigations. The Officer in charge of these squads would be a senior detective who was also legally qualified.

(f) The Commissioner was conscious of the effect which

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71 e.g. s. 318 relating to frauds by companies and officers of companies in liquidation.

72 e.g. s. 130, relating to the failure to file an annual return. s.s. 321 and 364 relating to misfeasance etc. by directors could also be included.

a criminal investigation could have on the business of a company should it prove unfounded and to this end recommended an amendment to the law that no investigation could be commenced or prosecution instituted by the Police without his authority. This would provide him with the opportunity to consult with his legal advisors as well as providing a uniform national policy in relation to this type of investigation.

In addition to the above, the Commissioner made several submissions relating to changes in the law relating to inspection of company documents,<sup>73</sup> prospectuses and financial advertisements. It is not intended to discuss these as the paper is intended to evaluate effective machinery to investigate breaches of the law rather than the substantive law itself.<sup>74</sup>

It is submitted that the above analysis of the respective roles to be played by the two agencies concerned is the correct one and a close liaison between both Departments could achieve the required objective.<sup>75</sup>

In their final report<sup>76</sup> the Macarthur Committee alluded briefly to the submissions made by the Commissioner of Police and noted that the Police Department had a number of qualified solicitors and other investigators on its staff who were forming the nucleus of a company fraud squad.<sup>77</sup> The Committee did not however see any need to alter anything said in their interim report but merely stated that the roles of the two departments should be complementary. They noted in passing that in Sydney the Commissioner of Corporate Affairs conducts extensive inquiries into company affairs and has qualified men on his staff for that purpose. In addition two members of the Police fraud squad are seconded permanently for duty with the Companies Office.<sup>78</sup> An evaluation of the available alternatives to investigate fraudulent company activity will be made later in the paper.<sup>79</sup>

73 Already enacted per 1973 Companies Amendment Act, but the power does not extend to members of the Police.

74 Some amendments to the law were considered in an associated paper by the same author, ante, n. 1.

75 This theme is expanded in part three chapter five.

76 Published March 1973. 77 Ibid, at para 40. 78. Idem.

79 Post, part three chapter five

The position in each Department today is as follows.

The Commercial Affairs Division of the Justice Department is a reality. It was constituted on 1972 and brings together the Companies Register and the office of the Official Assignee. In Wellington the total complement of the division is 30. The Official Assignee handles bankruptcies and companies ordered to be wound up by the Court. An accountant has been appointed to his staff and a legal officer will be recruited in the near future. The Companies Register is maintained by a number of clerical staff, some of whom are partially qualified in law. Their task has been to up date the Register and cull out old files. They have reached the stage where the Register in Wellington reflects an almost up to date position of each company's affairs as required under present legislation. An increasing opportunity is available for the checking of information given on documents supplied. Unfortunately the disclosure provisions of the Companies Act 1955 are insufficient to obtain a true picture of the affairs of many companies.<sup>80</sup> Included in the above figure is a pool of typists and clerical assistants who are available to both the Official Assignee and the Companies Register staff when required.

Two Accountants are employed in the Auckland Commercial Affairs Division and one in Christchurch.

The primary aim of the Division is the provision of an up to date register together with resources for a more positive policing of breaches of the law by companies and their management. The first aspect of this has been partially if not wholly achieved but the latter and more important aim has not. Part of the blame for this must rest with the number of large company liquidations and receiverships which have stretched available resources to the limit.<sup>81</sup> Another factor is the difficulty of attracting sufficiently qualified staff at Public Service Salaries which donot match those available to professionally qualified persons in private practise.

80 For further details on this aspect refer associated paper by same author, ante, n.1, part one chapter five and part three chapter one.

81 e.g. CIRCUIT group collapse and CORNISH group collapse. refer also 1975 Report Justice Department pp. 4-5.

The Police Department has established one Company Fraud Squad in Auckland. It was established in 1971 when a legally qualified Detective Inspector and a privately recruited accountant were appointed. Their role was one of advice to the existing fraud squad of the Auckland C.I.B. with a limited inquiry role with respect to suspected company frauds. The fraud squad at Auckland at that time consisted of a Detective Senior Sergeant in charge, two Detective Sergeants together with a number of Detectives and Detective Constables. The squad dealt with all types of fraud from the simple false pretence "cheque" offender through to complex defalcations and company frauds.

The first major company inquiry dealt with by the newly formed company squad was that into P.L.L. LTD.<sup>82</sup> and before this was completed the squad was assigned the J.B.L. investigation. Since then the latter case has occupied most of the resources of the company squad.

No similar squad has yet been established in Wellington.

In Christchurch the Detective Senior Sergeant in charge of the fraud squad has an accounting qualification which assists him and the remainder of his squad in any complex inquiry. He is what may be termed the de facto company fraud squad in that centre.

In Wellington the fraud squad consists of a Detective Sergeant, one Detective and four Detective Constables. They rely on the advice from the Legal Section in Wellington in complex cases such as company frauds.

In all other C.I.B. offices the fraud squads are staffed with Detective Sergeants and Detectives none of whom have qualifications in law or accounting.

This then is the machinery relied upon today to police the existing company law. Other agencies such as the Consumers Institute and Creditmen's Association have a limited function in this area but it is not proposed to discuss their role here as it is by far of only secondary importance to the agencies already discussed.

CHAPTER TWO: Police Department Policy.

Since the submissions were made to the Macarthur Committee by the Police, a new Commissioner has been appointed following the retirement of Commissioner SHARP. The Auckland Company Fraud Squad still exists in its original form but with a change of personnel. It has not realised its full potential to assist inquiries into suspected company frauds as it has been almost exclusively engaged in the J.B.L. inquiry.

No further Company Fraud Squads have been established.

There are however a number of personnel of all ranks within the Police, both in the Uniform Branch and the Criminal Investigation Branch who have either partially or fully qualified in both law and accounting. The Department has therefore, the resources available to utilise in the establishment of more specialised squads.

Why this has not eventuated is not clear though several factors emerge as perhaps part of the reason. The first involves a brief examination of the administration of the Criminal Investigation Branch of the Police. Staff is recruited from constables in the Uniform Branch who then undertake two and a half years of training culminating in a two month full time residential "Detective Qualifying Course". During the two and a half year period intensive study in all aspects of the criminal law and evidence is undertaken and in order to progress a trainee must pass a series of examinations on each subject studied. In addition the trainee undertakes practical instruction on such subjects as conducting investigations into various types of offences and the interrogation of suspected offenders. Throughout his training period each constable works full time with qualified detectives and other trainees on a variety of cases. If a sufficiently high standard is not reached a trainee is returned to the Uniform Branch and cannot thereafter enter the C.I.B. Each C.I.B. office is comprised of a number of squads who specialise in various aspects of the law. These include "Break"

and "Car" squads, as well as "Robbery", "Vice", "Drugs", "Indecency" and "Fraud" squads. Each trainee spends a period of time on several squads before he qualifies as a detective. Following this he is not required to undertake any further study but may sit promotional exams.<sup>83</sup>

In theory this system should produce experienced investigators of a high calibre. While this is true in respect of most aspects of the law it is not a reality with respect to company fraud. Throughout their training personnel in the C.I.B. study fraud in general and some aspects in detail. There is no instruction however on company law or the more complex provisions of the criminal law.<sup>84</sup> The system of rotation of staff among different squads for a broad experience does not allow members of a fraud squad enough time to develop a sufficient knowledge of his subject. This is not so true among the more senior members of a squad but even there with promotion and transfer opportunities they may not stay more than one or two years. The system is geared for a general knowledge of a wide variety of law and investigation techniques rather than specialisation in particular areas.

Such a system is however a necessary one because the very nature of a detective's job is that he must be equipped to deal with a wide variety of crime. Any specialisation in one particular field to the detriment of another could jeopardise a member's promotional prospects.

A solution to this dilemma will not be easy but it is submitted that one is possible. This will be discussed at greater length in chapter five of this part.

The Department is conscious that the field of commercial and company fraud and indeed "white collar crime" in general is in need of greater supervision and investigation. They are also conscious of the need for caution and discretion when undertaking these inquiries because of the potential danger which exists to the reputation of an individual or a corporation from a criminal investigation which subsequently proves to have been unnecessary.

83 For the ranks of Sergeant, Senior Sergeant and Commissioned Officer. Refer Police Regulations 1959 regulations 17-18.

84 E.g. Theft by failing to account or by misappropriation, Crimes Act 1961 ss. 222 and 224.



To provide adequate protection against unwarranted interference or investigation into the affairs of a company, the Commissioner of Police made the following submission to the Macarthur Committee following the publication of its interim report;<sup>85</sup>

"....the officers in charge of each fraud squad should be  
"required by law to obtain the consent of the Commissioner  
"to:

- " (a) Commence an investigation into a company's  
" affairs; and
- " (b) Commence a prosecution against a company or its  
" officers for breaches of the Companies Act. " <sup>86</sup>

This submission was in response to a recommendation made by the Committee in its interim report that New Zealand adopt the provisions of the Australian legislation with respect to the commencement of a prosecution under a Companies Act. This reads;

"Except where provision is otherwise made in this Act  
"proceedings for any offence under this Act may be taken  
"by the Registrar (of Companies) or with the written con-  
"sent of the Minister by any person." <sup>87</sup>

The Committee made this recommendation on the premise that the Act should have an express provision showing that the Registrar of Companies is the person who has the primary responsibility of bringing proceedings for any offences under the Companies Act.<sup>88</sup>

The premise that the Registrar should have primary responsibility in this area is not disputed but it is submitted that both agencies have a role to play and in practise the Police may often wish to prefer charges under the Companies Act. It would appear to be anomalous that of two agencies working in close liaison with each other in a similar area, one should have to obtain the written consent of the Minister of Justice before charges may be laid, while the other can proceed on the initiative of the Registrar of Companies.

