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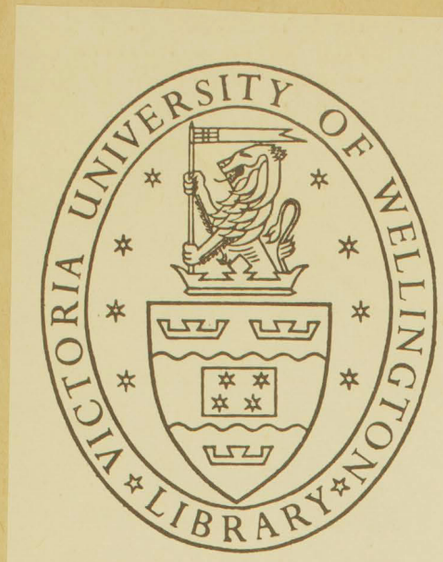

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SYNDICATION: ITS EMERGENCE, NATURE, AND PRESENT LIMITS

RESEARCH PAPER in COMMERCIAL and CRIMINAL FRAUD

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I. THE EMERGENCE OF SYNDICATION

Property syndication emerged in New Zealand as a form of public investment in 1967. The company responsible for bringing this method of investment to New Zealand was JBL Consolidated Limited. By 1970 property syndication had entered its boom period.[1] This boom witnessed the spread of syndicate promoters, usually small companies established for this purpose, who established syndicates of various structures.

The major impetus behind the growth and interest in property syndication was high inflation and a shortage of finance. On the one hand, promoters of development in commercial property found difficulty in raising finance from traditional avenues and, therefore, they looked for alternative sources: finance from syndication was one method. On the other hand, the small investor, who usually used such facilities as savings banks, New Zealand Government and Local-body stock (all of which provided low interest rates for a fixed capital deposit), discovered that his savings were being eroded by inflation.

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1. According to the 1970 annual report of JBL Consolidated Ltd the number of syndicates managed by it were 25 in real property and 5 trawler syndicates. Given that there were by then other promoters active syndication must have had an affect on the traditional patterns of investment as it directed funds away from them. It is possibly with this in mind that the Government introduced section 155BB of the Land and Income Tax Act 1954 in order to slow down investment in syndication by putting it on a par with companies for tax purposes. See text: post, p. 4.

Many of these small investors were those on fixed incomes who relied almost entirely on earnings from their deposits for income. To them syndication seemed to fulfill their need to acquire an investment which purported to preserve their ratio of capital to the cost of living index, while at the same time providing a return on their capital commensurable with the rate of inflation. In addition, those that traditionally invested in the sharemarket had had their confidence shaken in this form of investment as an inflation proof venture.[2] Some of these investors were also attracted to property syndication by brochures that proclaimed that the value of a syndicate interest increased

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2. These circumstances are well documented by J.G. Russell in an article "Property Syndication" The Accountants Journal (1971) Vol.50 No.5.p158. He pointed out that New Zealand had fared poorly on several fronts. "From fourth place in the standard of living tables a few years ago, we have fallen to fourteenth place, and our rate of increase in gross national product is lagging well behind National Development targets. Over a fifteen year period, we have recorded a 1.7 percent annual increase in productivity which has the distinction of being the lowest among nations with a predominantly European population. On the local scene, Government has introduced a payroll tax and has increased tax on dividends received from joint stock companies. These actions have seriously shaken confidence of investors in the holding of ordinary shares as an inflation proof investment. In fact, recent statistics have shown that, on average, investments in the sharemarket have been performing rather poorly."

over time as it was pegged to the capital appreciation of the value of real estate.[3] Indeed official statistics supported this claim. Added to all this was the promise of a secure asset. Several syndicate promoters promulgated Franklin D. Roosevelt's remark:[4]

> "Real estate cannot be stolen or lost nor can it be carried away. Purchased with commonsense and managed with reasonable care it is about the safest investment in the world."

The bulk of property syndication promotion was handled on a broking basis by companies who publicly invited individuals to pool their capital in order to obtain commercial property requiring large amounts of capital.[5] Often these same

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3. E.g. the brochure Investment By Syndication, (undated) published by JBL contained a graph, on page 8, the typical assertion of syndicate promoters that real estate increases in value at double the rate of company shares. For criticism of this claim see note 25: post, p 11.

4. This example of promotional technique was extracted from the brochure Syndication Management (Wellington) Ltd. (undated).