85 Ante, n. 64.

86 Submissions to the Macarthur Committee on Company Law by the Commissioner of Police, 22.5.74. para 8.

87 Uniform Companies Act (Aust.) s. 381; ante, n. 85 at para 38

88 Ante, n. 85 at para 38.

Under the existing Companies Act (1955), there is no restriction on the Police Department in relation to the commencement of inquiries into a company, or proceedings against it or any of its officers. It is submitted that if any restriction on the discretion of the Police in the area of Company investigations is to be made, the Commissioner of Police should be a competent person to make the necessary authorisation.

The Police Department does propose to establish company fraud squads as part of the complement of the C.I.B. in centres other than Auckland as the need arises. It is contemplated that these squads would work in close liaison with the Commercial Affairs Division of the Justice Department when making inquiries into company affairs. There is no intention that any police personnel should be actually seconded to work with any investigative team of any Commercial Affairs Division. Any advantages offered by this approach can be achieved by a close liaison between each agency.

Since the inception of the concept of specialised company fraud squads within the Police in 1971, no further staff have been assigned to this task. The result is that two members in Auckland are engaged in this type of inquiry on a full time basis as well as one in Christchurch. Since 1972 the Auckland squad has been fully engaged in an investigation of the J.B.L. collapse.<sup>89</sup> All other inquiries into suspect companies have been handled by the regular fraud squads within each C.I.B. district and these are often short staffed. The Department has not therefore, been able to exercise any positive preventive role in relation to company fraud but have had to follow up the complaints as they are received.

Part of the reason for this situation is the competing priorities within the C.I.B. for an increase in staff from a limited pool of trainee detectives and existing staff. A further factor involved is that the number of staff who are both willing and

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89 This investigation is almost complete but the squad already is committed to a further large scale inquiry into the CIRCUIT group of companies.

qualified to undertake this specialist type of investigation is limited. The potential is there but it requires administrative action in order to make full use of them. Some effort has been made to provide fraud squad personnel with some of the knowledge required in relation to commercial and company fraud, by the provision of residential fraud courses at the Police College in Trentham. To date three have been held but their effectiveness is limited to some extent by the fact that they are only one week in duration and in that time only a limited syllabus can be covered.

Neither problem is insurmountable and possible solutions will be examined in a later chapter. <sup>90</sup>

CHAPTER THREE:

Justice Department Policy.

The attitude of the Justice Department is closely allied to that of the Police. This is that both departments have a role to play in the investigation of suspect companies and close liaison is necessary to achieve good results, thus providing effective supervision of company affairs. They see their role as supervision of and inquiry into company affairs generally but as soon as criminal fraud is suspected the inquiry is handed over to the Police to complete. Obviously there will be areas which may overlap and both agencies may be inquiring into a company simultaneously in order to perform their respective duties. Both are and will continue to be autonomous. Close liaison and co operation will be necessary to avoid duplication of inquiries or misunderstanding. This spirit exists today in the main centres and there is no reason why it should not continue and expand.

The overall administration of the Commercial Affairs Division of the Justice Department has already been briefly outlined, and it is not intended to repeat this. Future trends are, however, relevant. The Justice Department, in common with most Government Departments, has the problem of attracting sufficient staff with the expertise desired to be able to efficiently perform their duties under statute or otherwise. The Commercial Affairs Division is no exception. The Department does envisage a systematic training of its existing staff and any new staff it is authorised to engage. To this end several members of the Division in Wellington are undertaking study in law to assist them in their duties. A qualified accountant has been appointed in Wellington, as well as two in Auckland, and qualified legal advisors are being sought. The Division is expand-

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91 This is of necessity a general outline only as although a written request was made to the Department for further details, a reply was not forthcoming prior to the publication of this paper.

ing, but so also is their work load.<sup>92</sup> The Police Department is also expanding, though not so fast in the Criminal Investigation Branch as in the Uniform Branch. Both face problems of attracting and training staff. It remains to be seen whether progress in these directions will keep pace with or even exceed, the expansion of the corporate structure and its progeny, the fraudulent company.

It is submitted that particularly in the case of the Police Department, but also to a lesser extent the Justice Department the expansion needed is not forthcoming. This is corroborated by the fact that almost every time either the Police or Justice have occasion to investigate a company evidence of criminal fraud by those in control has been found. At present their role is merely a passive one of following up selected complaints. If further staff were available so as to enable both Departments to adopt a positive role of supervision,<sup>93</sup> prevention and policing,<sup>94</sup> further fraudulent activity must be discovered, perhaps in time to prevent loss to innocent investors and creditors.

The next question to be analysed therefore, is the best method whereby this may be achieved.

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92. This factor was commented on in detail in the 1975 Annual Report of the Department of Justice, by the Secretary for Justice, at pp. 4-6.

93. Primarily by the Justice Department.

94. By both the Police and Justice Departments.

CHAPTER FOUR:           Some overseas systems.

In order to evaluate an effective system for New Zealand conditions I made inquiries among twelve separate Police Departments in four different countries for details of their administration and ideas for improvement. Unfortunately only four replies were forthcoming but all contained very useful information and suggestions.

In the United Kingdom, two agencies have responsibility for investigations into suspected company fraud. These are the Department of Trade and Industry and Company Fraud Squads, staffed by detectives in many of the major Police Departments. The administration of one of the squads will be outlined and discussed.<sup>95</sup>

1.           The Department of Trade and Industry.

This was formerly known as the Board of Trade and has extensive powers of investigation and inspection under a variety of statutes.<sup>96</sup> It has a general power to call for the production of books and papers from any company at any time if it thinks there is good reason to do so.<sup>97</sup> This power is normally used in relation to statutory inspections of a company's affairs which the Department may undertake on a variety of grounds;

Firstly if a formal resolution of a general meeting of a company, or a court order can be obtained, the Department is required to appoint inspectors to carry out an inspection of<sup>98</sup> the affairs of that company.<sup>99</sup> Secondly an application may be made to the Department by any individual shareholder for the inspection

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95           The Metropolitan & City (of London) Police Company Fraud Department.  
96           Including the Companies Acts 1948 and 1967; also the Bankruptcy Act 1914.  
97           Companies Act (U.K.) 1948 s. 109.  
98           I.e. an investigation.  
99           Companies Act (U.K.) 1948 s. 165(a).

of his company on the ground that it is being conducted fraudulently or oppressively, that those in control have been guilty of fraud, misfeasance or other misconduct, or that the shareholders have not been given all the information which they might reasonably expect. <sup>1</sup> Finally there is provision for the application to the Department for an inspection on the grounds that the applicants must satisfy the Department that there is "good reason" for requesting the inspection. Such an application must come from at least two hundred shareholders or the holders of one tenth of the issued share capital. <sup>2</sup>

Complainants under these provisions are required to submit a statement of facts setting out the grounds of the application. The Department will often attempt to negotiate between the parties in order to arrive at a suitable compromise. If no compromise is forthcoming the Department may exercise its discretion to either inspect the documents of the company or order a full scale investigation. Often the first alternative will suffice and in many cases no action at all will be recommended.

Should an inspection be ordered, a single full time inspector <sup>3</sup> is appointed to carry out the investigation. The inspector may be an employee of the Department, or as is frequently the case an independent lawyer or accountant engaged for the purpose.

The appointed inspector has wide powers to require information to be furnished to him by officers of the company and in addition he may require them to answer any question put to him in the course of the investigation with respect to the affairs of the company. <sup>4</sup> If a refusal to answer such questions is encountered the inspector may report the fact to the Court who may inquire into the case. <sup>5</sup> Protection against statements being admissible in criminal proceedings is not provided. <sup>6</sup>

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1. Companies Act 1948 (UK) s. 165(b); 2. Ibid, s. 164.
  3. If a complex inquiry, two or more may be appointed.
  4. Ante, n. 1, s. 167(3); 5. Idem.
  6. Similar powers are provided under the New Zealand statute, Companies Act 1955 s.s. 169-175.

A report of the investigation is required to be submitted to the Department. This is made available to the parties but in the case of a private company it is seldom published. The parties are left to resolve the question of further action unless there is evidence to support criminal charges. In this event the Director of Public Prosecutions or the Department itself may institute criminal proceedings.

The standard of conduct required by an inspector when carrying out his inspection and exercising his powers under the Act was laid down in two recent decisions.<sup>7</sup> The main test is that the inspectors must act fairly in their conduct of the investigation as a whole. In addition they are obliged to give anyone whom they proposed to condemn or criticize in their report a fair opportunity to answer what was alleged against him.<sup>8</sup>

The provisions governing the appointment of inspectors applies equally to both public and private companies. A considerable number of applications are made but few inspectors are appointed. The following table is illustrative of this;

Appointment of Inspectors in Public and Private Companies 1964 - 1970.

Year	Applications	Appointments.			Public Private Companies	
		s. 164	s. 165(a)	s. 165(b)		
1964	121	-	2	12	7	7
1965	146	-	2	2	3	1
1966	150	1	-	13	3	11
1967	240	-	-	18	12	6
1968	338	1	1	14	-	16
1969	390	-	-	26	3	23
1970	490	-	-	15	3	12.

7 Re Pergamon Press Ltd. 1970 1 Ch. 338.  
Maxwell v Department of Trade and Industry 1974 2 WLR 338

8 Idem.

9 Figures taken from Hadden, Company Law and Capitalism second ed. at p. 332.



The reluctance of the Department to appoint inspectors is due in part to an awareness of the irreparable harm to a company which would be almost inevitable following the publicity given to the formal appointment of an inspector.<sup>10</sup> This argument is more cogent in respect of a public company whose shares are subject to the uncertainties of the share market than to a private company, although in the latter instance potential creditors and investors would be inevitably discouraged by the fact a company is under official inspection. Despite this however, there is a strong argument in favour of disclosure of adverse circumstances within a company in order to warn persons dealing with it that there is a good chance they may lose their money. A compromise between these two extremes is not easy but it is submitted that the attitude adopted today leans too far in favour of the former alternative.<sup>11</sup> This dilemma may be resolved in part by greater use of preliminary powers of inquiry to demand production of documents<sup>12</sup> without the associated publicity of a formal appointment of inspectors.

An additional power vested in the Department is that to order the suspension of business while an investigation is underway.

The Department has been criticised in relation to the time taken to complete an official inspection before a report is presented. The following table illustrates typical periods taken to report;

Year	Applications	Inspections	Companies involved.	Mean time to report in months.
1957	72	1	2	31.
1958	64	3	3	22.
1959	67	3	3	6.
1960	72	3	14	12.
1961	81	3	7	25.
1962	88	4	9	10.
1963	90	3	7	30.
1964	121	11	14	18(approx) <sup>13</sup>

10 Ibid, at 334. 11 Idem.

12 Ante, n. 97.

13 Figures taken from Hadden, "Control of Company Fraud," ante, n. 54 316.

It can be seen from the table that although varying from year to year, the standard time for completing an inspection and report is about two years. Sufficient facts concerning these investigations are not known so an assessment cannot be made as to whether the time taken is unduly long. This is particularly true when the complexity of an inquiry into a large company collapse is considered.<sup>14</sup> Nevertheless observations have been made that the actions of the Department are unduly tardy and cautious. One example of this was identified by Professor GOWER when presenting his submissions to the Jenkins Committee, when he observed;

"The attitude seems to be that if one makes out a prima facie case of oppression then you say 'We are not going to appoint an inspector because you already know the facts'. On the other hand, if you donot make out a prima facie case you say, 'You have not made out a prima facie case and therefore we cannot appoint an inspector.'" <sup>15</sup>

The criticism was directed at the policy of not appointing an inspector when most of the facts were already known. If this principle was applied to cases of prima facie fraud, the Department would, I submit be abdicating its responsibility if it refused to appoint an inspector on the above rationale. The point is raised as it is illustrative of the inherent difficulties associated with a large beaurocratic organisation of this type where the administrative structure is such that results appear to take an extraordinarily long time to achieve. Part of the answer may lie in the confusion surrounding the role of the inspector appointed. To whom does he owe his primary duty; to the shareholders, creditors, investors, or to the public at large? This confusion has moved an eminent inspector to comment;

"In other investigations and inquiries of which I have had experience a line is drawn between the administrative function of searching out and presenting evidence and the

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14 The P.L.L. LTD inquiry took two years before coming to Court and the J.B.L. inquiry has been three years without a final result to date.

15 Jenkins Committee on Company Law (UK) 1962 Cmnd 1749. Reproduced in Hadden Control of Company Fraud, ante, n. 15 p. 317

"quasi-judicial function of assessing evidence and reaching conclusions ..... In a company investigation of this sort one man has to combine the work of an accountant, detective, solicitor and adjudicator." <sup>16</sup>

Such confusion has resulted according to one writer in the role of the Department being reduced to one of "fact finding" without much effort to analyse the facts or resolve the case.

This criticism does not, however, affect the basic proposition that a similar organisation to the Department of Trade and Industry with wide powers of inspection and investigation has the potential to be an effective preventive and supervisory tool in relation to fraudulent company practises

2. Company Fraud Squads attached to the Police.

These form the other arm of the machinery to combat the fraudulent company. They exist as part of the C.I.D. of most Police Departments in the United Kingdom. The administration of two of these squads will be outlined here.

The Metropolitan Police and City of London Police maintain a joint Department for the investigation of certain types of fraud. It is known as the "Metropolitan & City Police Company Fraud Department." The functions of the Department are:

To investigate difficult cases of substantial fraud -

- (1) (a) In connection with the promotion or carrying on of any company; the investment of money in any company; the creation of or dealings with the debentures or shares of any company.
- (b) Involving expert investigation of the accounts of any company or business, and
- (c) Perpetrated by an individual or by partners in a business or on banks.

- (2) The work of the Branch embraces both the detection of actual cases of fraud and the prevention of frauds on the public.
- (3) Inquiries are also made in relation to offences against the Unsolicited Goods and Services Act 1971,<sup>17</sup> and the Fair Trading Act 1973.<sup>18</sup>

The current establishment of the Department is:

- 1 Commander;
- 4 Detective Chief Superintendents;
- 3 Detective Superintendents;
- 11 Detective Chief Inspectors;
- 25 Detective Inspectors;
- 38 Detective Sergeants;
- 23 Detective Constables;
- 6 Temporary Detective Constables;
- 16 civilian staff employed as clerks, typists and drivers

when required. This comprises the Metropolitan component. In addition there is a City of London component consisting of;

- 1 Detective Chief Superintendent;
- 1 Detective Superintendent;
- 2 Detective Chief Inspectors;
- 7 Detective Inspectors;
- 10 Detective Sergeants;
- 3 Temporary Detective Constables;
- 1 Constable;
- 6 civilian staff.

The total staff of 158 is in addition to the conventional fraud squads attached to the C.I.D. who concentrate on the more conventional false pretence<sup>19</sup> and credit by fraud inquiries.

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- 17 for example, unsolicited entries in Trade Directories.
- 18 for example, pyramid selling; in practise some inquiries are referred to the Department of Trade and Industry.
- 19 for example, dud cheques which form the basic diet of any fraud squad and are the reason they have little time to devote to the more complex type of commercial and company fraud.

None of the established staff is qualified in law or accounting. The investigative expertise of the Department stems from the selection of officers of proved detective ability who have the ability to assimilate further knowledge of the complex provisions of commercial and company law as well as the basics of accounting. Part time education in these areas is encouraged in addition to a variety of course run by the Department. The aim is to have every detective on the squad sufficiently "au fait" with the principles of commercial law and accounting so that he is able to understand the language of the professional lawyer or accountant, test the validity of any document and the propriety of any transaction.

Company and similar large scale frauds are a recurring and increasing problem in the United Kingdom in general and the London area in particular. Most have international implications. The problem is being contained, but not without difficulty and only at the expense of long hours worked by the investigating officers of the Company Fraud Department. The problem is not seen as one of system or technique but an increasing one of lack of investigative personnel. Improvement plans are constantly under review in response to changing patterns of types of frauds being committed.

The Metropolitan Police maintains its own Solicitors Department to assist and advise in all legal matters affecting the Police. This service is not normally utilised by the Company Fraud Department as two alternative sources are available. The first is the Department of Trade and Industry who maintain their own professional division consisting of both qualified lawyers and accountants. This Department deals with many company offences itself often reported by the Company Fraud Department. There is close liaison between the two and the former's legal and accountancy section has greater expertise in the field of company fraud than the latter's counterpart. Further, should a company be under official inspection by the Department of Trade contemporaneously, as is often the case, with a police investigation, the inspector appointed is frequently a Queens Counsel with assistance provided by a qual-

ified accountant backed by an experienced staff. The inspector will invariably disclose any offences committed and report accordingly. In this type of dual investigation the Department of Trade liaise with the Company Fraud Department in both the compilation of evidence and the evaluation of which charges should be proceeded with. A second source of advice and expertise is provided by the Office of the Director of Public Prosecutions who, in the United Kingdom, are the final prosecuting authority. A different situation exists in New Zealand where the Police Department have their own Prosecution staff who handle all summary offences as well as most preliminary hearings for indictable offences. The D.P.P. is staffed by fully qualified solicitors and barristers. It may also call on the services of Treasury Counsel who are senior and experienced barristers who are retained by the Crown for advice and advocacy. A further avenue open to the D.P.P. is the engagement of accountants to examine accounting documents in the course of a fraud inquiry.

There is, therefore a three tier system in the United Kingdom for the investigation and prosecution of company and related fraud offences. The Police Company Fraud Department, the Department of Trade and Industry and the office of the Director of Public Prosecutions. The Police and Department of Trade are primarily investigative but have an advisory role. The D.P.P. has a primarily advisory and prosecution role but also undertakes some investigation in this and other fields of the criminal law.