5. The more well known promoters were: JBL Consolidated Ltd, Syndication Management Ltd, Armstrong, Mead and Associates, Circuit Development Group Ltd, Pacific Property Syndicates Ltd, Derick Watson and Associates, Sheffield Associates Management Ltd, New Zealand Growth Securities. In addition to these many privately subscripted syndicates were commenced especially after the enactment of s.153BB of the Land and Income Tax Act 1954.

companies provided management services once the syndicate was established.[6]

Since 1971 the popularity of property syndication has diminished dramatically. Three events caused this. Firstly, the introduction, in 1971, of a property syndicate tax on those syndicates dealing in real property with more than eleven syndics. Under section 153BB of the Land and Income Tax Act 1954 property syndicates were deemed to be companies for that Act. Likewise the interest of a syndic was deemed to be a share. As a result the provisions of that Act taxing companies were accordingly extended to tax property syndicates.[7] The effect of this measure was to cut off this avenue of investment from the small investor. For the amount needed now to join a syndicate of twenty-five members getting the same return as before rose from between $500 and $1,000 (before s.153BB was enacted) to between $9,000 and $10,000 (after s.153BB was effective). In order to circumvent these provisions small short term syndicates arose.[8] Secondly the collapse of the JBL Group shook investor confidence in syndication because this name was synonymous with this form of investment. Thirdly the enactment of the Syndicates Act 1973 increased the statutory requirements for establishing a

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6. E.g. the Te Atatu Mall Syndicate. For details see note 13: p 6. Another form of management was the use of trust companies in whom title vested and who managed the settled syndicate property. The manager of Property Investment Partnership XVIII: Mid-City Garage Property is The Perpetual Trustees Estate & Agency Co of N.Z. Ltd.
7. s. 153BB(1)(a)&(b).
8. Consumer(1972) Vol.88, p.242.

publicly sponsored syndicate. Promoters have submitted that the expense of complying with the provisions of this Act maybe too high.[9] One commentator on the Act remarked that it was a hammer to split the (already dehydrated) pea.[10]

At present virtually all activity in the promotion of real property based syndicates has ended. No doubt the collapsed Circuit Management Ltd, which was the largest remaining promoter and manager of property syndicates, will make it more difficult to generate investor interest in any new syndicate. Current activity in promoting syndicates is restricted to the following areas:

(a) The establishment of syndicates not subject to the provisions of either the Land and Income Tax Act or the Syndicates Act:— namely those syndicates of less than eleven syndics not raising their funds through public offer.

(b) Syndication of property other than real estate such as race horses and breeding stock.[11] Apparently these ventures do not consider themselves bound by the provisions of the Syndicates Act for they do not comply with it. The present

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9. It was submitted by the Trustee Companies Association that in order to comply with the provisions of the Companies Amendment Act 1966, upon which they considered the provisions of the Syndicates Act 1973 relating to prospectuses were based, it would be uneconomic for a public company to borrow less than $100,000. See the unpublished submission of The Trustee Companies Association to the Statutes Revision Committee on 3 April 1973 at p.1.
10. This opinion was expressed by Derick Watson & Associates to the Statutes Revision Committee in October 1972 (unpublished) at p.1.
11. See text: post, p55.

writer considers it is arguable that they should comply with the Act. Certainly they are too small to be caught by 153BB of the Land and Income Tax Act. These syndication proposals offer a very high return (20% and over) which no doubt encourages those who are wary of the security of syndication by appealing to the force of greed.

(c) The raising of investments in enterprises similar to property syndication but camouflaged as for other purposes. The most popular of these is the mutual (superannuation) fund.[12]

II THE NATURE OF SYNDICATES BEFORE THE SYNDICATES ACT 1973

Many of the pre-act syndicates are still operative and form the bulk of property syndication activity today and the organisational and legal structure of the pre-act syndicate may still be used in establishing new syndicates.

Prior to the Syndicates Act most syndicates were comprised of not more than 25 individual investors of moderate means who combined their resources.[13] The resulting pool of funds

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12. E.g. the DMS Superannuation Fund. A full description of mutual funds is contained in an article by C.L. Ryan Mutual Funds (1973) 7 V.U.W.L.R. 293.