The Police see their function as one part of a team effort and consequently do not place too high a priority on a tertiary qualification in either law or accounting. They prefer sound detective skills backed by some professional expertise. This approach is well suited for their system as advice on complex issues is always available from other sources with whom they maintain a close liaison. In New Zealand the Police Department is not so fortunate as although it has some sources to which it can turn for advice,<sup>20</sup> these sources do not have the experience or

expertise of their counterparts in the United Kingdom in relation to complex commercial and company frauds. This largely results from the fact that this area of crime was largely unknown to New Zealand until recent years. From this premise it can be argued that the investigator in this country requires more professional skills in law and accounting than does the Police investigator in England.<sup>21</sup> This does not derogate however from the proposition that any investigator must possess sound techniques of inquiry, deduction and compilation of evidence such as those possessed by trained detectives. It is submitted that a combination of the two types of skill is essential for effective investigation in this area.

A further example of a Company Fraud Squad is that of the Strathclyde Police in Glasgow,<sup>22</sup> which has a function closely allied to the Company Fraud Department discussed above. It consists of a Detective Superintendent, a Detective Inspector, two Detective Sergeants, two Detective Constables, two female Detective Constables, one Detective Constable on temporary attachment and a civilian assistant trained in accountancy. No members of the squad possess a tertiary qualification but all are experienced detectives who undertake further instruction in questions of law and accounting. The Strathclyde Police have a number of their staff who have acquired Law Degrees but they do not form part of this squad or the C.I.D. They are available for advice if required.

The administrative structure to inquire into suspected offences of all kinds in Scotland is different to that in the United Kingdom or New Zealand. All criminal prosecutions are conducted at the direction of the Lord Advocate who is a political appointee at the head of a government department known as the Crown Office. In theory all crimes are reported to and investigated by a Procurator Fiscal who is always qualified in law and is not a political appointee. He has, therefore,

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<sup>21</sup> This theme will be expanded in the following chapter.  
<sup>22</sup> Known as the Strathclyde Police Company Fraud Squad.

continuity of office. He is responsible for the investigation and prosecution of all crimes within his area of appointment.<sup>23</sup> He is always under the control of, and answerable to the Crown Office.

More than one Procurator Fiscal may be appointed in each Sheriffdom and each may have several assistants known as Procurators-Fiscal Deputes. The Fiscal disposes of minor offences<sup>24</sup> in the Sheriff Courts and more serious offences<sup>25</sup> which after investigation he reports to the Crown Office for prosecution in the Sheriff and Jury Courts, or the High Court of Justiciary.

In practise he does not carry out criminal investigations himself but uses the local police as his agents for this purpose. He receives their reports for his consideration and decision whether or not to prosecute. There are no preliminary hearings for indictable offences in Scotland; the Procurator Fiscal decides whether or not there is a case to answer. The Police have no power to prosecute or instruct someone else to prosecute if the Fiscal makes a negative recommendation; neither can they prevent a prosecution if the Fiscal or the Lord Advocate decides to take proceedings.

In the area of commercial and company fraud, therefore the Company Fraud Squad work in close liaison with, and under the direction of the Procurator Fiscal who advises them on questions of law as well as deciding whether or not to proceed with criminal proceedings in a particular case.

There is a separate Companies Office within the Department of Trade in Scotland but they have no jurisdiction to inquire into offences relating to companies. These are carried out by the Police on instructions from the Procurator Fiscal.

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23 Each such area is known as a Sheriffdom .  
24 Equivalent to summary offences in New Zealand.  
25 Equivalent to indictable offences in New Zealand.



There is no other squad in the Strathclyde C.I.D. who handle solely fraud inquiries. Frauds of a relatively minor nature are dealt with by Detectives in the course of their other inquiries. There is only one other fraud squad in Scotland which is based in Edinburgh.<sup>26</sup>

Despite the complex administration in relation to the direction and investigation of criminal offences in general and company frauds in particular the Strathclyde Company Fraud Squad does not feel inhibited by the fact that, in theory at least, it is subserviant to their Crown Office. The two functions are separate. The Police are the investigators while the Procurators Fiscal initiates inquiries and makes the final decision in relation to them. They are, in reality, partners seeking a common goal.<sup>27</sup> Minor administrative difficulties do arise but these are not regarded as significant.

A different approach, though there are some similarities, has been taken in Australia. Basically they have two agencies for investigation of company and commercial fraud. The first is the Companies Office who have until recently had similar functions to that of their New Zealand Counterpart.<sup>28</sup> The second is the Fraud Squads attached to local C.I.D. They suffer from similar problems as those existing in New Zealand, namely shortage of staff per se and shortage of personnel with sufficient knowledge and expertise to efficiently investigate and prosecute complex commercial and company offences.<sup>29</sup>

One example of this is that of the Department of Police and Customs in the Australian Capital Territories.<sup>5</sup>

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26 No information has been sought or received as to the administration of this squad.

27 These comments are those of the Detective Inspector attached to the Strathclyde Police Police Company Fraud Squad.

28 The Commercial Affairs Division of the Justice Department; refer ante, part three chapters one and three.

29 Including both fraud and lesser offences, (such as those found under the Companies Act 1955 ss. 320, 321 and 364.

This squad consists of nine men, the officer in charge being a Detective Inspector. In addition they have access to a pool of typists and clerks attached to the C.I.D. Most are experienced detectives who have attended courses in commercial law and statistics. One members is near completion of his degree in economics and two others are attending courses at the Canberra College of Advanced Education in Law and Administration.<sup>30</sup>

There is a proposal by the Australian Government to substantially reorganise the machinery for investigating large scale frauds in Canberra.<sup>31</sup> Preliminary planning suggests a single fraud investigatory unit consisting of upwards of 400 members consisting of experienced police investigators, legal officers, accountants and support staff. No further details are yet known. There is no indication of when this proposal may become a reality.

In Sydney the Police Fraud Squad work in conjunction with the office of the Commissioner for Corporate Affairs,<sup>32</sup> who conducts extensive investigations into company affairs and has staff qualified in both law and accounting for that purpose. In addition two members of the fraud squad are seconded permanently for duty with the companies office.<sup>33</sup>

Both the above fraud squads donot deal solely with commercial and company frauds but also with the minor offences of fraud handled by a conventional fraud squad. They are the only fraud squads in their respective C.I.D. offices.

In Canada some enforcement machinery is more fragmented. For example in Toronto three different Police Departments have

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- 30 These courses were not undertaken at the instigation of the Police Department but from the members own volition.
- 31 This has resulted from a greater awareness of the problems of white collar crime in general.
- 32 Established under recent legislation; refer associated paper by the author, ante, n. 1.
- 33 Further details of the administration of this system were sought but were not forthcoming at the time the paper was written.

jurisdiction in the enforcement of the law. These are;

(a) The Metro Toronto Police Force, who are responsible for all criminal investigations in the Toronto Metropolitan area. They are sworn in as Peace Officers and may exercise their powers throughout the state of Ontario. Other municipalities have their own Police Force staffed with other Peace Officers.

(b) The Ontario Provincial Police (O.P.P.) who have jurisdiction in rural areas, villages and towns not under the administration of the Police listed in (a) above. The O.P.P. assist the municipal Police and the converse also applies, if required.

(c) The Royal Canadian Mounted Police (R.C.M.P.). They are appointed by the Federal Government and have specific functions of policing all provinces.

In Toronto all three arms are represented and all have officially appointed fraud units; the Metro maintain a fraud squad, the O.P.P. an "Anti Rackets Branch" and the R.C.M.P. a Commercial Crime Section.

A further agency, the Ontario Securities Commission (O.S.C.) have jurisdiction to inquire into and prosecute offences related to companies as well as the stock and brokerage industry.

The Metro Fraud Squad handle all fraud offences from those involving cheques to commercial and company fraud. There is no separate Companies Office and all bankruptcies are handled by the R.C.M.P.

Within the Metro Fraud Squad there is specialisation of personnel in the area of company and related frauds. No member has a legal or accounting qualification but all have undertaken some study in both subjects. In addition they are experienced investigators. Younger officers of the Metro do hold university degrees and these are being considered for use in the role of investigation within the Fraud Squad in future.

The Metro acknowledge that they have an increasing

workload in relation to commercial and company fraud. This increase is in both volume and sophistication. They acknowledge that their system has numerous defects, not the least of them the fragmented nature of their investigatory machinery.

The above are some examples of how investigations into offences of this nature are carried out. Several similar factors emerged from the replies received from Police Departments in Australia, the United Kingdom and Australia.

The first is that the development of commercial and corporate crimes has exceeded the development of both the substantive law and the machinery to police that law. As one writer assessed the situation; "I believe that fraud has matured whilst the investigation of fraud has remained an embryo".

The second is that these investigations occupy a unique position in relation to general police work. They require a particular expertise which cannot be easily acquired. This expertise involves two aspects. The professional expertise of an investigator and the academic expertise of the lawyer and accountant.

Finally the belief was generally expressed that of the two aspects of the preceding paragraph, the former was of greater importance though the latter was useful. The two married together was approaching the ideal. Another writer expressed the view; "a criminal is just a criminal and a fraudster or a dishonest company director is just another criminal; albeit better dressed and wealthier. If a fraud squad officer cannot keep that in mind.....; if he lacks the experience in dealing with the criminal fraternity at a lower level; or if he does not have the ability to penetrate a veneer of business knowledge, education or honesty, then mere theoretical knowledge and paper qualifications will be of little value."

The final question to be discussed in this paper is how can we best cope with the problem in New Zealand in the light of some overseas experience.

CHAPTER FIVE:

A model for New Zealand.