13. Some earlier syndicates have more than 25 syndics. For example the Te Atatu Mall Syndicate had 34 syndics. This was a syndicate of a retail shopping centre established by JBL Consolidated Ltd on 24 January 1969. It was built by JBL Construction Ltd and promoted and managed by JBL Consolidated Ltd. It promised an annual return of 10% per annum on an investment of $2,000. Management was expedited through the device of a head lease (see text: p.14.). It is still a going concern. Similarly the Jaybel Terminating Trawler Syndicate No. 2 had 64 syndics; est. 26 May 69.

was sufficient to buy into a substantial property with high returns; usually from commercial leases. In some cases syndicates were promoted with a minimum investment of as much as $5,000;[14] for others as little as $1,000.[15] Those syndicates that depended on insurance loans for funds needed an even smaller initial investment but required an annual premium payment.[16] The estimated return stated by most schemes was between 10 and 12% per annum.[17] This return when coupled with a promise of security of investment and professional management lured the unsophisticated investor. The structure and manner in which syndicates operated fell into two main groups consisting of two different kinds.

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14. E.g. the Levin Shopping Complex Stage II Syndicate (no details of this syndicate are available beyond its application form put out by the Circuit Group). An example of a large initial investment is the Hampton Court Syndicate (an undated prospectus). The object of this syndicate was to purchase a commercial building called Hampton Court. The number of members is not available. It offered a return of 8% per annum on an investment of $25,000 per syndic.
15. E.g. the Everest Avenue No. 35 Syndicate (no details available) except that it offered 10% per annum.
16. A common premium was $340. On top of this was $50 application fee. See note 57: post, p 23.
17. This was reduced by up to half after s.153BB was enacted.

A. Syndicates Funded by an Initial Capital Sum Investment

1. The joint owner syndicate

Most property syndicates were structured on a joint ownership basis. This had the advantage of allowing a distribution of the investment to each syndic before tax.[18] The promoter handled the issue of advertising brochures, any legal arrangements, placing of options on the proposed syndicated property, purchase and sale of any property, finding mortgages, management of the established syndicate and the distribution of income. Each syndic received legal title over the property as tenants in common. (Sometimes syndicates issued a deed of syndicate.) Therefore, each syndic had an undivided interest in proportion to the amount of his subscription. The syndicate's return was usually boosted by gearing up the investment with mortgage money at an interest rate less than the earning rate of the property.

A derivative of this type of syndicate was the "special partnership" structured syndicate. Under this scheme the promoter/manager became a general partner and accepted absolute liability for the affairs of the partnership. Whereas, the syndics were special partners and had their liability restricted to the extent of their individual investment; the amount of which was contained in a Certificate of Registration in the Supreme Court.[19] Although ownership of the property

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18. This was not so after the enactment of s.153BB of the Land and Income Tax Act 1954.
19. S.51 of the Partnership Act 1908.

vested in the special partners the promoter/manager, as general partner, was able to maintain full control of the business of the syndicate. However, these special partnerships cannot exist for a period of more than seven years[20] which was a major limitation when they were adopted by syndicates. The major advantage of the special partnership over the joint ownership syndicate was that each syndic's liability was restricted to the extent of his individual investment. In comparison in a jointly owned syndicate one syndic may be singled out for liability in the event of a default in mortgage payments. Furthermore if the syndicate is deemed to be a partnership other legal liabilities for each syndic such as the necessity to dissolve the syndicate and reform it every time there is a new member admitted will arise.

2. The Limited Liability Company Syndicate

In this kind of scheme the promoters act as agent for the syndicate company.[21] The investors take up shares in the company which purchases a property. The only shareholders in the company are the syndics. The advantages of this scheme were threefold: firstly, each syndic's liability was limited to the extent of his share; secondly, the disclosure and accountability of management provision in the Companies Act applied; thirdly, member's shares were more easily alienated than in the joint ownership kind of syndicate. The major disadvantage

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20. S.57 of the Partnership Act; this period can be extended at the end of that period.

21. This description was extracted from Consumer (1971) Vol.76, at p.218. An example of this type of syndicate is Eastbourne Flats Ltd.

of this kind of syndicate was that earnings were taxed before they were dispersed to syndics. This disadvantage was removed with the enactment of section 153BB of the Land & Income Tax Act.

B. Syndicates Funded from Loans on Insurance Policies

This method of syndication involved an agreement by investors to effect an endowment life insurance policy.[22] After the policy had been in operation for two or three years the syndicate borrowed against the surrender value of the policy upto the maximum loan available. By pooling these proceeds and by raising additional mortgage finance the syndicates first property was purchased. Every few years after that further loans could be raised on the increasing surrender value of the policies for further property purchases. This cycle was repeated throughout the currency of the policies linked into a group. It was not uncommon to combine syndicate groups in the purchase of a very large property.[23] The net income of the insurance syndicate was either distributed in cash or applied to reduce the mortgages or both. Before the passing of tax legislation the premium payments were allowable as a special exemption from income tax in the hands of each syndic.[24]

A distinction should be drawn between those syndicates that were run by a management company and those that ran themselves. The former were usually of the joint ownership kind

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22. Most policies were of 20 yrs duration and would ultimately be worth $7,000 for a premium of around $300 per year. E.g. the Tower Group Synd. (undated, no details of deed available)

23. National Business Review (1975) Vol. 5 No. 42 June 18 at p.1.

24. Section 85 of the Land and Income Tax Act 1954.

and the latter of the limited liability company kind. As insurance schemes involved continual investment of funds the company syndicate was more suitable than any other. The major disadvantages of this method of fund raising were; there was no guarantee that the syndics would be able to borrow on their policies, the syndicate could fail through the death of several members and the real capital appreciation was very low.[25]

III THE LIABILITY OF THE SYNDICATE PROMOTER

The liability of the promoter of a company type syndicate is that of the promoter of any company. As such they will not be the special concern of this paper.

Before the passing of the Syndicates Act the promoter of a joint ownership syndicate scheme owed no special statutory duties to the investor.[26] A promoter disclosed what information he wanted to and no more and acted as he pleased towards the investing public with legal immunity so far as he did not breach any common law duties.

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25. On a contribution of $300 per annum from 25 members the loan value accrued by the syndicate would be about $14,000. An accumulation of 25 times $300 per year in the POSB would yield $23,880. This was the conclusion of J.A.B. O'keefe in Property Syndication with Life Insurance. [1971] N.Z.L.J. 520. He also pointed out that statistics relating to real property values can be manipulated by taking favourable years as the base line and by not taking into account that increased capital value includes the improvements made to the property which to a large extent accounts for the difference between the purchase and sale price.

26. The Protection of Depositors Act 1968 did not apply because "deposit" was defined as a loan of money.

A. Liability for Advertising and Soliciting

Except for the rules of misrepresentation or fraud[27] there was no restriction on the advertising matter of syndicate promoters. Consequently much of it was generalised, flamboyant and sometimes misleading in that it selected only those facts which showed property syndication in a favourable light. Much of the literature was based on assumptions about the future state of the economy, continued

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27. The Consumer Information Act 1967 did not regulate advertising promoting syndicates because of the definition contained therein of "goods" in section 2. This was goods:

> "means any article or product of any type or class that is intended for sale to any person for use or consumption, and includes services."

As a result the common law rules of representation in contract, fraud and tort would apply. However, without the necessary special relationship referred to in Mutual Life & Citizens' Assurance Co. Ltd v. Evatt [1971] A.C.793 which maybe difficult to establish between a promoter and an investor tortious misrepresentation is unlikely to be available to an aggrieved investor. Thus the only remedy available to an investor would be recission of the contract in the event of a contractual misrepresentation or damages if fraud can be established.

inflation, the value of commercial property, the maintenance of interest and earning rates all of which tend to be unpredictable.[28]

More importantly a number of features of syndicate promotion were not revealed to the investor. For example, in none of the brochures that the writer has seen was the investor informed of the true market value of the property based on a registered valuer's report. Very often the property offered to the proposed syndicate had already been bought or even built by the promoter; no indication was given as to the profit made in selling the property to the syndicate by the promoter. Most brochures displayed a penchant for valuing the property on a return basis. This means that the value of the property was calculated from a number of factors which could be juggled to suit the promoter.[29] The result was often an overpriced property

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28. E.g. The Logical Investment (undated) pub. Syndication Management Ltd; Property Investment Programme (undated) pub. Armstrong, Mead and Associate. These two brochures used statistics purporting to demonstrate the comparative value of investing in real property and in shares covering the period between 1950-1967. Both these years were years when shares were at a low ebb and it would seem that after 1967 they increased at a greater rate than real property.

29. The Accountants' Jnl (1971) Vol. 50 No. 5. 158 at p. 160.

on top of which the promoter made an initial capital gain.[30] Thus any gain that the syndic could have made was absorbed for several years.