Thus far two distinct types of company which cause particular problems in relation to law enforcement have been identified. The first is the inefficient company which through a variety of reasons fails, owing considerable sums of money to its creditors. The second is the fraudulent company which through a variety of dishonest practises makes a profit for its members to the detriment of its creditors. This type of company may have been a legitimate business initially but in an effort to rescue it from failure the controllers employ a number of methods, some of which may be justifiable, some merely 'sharp' business practices and others which are fraudulent in the criminal sense.

Each type of company may have some characteristics of the other, but each will have a dominant factor of either fraud or mere inefficiency. Both categories present considerable problems to any law enforcement or other agency whose task it is to reconstruct the activities of a company and ascertain whether any breaches of the law have occurred.

It is submitted that the machinery which exists at present in New Zealand is insufficient to effectively deal with the problems faced.<sup>34</sup> What then is a better alternative?

Several different models for enforcement of the law and inquiring into the activities of a company may be identified. The first is an expansion of the present system which is a dual approach by both the Police and Justice Departments, each having a defined responsibility.<sup>35</sup> The Police would continue to have primary responsibility for inquiry into and prosecution of substantive criminal offences committed by companies and their officers. Complaints may arrive from a variety of sources including creditors and the Justice Department. The task of evaluating complaints should be the responsibility of a unit with experience in company and related law. The

34 Refer chapters one and three of this part of the paper.

35 Refer ante, pp 38-40 for the division of responsibility between the Police and Justice Departments.

task of investigation would fall to the same unit which should have some experience in conducting investigations. Ideally this unit should consist of experienced detectives, some of whom have knowledge of, and possibly qualifications in the area of commercial and company law. This knowledge may be achieved in two ways. The first is the undertaking of a law degree by a member of the squad while the second would involve training within the Department in the form of specialised courses on the relevant subjects. A related skill necessary is that of accounting procedures and detectives with knowledge in this area are a necessity. Similarly this knowledge may be acquired by the undertaking of a formal course at a university or technical institute, or from courses within the Department. Of the two alternatives, a tertiary qualification would be desirable but the usefulness of Departmental courses should not be under rated.

That there is a need for such a specialised unit is evident from speaking to officers from Fraud Squads throughout the country, but more particularly in Auckland and Wellington. The administration of such a unit, however, is not without its problems. It is in the nature of company fraud work that there is not a constant workload. Therefore should a unit be set up whose only responsibility was the investigation of frauds involving companies or other bodies corporate there may be periods where it is overloaded with work, while at other times it may be virtually unemployed. On the other hand if specialised detectives are assigned to regular fraud squads to handle company frauds when they are reported there is the very real danger that such detectives will be absorbed for much of the time on regular fraud work at perhaps the detriment of a company investigation. Fraud Squads are almost always overloaded with work and it would be inevitable that any detective on the squad would acquire a considerable number of files. These may not be easily completed on the arrival of a company inquiry. A company inquiry requires long patient investigation and the biggest problem faced by fraud squads today is that

they do not have time because of their regular workload to make adequate inquiries into suspected fraudulent companies. There is a real danger that this situation would continue even where an extra detective for company fraud work is attached to the squad.

The alternative is a separate company fraud squad as exists in London and Glasgow<sup>36</sup> with qualified detectives appointed to undertake the relevant inquiries. This is the present system in Auckland. There is no other equivalent squad in New Zealand.

A further alternative is a company fraud squad within the administrative structure of a regular fraud squad but with independent responsibilities. Such a system could form the first step towards an autonomous and larger company squad. The advantage of this type of administration is that the company fraud staff could be available to assist the regular fraud squad when they were able but equally they could refuse work when they are fully occupied with company inquiries. The company staff should have an investigative function rather than an advisory one as specialised advice can be obtained from separate sources<sup>37</sup> and it would be a waste of a trained investigator to employ him solely as an advisor, though no doubt he would be available to the fraud squad for advice when required.

The second arm of this enforcement machinery would be provided by the Commercial Affairs Division of the Justice Department. Their investigative role should, it is submitted be confined to those in relation to a normal company liquidation and any offences committed under the Companies Legislation. Their staff consist at present of mainly clerical staff with no particular expertise or training in relation to investigatory techniques.<sup>38</sup> Some of their staff are partially qualified in law and others have been recruited from university graduates. It is submitted that although these qualifications are useful in relation to inquiries into companies in liquidation and also bankruptcies, something extra, namely the investigative and interrogative skill of the detective, is required when dealing with fraudulent directors and promoters. There is thus a clear role to be played by both agencies. Inevitably there

36 Ante, chapter four part three 37 e.g. Legal Section; lawyers and accountants in private practice. 38 With the notable exception of the Official Assignees.

will need to be close liaison between them and even some overlap in role. There is no reason why they should not form an effective team to combat the growing problems presented by failing and fraudulent company provided they are furnished with the necessary staff.

An alternative to this model is that recently proposed for London.<sup>39</sup> This envisages the functions at present being carried out by the Police Company Fraud Squads, the Department of Trade and Industry, the Official Receiver and the Director of Public Prosecutions should be unified into a single new administrative structure to form a single company law enforcement unit. The professed aim of such a change is to achieve a single records agency, speedier inquiries into suspected company frauds, greater prevention of fraudulent and related company activity and a more specialised, professional investigative team.

While such a model may have some advantages in the United Kingdom where the existing administration of the Department of Trade and Industry is notoriously slow, it is submitted that such a system in New Zealand would have few advantages while it could have serious disadvantages. Among these is the difficulty of attracting sufficient qualified and skilled staff for such an agency. It is doubtful if a professional detective could be enticed to leave the Police Department for a job in another quite separate government agency. It is equally doubtful whether sufficient professional graduates could be attracted to such an agency which could not hope to match the salary scales of the private sector for lawyers and accountants. Finally it is not clear whether such persons could do an effective investigatory job in any case. The authors submission is, leave professional investigations to professional investigators, that is the Police, or more specifically detectives.

Any advantages of a unified model such as that suggested above could, it is submitted be achieved equally as well using the dual

39 See Hadden ante, n. 54 pp. 323-328. See also Hadden Company Law and Capitalism (first ed 1972.) pp. 339-340.



approach outlined above. This is dependant of course on both the Justice and Police Departments supplying sufficient resources to their respective investigative units.

A third approach to the problem is allied to the first model outlined. This envisages a specialised Police team working in conjunction with a team from the Justice Department in relation to company fraud. This system involves the secondment of police personnel to the Justice Department to work alongside their staff. Such secondment is on a reasonably permanent basis. In Sydney there is an example of this, where two members of the fraud squad are seconded permanently with the Companies Office. The Macarthur Committee referred to this secondment and referred to it as "real co operation between the two departments."<sup>40</sup> While there can be no doubt that this is real co operation it is submitted that it is unnecessary and possibly wasteful in terms of staff resources. Two separate roles can be distinguished for each agency.<sup>41</sup> If both work too closely in relation to each role there is a danger that the roles could become confused with the result that experienced Police personnel could find themselves engaged in inquiries which are not part of the Police responsibility. The spirit of liaison, assistance and co operation can be achieved with the two agencies working separately.

It is submitted therefore that the first model outlined will be the best, initially at least to police more effectively the activities of suspected fraudulent companies.

Having outlined an ideal model, the question of how feasible its introduction will be is relevant. There are a number of factors to be considered here. Firstly there are resources. Have both Departments sufficient staff on whom they can call to increase the effectiveness of their existing machinery. In relation to the

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- 40 Macarthur Committee on Company Law, final report 1973 para 40.  
41. Referante, pp. 38 - 40 with respect to the nature of the role of each Department.

Justice Department, they have embarked on a planned expansion of their machinery to supervise and investigate suspect companies through the establishment of the Commercial Affairs Division.<sup>42</sup> The Police, on the other hand, have not significantly increased their fraud squad staff since the inception of the Auckland Company Fraud Squad with two members in Auckland in 1971.<sup>43</sup> The principal reason for this has been the many different priorities for the utilisation of staff within the Police. The question of law and order in general is a political issue of some importance and the priorities of politics do not necessarily coincide with those of reality. Since the present Government took office total Police staff has increased to 4119, from a ratio of 1:890 to 1:745 of total population.<sup>44</sup> Almost all of this increase has, however, been absorbed by the Uniform Branch with the result that the Criminal Investigation Branch (C.I.B.) whose task is to investigate more serious crime, has not significantly expanded for some years. This is despite the fact that the incidence of more serious crime has been increasing at an annual rate of in excess of 10%.<sup>45</sup> The result has inevitably been greater pressure on the resources of the C.I.B. in general and fraud squads in particular.

The Department has plans to expand all squads in the C.I.B. but there is no indication of when this will occur.

A second factor to consider is the required knowledge and expertise of the staff investigating company frauds. The Police Department has a number of officers throughout the country who hold tertiary qualifications in both law and accounting and there are an additional number who are partially qualified in both areas. Some of these are employed in the C.I.B. and have qualified as detectives. Thus, there is a pool of trained investigators able to form the basis of specialised company fraud investigation units in each of the larger centres.

42 Ante, chapters one and three of this part.

43 Refer ante, p. 42 for further details.

44 Police Department Annual Report 1975 G.6, p. 5.

45 Police Department Annual Reports 1972-75, refer tables of crime statistics.

The Commercial Affairs Division of the Justice Department also have a number of graduates and partially qualified staff and with programmed expansion should be able within a few years to fully implement its policy of effective supervision of company activity as well as investigations into company liquidations and bankruptcies.