Some of the syndicate proposals contained the promise of a head lease that gave investor protection and solved the problem of administrating the daily running of the syndicate. Very often these head leases could be used to disguise a profit to be made by the head lessee and they were of little use in the event of insolvency by the head lessee. (The head lessee was usually the promoter.)

Much of the information was inadequate. The type of property to be purchased was rarely described in terms of its commercial potential. Those brochures that referred to a right to withdraw did not indicate how the interest might be disposed of. One promotion company offered a resell service but did not elaborate on its details.[31] Information concerning a syndic's right to question a management decision was, to the writer's knowledge, never furnished. As a fiduciary, without provision

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30. A capital gain could be made in several ways. Some of those possible were: escalate the price of the property by taking a head lease at an inflated rental; obtaining uninformed tenants who will pay more for the rental than is revealed to the syndics; by providing fittings which can be recouped in a higher rental; very high management costs.

31. Pacific Syndicates (NZ) Ltd did this in a prospectus advertising The Redwood Industrial Syndicate (undated).

to the contrary in the deed of syndicate or advertising, a management company would have an absolute discretion to sell, mortgage or purchase property.[32]

As to whether investors needed this information was not answered by commentators who advocated investor protection through disclosure of information. Given that investors in companies were entitled to some of this information, it seemed a logical step in the trend of investor protection to extend the disclosure principle to syndicate promotion; especially in view of the fact that many syndics could be classed as unsophisticated investors but while the principle of disclosure is valuable in corporate situations, syndicates were not really a suitable form of commercial investment into which the provision of disclosure contained in the Companies Act could operate and the smallness of the membership and initial capital of syndicates meant that compliance with these provisions was uneconomic unless syndicate promoters turned to establishing syndicates requiring large amounts of capital.[33] A corollary of large

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32. A detailed discussion of these rights can be found in the text: post p29.

33. In their submissions to the Statute Revisions Committee (unpublished) 3 April 1973 at page 1 the Trustees Companies Association pointed out that companies meet the cost of complying with statutory requirements whereas syndics would have to meet this cost in the case of syndicates. Further they alleged that it was uneconomic for a company to comply with the Companies Amendment Act 1966. See Note 9: ante, p.5.

syndicates would be the necessity of attracting investors with large amounts of capital; these investors are probably those who least need extensive disclosure. No doubt the regulation of advertising information can be achieved in other ways than in the Syndicates Act.

B. Liability to Account

At the time of the collapses of both JBL Consolidated Ltd and the Circuit Management Ltd money contributed by investors in unsettled syndicates was thought to be unaccountable.[36] The receiver[37] of JBL noted in his report that:[38]

> "there could be some argument, particularly where a trust receipt was issued that funds should have been held not only for the purposes for which they were subscribed but in a separate trust account. As it was money received for syndicates was paid into the JBL Consolidated Ltd trust account and then paid out to appropriate companies of the group."

It seems to have been accepted that this money was irrecoverable by the subscribers except as general unsecured creditors. It is the writers view that in most syndicates the terms upon which the investment was given to the promoters was sufficient to give subscribers priority in recovering their money over general and secured creditors.

Most application forms, for membership in a syndicate,

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36. In JBL Consolidated Ltd the amount lost totalled $1,647,936 and in Circuit Management Ltd the amount lost totalled $500,000.

37. Mr D. Hazard.

38. This extract is taken from a useful summary of the receiver's report. See Birchfield, The Rise & Fall of JBL (1972) at pp.137-138.

contained terms which requested that upon the paying of a deposit a position be reserved for the applicant in a specified syndicate.[39] Other application forms required, that the whole sum be paid in order for participation to be secured by the applicant in a specified syndicate property.[40] The payee was either the promoting company or a solicitor's trust account.[41] The money would be held in these accounts until the syndicate was settled. However in both the JBL and Circuit Groups the money was used elsewhere in the corporate structure before it was applied to purchase the syndicate property. In these circumstances the promoting companies could have been held liable to account, for the subscribed amounts, to the investors for any of the following reasons.