The position is therefore, that although the problem has increased substantially in recent years, for a variety of reasons enforcement machinery has not kept pace. The Police Company Fraud Squad established in Auckland has become fully committed on several major investigations leaving the already overworked fraud squads in Auckland and other centres to cope with other company frauds. Some progress is planned but its nature and timing is not known.

It is submitted that a dual approach to the problem by the Commercial Affairs Division of the Justice Department and Police Company Fraud Squads is the most suitable structure for New Zealand in relation to the investigation of fraudulent companies and the supervision of company activities in general. The Police Department has the resources in both personnel and expertise to make a meaningful contribution in this area but its full potential has yet to be realised. The establishment of specialised company fraud squads in Wellington and Christchurch with an active investigatory role together with an expansion of the Auckland Company Fraud Squad to meet its increasing demand should become an urgent Police priority.

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APPENDIX ONE

Lawhero

Coloured weather steels were offered

\$11.50 to \$51. Dominion Corro-

**A FLAT 10% PER ANNUM INVESTMENT  
THAT IS SOUND AND GUARANTEED**

**ASSETS:** Registered Chattels.

**SECURITY:** Backed and guaranteed by a substantial Finance Company.

**TERM:** Basically short term 2, 3 or 4 years, or arrangements can be made to let it compound until you require it.

**INTEREST:** A minimum of 10% Flat is guaranteed. Each month you are paid part principal and interest, which turns it into an effective rate of 19.6%.

**INITIAL INVESTMENT:** The minimum amount to start participating is \$1250 or there after in multiples of \$50.

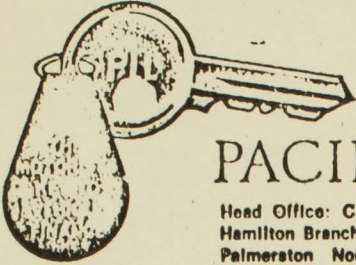
**REINVESTMENT:** Our calculations show by reinvesting your instalments you can receive approximately 15% Flat.

**CONVERTABILITY:** It is reassuring to have control over your money and this scheme provides that your money can be withdrawn on 30 days call.

**INTERESTED?:** Why not write to us for further details. Remember we place you under no obligation.

**PACIFIC INVESTMENTS,  
P.O. Box 654, Hamilton.**

APPENDIX TWO.



## PACIFIC LEND LEASE LIMITED

Head Office: C.M.L. Buildings, Queen Street, Auckland, P.O. Box 3253, Telephone 370-193, 373-538.  
Hamilton Branch: First Floor, Turners & Fows Bldg, Victoria St, Hamilton, P.O. Box 654, Phone 84-422.  
Palmerston North: National Bank Building, Rangitikei Street, P.O. Box 1730, Phone 77-834.

ORIGINATING OFFICE

Hamilton

12 May 1970

Dear Sir,

re: Pacific Investments:

Thank you for your letter regarding our Investment Proposition advertised in your paper recently. I have paraphrased below full particulars on the investment for your perusal.

General: Firstly our Company, Pacific Lend Lease Limited is engaged in the financing of leased motor vehicles. Having been one of the pioneering companies of this field in New Zealand, we are now recognised as the largest exclusive motor vehicle Leasing Company in the country. Over the last three years alone we have arranged leases for a total sum of well in excess of \$4,500,000 and with the total number of vehicles now under lease to us running well into the thousands, and increasing at a rapid rate we are finding that our normal finance sources are being taxed to the fullest.

At the present time we are backed by a monthly allocation from investment companies and finance houses, and we are now able to offer to the general public rates, terms and securities identical to those we have contracted with these finance companies.

Purpose of Investment: To discount Motor Vehicle Lease Agreements to new Investors and finance organisations at the same terms as are presently being enjoyed by existing financiers.

Security: This is obviously of prime importance to you, and is particularly sound in this instance. As previously stated, security offered to you is identical to that upon which several finance companies have contracted to provide finance.

An unusual aspect of this investment and perhaps the actual reason for its popularity is that the investor is the actual owner of the vehicle, and holds all legal documents pertaining to each individual lease. As this is a registered chattels document, the investor also holds a copy of the lease agreement, the Deed of Assignment, and a Solicitor's letter confirming Court Registration.

The lease which is registered at the Supreme Court in Auckland, shows you as the Assignee of the Lease, and binds the person leasing the vehicle to pay to you through us, monthly repayments in proportion to the amount of your investment.

When assigning leases to you our company also gives a written guarantee, guaranteeing the payment to you of all money payable under the Instrument and the due and proper performance of all the covenants conditions and agreements on the part of the bailee contained and supplied in the said Instrument. This means that if the bailee does not pay his instalments then we will pay them to you.

It may be seen from the preceding paragraph that this additional security gives this investment all the advantages and securities of any gilt edged investment.

Initial Investments: The minimum investment we can initially accept is \$1250.00. This is actually governed by the amount that we require to finance any one particular lease assignment. All deposits are paid into our investment account and are held in Trust for the investor until a motor vehicle lease assignment securing the investors deposit is executed in his favour. Where possible we try to utilise investments to the fullest, should a deposit exceed the amount of the assignment figure, then this excess is immediately refunded. Interest becomes payable from the day we receive a deposit.

Term of Investment: This varies over 2, 3, or 4 years, according to the term of the lease, but there is no maximum period. You can keep on re-investing for as long as you like.

Interest: Regardless of the terms of the Investment, interest payable is designed to give a return of a least 10% per annum flat. Calculated under the provisions of the Money Lender's Act, this is an effective return of approximately 19.6% per annum. Since instalments are made up of 10/11 capital repayment and 1/11 interest by re-investment this return can be considerably increased in the case of large investments. As the minimum requirement to take a new lease is \$1250, the bigger the monthly cash flow as above, the more profitable the investment.

Re-Payment of Advances: As stated previously, our company guarantees to you, your monthly principle and interest re-payment. Each month investors are posted a cheque from us for the monthly amounts stated on the lease agreement and the Deed of Assignment. This is calculated by multiplying the investment by 10% by the number of years of the investment, and divided by the number of months.

Some Examples to help you calculate your returns:

<u>Amount of Investment:</u>	<u>Monthly re-payments over -</u>		
	<u>2 years</u>	<u>3 years</u>	<u>4 years</u>
\$1000	\$50-00	\$36-12	\$29-18
1500	75-00	56-16	43-76
2000	100-00	72-21	58-34
2500	125-00	90-24	72-92
3000	150-00	108-29	87-51

From this chart you will be able to roughly estimate your monthly return for a large investment by multiplying the returns of the \$1000 column by your intended investment, (e.g. \$10,000 \$500-00 \$361-20 \$291-80.)

Another simple formula at 10% on an Investment of \$2000.00:-

<u>Amount of Investment</u>	<u>Term of Investment</u>	<u>Interest 10% Flat</u>	<u>Per Month</u>	<u>Per Annum</u>	
\$2000	2	\$200	\$100.00	\$1200	(\$1000 Principle & \$200 Interest
2000	3	200	72.21	867	(\$677 Principle & \$200 Interest
2000	4	200	58.34	700	(\$500 Principle & \$200 Interest

or an effective yearly rate over:-

<u>Term:</u>	<u>1st year</u>	<u>2nd year</u>	<u>3rd year</u>	<u>4th year</u>
2 years	10%	20%		
3 years	10%	15%	30%	
4 years	10%	13.3%	20%	40%

For the purpose of this illustration percentages have been calculated on yearly rates and do not take into account any reinvestment of principle or interest.

Convertibility: Should investors desire to surrender their investment before completion date, we are only too happy to arrange this by reassigning the lease to another investor or finance company. This normally requires one month's notice.

Insurance: All vehicles are fully insured so as to cover the amount of your investment. Insurance is arranged by our company before the lessee drives off.

Summary: Finance companies have found that while providing maximum security this investment, presents them with what is possibly the highest return available for a fully secured investment.

Both the lessee and vehicle must conform to a high standard before acceptance.

Our lease agreement form has been thoroughly checked by Queen's Counsel Representatives over the years, and conforms to all Government requirements of the credit sales and stabilization regulations, and is designed to give legal protection to both the Lease Company and your investment.

All you are required to do is provide the capital and we will arrange the rest on your behalf. All the expenses of insurance, repairs etc., are the responsibility of the lessee, as are all charges, legal expenses etc., arising out of this transaction. For your Investment you will receive back all your capital plus 10% Flat rate of interest, without any deductions whatsoever. All administration is handled by our company and our Solicitors, at no charge to you. We are conscious of your interest at all times and do all in our power to protect them.



Should you desire any further information then I would be only to pleased to assist you or if you would like to call and discuss this personally, appointments can be conveniently arranged by ringing 84422 Hamilton.

Yours faithfully,  
PACIFIC LEND LEASE LIMITED

*B. G. Rickey*

.....  
p.p. (B. G. Rickey)  
Branch Manager

APPENDIX THREE.

E

DEED OF ASSIGNMENT

PACIFIC LEND LEASE LIMITED (who together with it's successors, administrators and assigns is hereunder termed "the Owner")  
IN CONSIDERATION of the sum of \$1150.00 paid, lent and advanced to it by [REDACTED] - Retired Farmer & family incorporated company with it's registered office at [REDACTED] (hereinafter with it's successors and assigns called "the Corporation")

DOTH HEREBY AGREE to pay to the Corporation the sum of \$1380.00 by monthly payment of \$57.50 on the first day of every month and one final payment of \$1380.00 on the [REDACTED] day of [REDACTED] 19[REDACTED] until the whole of the said sum of \$1380.00 is paid commencing with a payment on the first day of August 1969, AND the Owner for the better securing performance of it's

obligations as aforesaid DOTH HEREBY ASSIGN SET OVER AND TRANSFER by way of Mortgage only to the said Corporation but as separate assignments

(a) All that the Owner's right, title, claim, interest and demand whatsoever in and to the hiring agreement referred to in the schedule hereto and (b) All the the Owner's title and property in and to the Motor

Vehicle described in the said hiring agreement and schedule AND for and as part of the consideration aforesaid the Owner DOTH HEREBY IRREVOCABLY

NOMINATE CONSTITUTE AND APPOINT the Corporation to be the Owners true and lawfull Attorney and as the Owners act or deed to do an execute all

such things as acts and deeds as may in the sole discretion of the Corporation be necessary or expedient for the more fully and effectually

carrying out or enforcing any of the rights powers and/pr privileges of the Owner contained or implied in the said hiring agreement AND if and

when required by the Corporation the Owner will at the owners expenses in all things act as agent of the Corporation for the purpose of collecting

the instalment of rent money or making such inspections, seizures or other wise attending to the proper performance by the Bailee of the obligations

on his part contained or implied in the said hiring agreement AND the Owner hereby becomes surety to the Corporation for an guarantees the

payment to the Corporation of the moneys payable under the said hiring agreement and of the due and proper performance of all the agreements

conditions and restrictions on the part of the Bailee contained or implied in the said hiring agreement and this surety shall be continuing one and

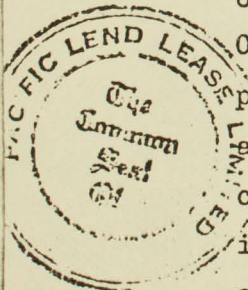
shall remain in full force and effect until complete performance by the said Bailee notwithstanding that any time or other indulgence may be

granted from time to time by the Corporation to the Bailee or any other person AND for the consideration aforesaid the assignor doth hereby

warrant that the said hiring agreement is valid and subsisting and has been duly registered under the Chattels Transfer Act, 1924 in the Supreme

Court at Auckland under No. [REDACTED] and that the said agreement is not void under the Hire Purchase and Credit Sales Stabilizations Regulations

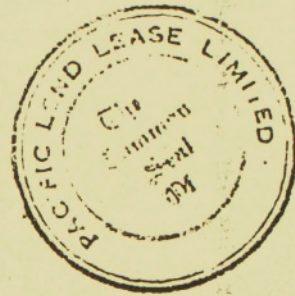
1955 and that the assignor has not contravened and will not contravene the said regulations and that the hirer has paid pursuant to the said



regulations and that the hirer has paid pursuant to the said hiring agreement no hire rent in respect of any period later than that commencing on the 1st day of August 1969

DATED at Auckland this 16th day of July 1969

THE COMMON SEAL of PACIFIC LEND LEASE )  
LIMITED was hereunder affixed by and in )  
the presence of: DIRECTOR )



WITNESS: .....

ADDRESS: ..... Auckland .....

OCCUPATION: ..... Director .....

THE SCHEDULE

Date of Hiring Agreement 16th July, 1969

Bailee: [REDACTED]

Term: 2 years

Vehicle: Jaguar

Type: 1962 Car

Make:

Registration No: [REDACTED]

Engine No: BH662/8

Chassis No: H045502

Which vehicle shall be kept  
and garaged by the Bailee at  
[REDACTED]  
[REDACTED]

## VEHICLE LEASE AGREEMENT

PACIFIC LEND LEASE LIMITED a duly incorporated Company having its registered office in Auckland, hereinafter together with its successors and assigns called "the Bailor" being the owner of the vehicle described in the schedule hereto (hereinafter called "the vehicle") doth HEREBY BAIL AND LEASE the same unto: ~~\_\_\_\_\_~~

Company Director

hereinafter together with (if an individual his executors and administrators) or (if an incorporated company) its successors called "the Bailee" for the term of 2 years from the 16th day of July One thousand nine hundred and sixty nine

The sum below is the sum payable after all trade-ins, down payments, deposits or rental payments made in advance have been credited.

At a rental of:

(1) \$ 690.00 per annum in respect of the first year ending 16:7: 19 70

(2) \$ 690.00 per annum in respect of the second year ending 16:7: 19 71

~~XX~~

~~XX~~

And at a Residual Value of: \$ 50.00 being the amount agreed upon by the parties hereto and payable in terms of sub-paragraphs (z) (iv) to (z) (vii) hereof.

The Bailee shall pay the above rental by monthly instalments of \$ 57 : 50 in advance on the 1st day of each and every month PROVIDED HOWEVER that the Bailee will pay to the Bailor on or before the execution by the Bailee of this Instrument rental in respect of the period from the 16th day of July 19 69 to the first day of August 19 69

on which last-mentioned date the first of the said monthly instalments of rent will be payable AND IT IS HEREBY AGREED AND DECLARED BY and between the Bailee and the Bailor —

- (a) The Bailor hereby bails and leases the vehicle unto the Bailee and the Bailee agrees to take the same on Bailment and Lease.
- (b) That the Bailee will pay to the Bailor the said rent at the times hereinbefore provided free and clear of all deduction whatsoever, and the Bailee shall on or before execution thereof hand to the Bailor as security for the payment of the respective instalments of the said rent payable hereunder an irrevocable authority in writing authorising the Bailee's Bankers to remit the said instalments of rent from the Bailee's account with such bank, such remittances to be free of exchange to the Bailor at Auckland or elsewhere in New Zealand as instructed from time to time by the Bailor and such authority shall be deemed to be a collateral security only for the said instalments of rent and not in any way deemed to affect the liability of the Bailee to make any payments for which the Bailee is liable hereunder.
- (c) That the Bailor has good right and full power to bail to the Bailee the vehicle purported to be hereby bailed.
- (d) That the Bailee will not at any time during the currency hereof do or allow any act or deed whereby the vehicle may become prejudicially affected and the Bailee will at all times duly pay all rents from time to time becoming due in respect of any lands or premises on which the vehicle is for the time being kept and garaged.
- (e) That during the continuance of this Instrument the Bailor, its agents or servants may from time to time and at reasonable times for that purpose enter into and attend any lands or premises whereon the vehicle is from time to time being kept or garaged for the purpose of viewing and inspecting the condition of the vehicle and the Bailee will give and afford to the Bailor its agents and servants all reasonable assistance to enable the Bailor its agents or servants to view the same accordingly.
- (f) That the Bailee shall not at any time during the term hereof permit the vehicle to be driven at any time by any person who does not hold an appropriate driver's licence or who is under the influence of liquor.
- (g) That the Bailee shall at all times during the term hereof comply with and ensure that every authorised driver hereunder complies with all Acts, Regulations and By-Laws applicable to the vehicle or its use during the term hereof and the Bailee hereby undertakes to register and keep the vehicle registered as required by "the Transport Act 1962" and any amendments thereof and pay the annual registration fee, all heavy traffic fees and other fees payable in connection with the vehicle under any Act, Regulation or By-Law during the term hereof.
- (h) That the Bailee shall not part with possession of the vehicle and the Bailee shall not sub-let or bail the vehicle or charge or assign the interest of the Bailee under this Instrument.