1. <u>This type of application gives rise to an expressed Trust</u>

According to this line of reasoning the terms of the application form established an express trust the terms of which were to invest the money only in the specified property.[42] As a result any use of the money for purposes other than setting it aside in a separate account until sufficient funds were received

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39. See Appendix I.
40. See Appendix II.
41. JBL used trust accounts receipts for the balance of the capital and for the deposit merely issued a company receipt.
42. In addition it may be possible to draw an analogy between the promoter of a company who owes a fiduciary duty to

42. (Continued)

the members of the company which he promotes, according to the decision in Gluckstein v. Barnes [1900] A.C. 240, and the relationship between the promoter of a syndicate and the syndics. The Court of Appeal in R v. Prast [1975] 2N.Z.L.R.251 at p.250-251 was prepared to accept that in circumstances similar to syndicate applications for specified property gave rise to a trust and that use of the money for other purposes amounted to a breach of trust for the purposes of section 224 of the Crimes Act 1961. The difference between the application letter in Prast's case and the syndicate application, was that the former contained the phrase "held in trust" whereas the latter contained no such phrase. However, in Prast's case the money was subscribed for unspecified property whereas the syndicate application detailed the specified property. Thus the words of the application in both instances gave rise to the money being held by the promoting company on trust for the investor. These differences in wording aside the legal position of the promoting company and its officers is the same. Thus Prast's case would be authority for the submission that use of the trust money for any other purposes amounts to a breach of trust by a promoter and also an officer of the company.

to purchase the specified property and then purchasing the property would have amounted to a breach of trust by the promotion company.[43] Mere negligence on the part of a promoting company in failing to acquaint itself with the terms of the trust would have been no defence.[44]

2. The money was subscribed for a specified purpose which fails immediately the promoters apply it elsewhere

This line of reasoning would be as follows. The money was given to the promoting company to be applied for a purpose: Namely, to be accumulated in a fund to be used to purchase a specified syndicate property. Thus once the money was used by the promoting company for a purpose other than the stipulated purpose the investors had priority over the money under a resulting trust for their benefit as settlors.[45] This resulting trust could be presumed in favour of the investors in two other related circumstances. Firstly, if investors subscribed more

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43. It is the duty of the trustees to adhere to the terms of the trust. See Nevill's Trusts, Wills and Administration (1971) 5th ed at p.87. As such the promoting company as trustee may only invest the money in the stipulated property. Further to this point s.4(1) Trustee Act 1956 indicates that investment must be subject to the terms of the trust. The decision in R. v. Prast brings the position of a trustee home to any would be promoter who is considering misappropriating subscribed funds.

44. Campbell v. Sclanders (1895) 13 NZLR 752.

45. Re Gillingham Bus Disaster Fund [1958] Ch.300, affd C.A. [1959] Ch. 62 Although the point did not arise on appeal it was held that the balance of a fund raised for the benefit of an accident victims was held on resulting trust for the subscribers when the purpose had failed.

money than required for the stipulated property a resulting trust would arise as to the surplus amounts,[46] unless the terms of the application stipulated anything to the contrary.[47] Secondly, a resulting trust could be presumed once the promotion company went into insolvency as the purpose of the unsettled funds was frustrated.[48]

3. The promoting company is a trustee de son tort of the money

If submission 1. fails it would seem that at least the promoting company was a trustee de son tort. The elements of a trustee de son tort were described in the judgment of Ungoed-Thomas J. in Selangor United Rubber Estates, Ltd v. Cradock (No. 3) [49] as those persons, though not expressly appointed as trustees, who take it on themselves to act as such and to possess and administer trust property for the beneficiaries. The distinguishing features are that they do

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46. Re West Sussex Constabulary's Widows, Children and Benevolent (1930) Fund Trusts [1970] Ch.1 at p.15. It was held that when a donation was made for a purpose and that purpose failed a resulting trust arises over the surplus assets for the benefit of the donor; substitute donor for investor when applying this decision to the syndicate situation.

47. See Appendix I where a promise to refund surplus money was made.

48. Re Sick and Funeral Society [1973] Ch.51. At winding up the society had surplus assets which it had acquired by subscription. The Court held that these assets should be distributed between each member in proportion to his contribution, if ascertainable, on resulting trust.

49. [1968] 2 All E.R. 1073.

not claim to act in their own right but for the beneficiaries, and that their assumption to act is not of itself a ground for liability, and so their status as trustees preceeds the occurance which may be the subject of the claim against them.[50] Thus in collecting money on behalf of the investors the promoting company took it upon itself to administer the fund for the benefit of the investors not to act in their own right giving rise to the status trustee de son tort.

It was the practice of some of the promoters to issue a solicitor's trust receipt. If the promoter attempted to deny an expressed trust the trust receipt may have been an evidential factor in determining that a trust existed in favour of the investors.[51] Upon the issuance of a trust receipt it is submitted that the solicitor could be construed as acting for both parties. As such he would be a stakeholder[52] and, therefore, holds the money for the benefit of both parties. Furthermore, he must only invest the money into a trust account at a bank to be held exclusively for the investor as the investor directs.[53]

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50. Idem 1095.