- (i) That the Bailee shall at all times pay the cost of all fuel and oil used or consumed by the vehicle.
- (j) That the Bailee shall at all times keep and maintain, at the Bailee's own expense, the vehicle in good running order, repair and condition and will upon demand of the Bailor at any time forthwith to the satisfaction of the Bailor, at the Bailee's own expense, deliver the vehicle to the Bailor for inspection at such place or places as directed by the Bailor and if at any time the Bailor is of the opinion that the Bailee is not keeping and maintaining the vehicle in good running order, repair and condition the Bailor may at its option forthwith terminate this bailment or do such things as in its opinion are necessary to restore the vehicle to good running order, repair and condition, and the cost of such restoration shall be immediately payable by the Bailee to the Bailor and until such payment the Bailor shall be entitled to retain possession of the vehicle without affecting the Bailee's liability to pay rent hereunder. If the cost of the said restoration is not paid by the Bailee to the Bailor within seven (7) days from the date of the account for the same as rendered to the Bailee, the Bailee shall in addition pay to the Bailor, interest at Fifty Dollars (\$50) per cent per annum on the amount of such account from the date thereof to the date of payment thereof by the Bailee. That the Bailee indemnifies the Bailor against any loss of or damage to the vehicle from whatever cause arising.
- (k) That the Bailee shall at all times insure and keep insured the vehicle with an insurance office to be nominated by the Bailor for such amounts and against such risks and contingencies and at such terms as are from time to time specified by the Bailor and the policies for all such insurances shall be in the names of the Bailor and the Bailee for their respective interests herein.
- (l) That the Bailee shall take no claim against the Bailor for any inconvenience, loss, damage or injury caused through the vehicle suffering or developing any defect fault or damage.
- (m) That upon the termination of this Instrument the Bailee will deliver and yield to the Bailor possession of the vehicle at such place or site as the Bailor shall nominate.
- (n) That the Bailee shall keep the vehicle safely kept and garaged when not in use and keep the same free from all liens and will notify the Bailor in writing immediately of any change in the address of the Bailee or of the place where the vehicle is kept and garaged.
- (o) The Bailor not being a manufacturer does not supply the said chattels with or subject to any condition or warranty whatsoever expressed or implied as to quality description fitness or otherwise. It is understood that the Bailee has examined or caused to be examined the said chattels previously to executing this Instrument and has satisfied itself/himself as to their condition and has entered into this Instrument solely in reliance upon its/his own judgment. Each and every representation guarantee warranty promise or undertaking whatsoever made or given on behalf of the Bailor prior to the execution of this Instrument and not evidenced in writing signed by the Bailor and whether in respect of or touching or concerning the said chattels or any part thereof or otherwise and each and every condition whatsoever imposed or stipulated for by or on behalf of the Bailor prior to the execution of this Instrument and not accepted in writing signed by the Bailor and whether in respect of or touching or concerning the said chattels or any part thereof or otherwise is hereby cancelled extinguished and rendered nugatory and of no force or effect whatsoever.
- (p) That the Bailee shall pay to the Bailor interest at the rate of Fifty Dollars (\$50) per cent per annum on any arrears of rent herein from the date such rent becomes payable to the date of payment thereof and if at any time or times during the term hereof the Bailee shall fail or neglect to perform or observe any covenant agreement or condition on the part of the Bailee herein contained or implied, the Bailor may at its sole discretion and without prejudice to any of its rights remedies or powers herein perform or observe such covenant agreement or condition and any moneys paid by the Bailor in or as a result of such performance or observance by the Bailor shall become immediately due and payable by the Bailee to the Bailor and shall attract interest at the said rate from the date of payment of such moneys by the Bailor to the date of payment thereof by the Bailee to the Bailor.
- (q) That the giving by the Bailee to the Bailor of any Bill of Exchange or Promissory Note for the whole or any part of the moneys hereby payable, shall not until such bill or note is honoured or met be considered as payment of or on account of the moneys payable under this Instrument or in any way affect or alter the rights or powers of the Bailor by virtue of this Instrument; and any Promissory Note or Bill of Exchange which before, at, or on any time after the execution of this Instrument may be given by the Bailee to the Bailor for the whole or any portion of the moneys hereby payable, or the remedy thereon by the Bailor or by the holder thereof, shall merge into the covenant hereto expressed or implied.
- (r) That if the Bailee shall make default in punctual payments of the monthly instalments or moneys hereby payable or shall fail to perform and observe the covenants, conditions or agreements herein expressed or implied and on the part of the Bailee to be performed and observed or if any lien shall lawfully be claimed over the vehicle by any workman or any other person in respect of repairs executed at the request of the Bailee or if at any time the judgment of any Court against the Bailee remains unsatisfied for one day or if the Bailee becomes bankrupt or makes arrangements with the Bailee's creditors or (being an incorporated company) enters into liquidation or has a receiver appointed, then in such cases the Bailor, either personally or by its agents or servants, may immediately thereupon or at any time thereafter, without any further consent by the Bailee, and without giving to the Bailee any notice or waiting any time and notwithstanding any subsequent acceptance of the payment or any moneys due herein, enter upon any lands or premises whereon the vehicle may be and retake possession thereof and terminate this bailment without being liable under suit action, indictment or other proceedings whatsoever of the Bailee but without releasing the Bailee from any liability in respect of the breach or non-observance of any covenant, agreement, condition or restriction herein contained or implied on the part of the Bailee to be observed or performed which may then have occurred.
- (s) If this bailment is terminated prior to the expiration of the said term hereof the Bailee shall be liable to the Bailor for all loss incurred by the Bailor as a result of such termination.
- (t) That if the Bailee is an individual the Bailee hereby admits and declares that the Bailee is over the age of twenty-one (21) years.
- (u) That if there is more than one Bailee herein the liability of such Bailees shall be deemed to be joint and several.
- (v) Time shall be of the essence of the Bailee obligations herein.
- (w) The Bailee shall upon demand of the Bailor at any time execute the transfer of the vehicle in favour of the Bailor or its nominee such transfer to take effect from the date of termination of this Instrument and to be held by the Bailor or its nominee. The Bailee shall upon the termination of this Instrument forthwith hand to the Bailor the CERTIFICATE OF REGISTRATION and any other relevant documents in respect of the vehicle. The Bailee hereby irrevocably appoints the Bailor and any Manager, Secretary or other Officer of the Bailor jointly and severally, the Attorneys of the Bailee for the purpose of applying for a new Certificate of Registration or of executing any Transfer or other instrument in connection therewith.
- (x) The Bailee shall pay all costs and expenses of and incidental to the registration of this Instrument under the Chattels Transfer Act 1924 or any other Act under which this Instrument may require registration.
- (y) Any notice or demand herein by the Bailor may be served either personally or by posting the same in a pre-paid letter addressed to the Bailee at the Bailee's last known address in New Zealand and any notice or demand so despatched by post shall be deemed to be served at the time when the same in the ordinary course of posting would be delivered.
- (i) It is acknowledged by the Bailee that no contract or agreement has been made between him and the owner under which property in the said chattels will or may pass to the Bailee.

- (z) (i) Any accessories or goods supplied for or repairs executed to the vehicle whether supplied or executed by the Bailee or otherwise shall be deemed to have become part of the vehicle.
- (ii) In the event of a variation in payment of any moneys payable herein at the times and in the manner provided being agreed to by the Bailor during the term hereof, such variation shall not prejudice or affect any of the other provisions hereof and all the original rights and powers of the Bailor herein shall remain in force and effect notwithstanding any negligence, forbearance or delay in the enforcement thereof.
- (iii) The Bailee shall not be entitled to raise against any Assignee of the Bailor's interest in this agreement and/or the vehicle whether such assignment is absolute or by way of mortgage any cross demand, counterclaim or set off which the Bailee might be entitled to raise against the Bailor.
- (iv) It is agreed by the parties hereto that the residual value of the vehicle described in the schedule hereto be \$50.00
- (v) Upon termination of the hiring evidenced by this agreement, the Bailor and the Bailee may agree on the market value of the said chattels which value shall thereupon be deemed to be the terminal value of the said chattels. Should the Bailor and the Bailee fail to agree on the terminal value of the said chattels, the Bailee shall be at liberty to obtain a written offer or written offers to purchase the said chattels from the Bailor for cash from any licensed motor vehicle dealer whose place of business shall not be more than ten miles from the Chief Post Office at Auckland at any time within 72 hours after the Bailor and the Bailee shall fail to agree as aforesaid and thereupon the best such cash offer shall be deemed to be the terminal value of the said chattels. Should the Bailee fail to obtain any such cash offer the figure nominated for this purpose by the Bailor shall be deemed to be the terminal value of the said chattels.
- (vi) In the event of the terminal value of the said chattels as aforesaid being less than the residual value as defined in sub-paragraph (iv) the Bailee shall forthwith after determination of such loss pay to the Bailor the amount of such loss together with interest thereon at the rate of 20 per centum per annum from the third day after determination of loss as aforesaid until the date of payment.
- (vii) In the event of the terminal value of the said chattels as aforesaid being greater than the residual value the amount of such excess less any rental for the full term of the hiring and any other moneys owing to the Bailor by the Bailee shall forthwith after determination be paid to the Bailee.
- (viii) In the construction of this Instrument unless the context otherwise requires words importing the singular only shall include the plural and vice versa and words importing the masculine gender only shall include any gender.

In Witness whereof these presents have been executed this 16th day of July 19 69

**THE SCHEDULE HEREINBEFORE REFERRED TO**

One (1) Motor Vehicle as follows:—

Type: 1962 Car

Make: Jaguar

Registration No.: [REDACTED]

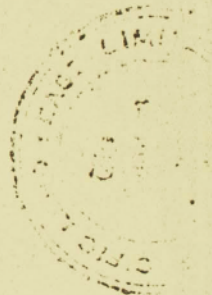
Engine No.: BH 662/8

Chassis No.: HO 45502

which vehicle shall be kept and garaged by the Bailee at:

[REDACTED]

THE COMMON SEAL of PACIFIC LEND LEASE LIMITED as Bailor was hereunto affixed by and in the presence of:



[Signature] Director

Witness: [Signature]

(Address) 124 St. Helens Bay Rd, Auckland

(Occupation) Stockbroker

SIGNED by the said [REDACTED] as Bailee in the presence of:

[Signature]

Witness: [Signature]

(Address) 124 St. Helens Bay Rd, Auckland

(Occupation) Stockbroker

10. The value of the vehicle shall be determined as follows: (a) In the event of a total loss... (b) In the event of a partial loss... (c) In the event of a total loss... (d) In the event of a partial loss... (e) In the event of a total loss... (f) In the event of a partial loss... (g) In the event of a total loss... (h) In the event of a partial loss...

THE SCHEDULE MEMBERSHIP MEMBERSHIP TO

One (1) Motor Vehicle as follows:  
Type: 1982 Car  
Make: Jaguar  
Registration No: [redacted]  
Engine No: BH 66275  
Chassis No: HO 45302

THE COMMON SEAL OF PACIFIC LEASE LIMITED is hereunto affixed by and in the presence of:

\_\_\_\_\_  
Director  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
SIGNED by the said \_\_\_\_\_ as called in the presence of:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



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