51. Brogan v. Public Trustee [1915] 34N.Z.L.R. 817.

52. Edgell v. Day (1865), L.R. 1 C.P. 80 at p.85 per Erle J.

53. The Law Practitioners Act 1968 s.71.(1) stipulates that:
"All money received for or on behalf of any person by any solicitor shall be held by him exclusively for that person, to be paid to that person or as he directs, and until so paid all such money shall be paid into a bank [in New Zealand] to a general or separate trust account of that solicitor."
The writer submits that "any person" refers to the investor as well as the client promoting company.

The direction would be that contained in the syndicate application. Thus any release of the money to the promotion company for use would have given rise to the liability of the solicitor on the grounds of breach of trust,[54] and liability under the Act[55]. Alternatively a solicitor may be liable to the investors to account for the amount that they invested in the syndicate in his capacity as a constructive trustee.[56]

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54. See text: ante, p.21.

55. The Law Practitioners Act 1968 s.71 (1).

56. Lee v. Sankey (1873), L.R. 15 Eq.204. Similarly in Carl Zeiss Stifftung v. Herbert Smith & Company (No. 2) [1968] 2Ch 277 at p.298 Sachs J states the necessary preconditions for holding a solicitor to be a constructive trustee. He stated that if the solicitor had ".... actual knowledge of the trust's existence and actual knowledge that what is being done is improperly in breach of trust — though, of course, in both cases a person wilfully shutting his eyes to the obvious is in no different position than if he had left them open..." then that solicitor is liable as a constructive trustee. It is submitted that solicitors operating trust accounts on behalf of investors and promoters in syndicates have the requisite knowledge.

A few syndicate application forms did not refer to any specific syndicate property.[57] It was unlikely that an express trust could be erected for the investors over unspecified property as the terms of the application only indicated a general purpose. However, as these application forms were invariably those containing insurance syndication arrangements[58] there was little money at risk as the promoter held no money until he was able to borrow on the syndics' policies.[59]

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57. E.g. Property Investor's Circuit (PIC) application contained in Appendix III. A PIC was a syndicate promoted by the Circuit Group. It was based upon the form of syndication which raised funds through the syndics taking out insurance policies for 22 years with an annual premium of $340.00. Every three years the PIC would raise a loan against the surrender value of the group's policies and, by boosting this with mortgage finance, purchase a suitable property. It would continue to do this cyclical purchasing of new property triennially over the 22 years. At the end of the period an absolute return of $14,432.00 was promised which amounted to a net return of 4½% per annum. (These details are taken form an undated Circuit Group prospectus). To the uninitiated investor this return looked attractive until, or unless, he calculated the annual percentage return on the insurance premium which was not done in the prospectus.

58. Ibid.

59. See Appendix III. Note that the $50 is an application administrative fee which is not refundable. The premiums pass straight to the insurance company without going through the promoter's hands.

At the stage the money was borrowed from the insurance company the property was most likely to be specified as the promoter must know how much he needs to acquire. More often than not the insurance company was likely to require, as a condition of the loan, that the money be held in trust by the promoter until the syndicate was settled. Thus once the property was specified the promoter would have been liable to account as a trustee.[60]

If the proposed syndicate property was unspecified at the time the promoter received the invested money[61] the promoter would at least have been a stakeholder of the money pending purchase of a property. As a stakeholder the promoter was a fiduciary and consequently liable to account for the syndicate money.[62] This was because the promoter held the sum lent by the investor or borrowed on the syndics' policies in medio for the syndics until the event of the purchase was settled which is the essence of a stakeholder.[63] If the stakeholder used the money for purposes other than the purchase of the syndicate property then he would have been in breach of trust.[64]

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60. See text; ante, p. 17.

61. The writer doubts if this would ever occur unless the syndics agreed to subscribe a fixed amount on the assurance that the promoter would find a suitable property.

62. Harrington v. Hoggart (1824-34), All E.R. Rep 421. This submission has force added to it if one accepts that an insurance type syndicate is established before the money is borrowed. Thus the money when borrowed is the property of the syndicate entrusted in the manager to invest.

63. Burt v. Claude Cousins & Co, [1971] Q.B. 427.

64. See page 25: post.

All the JBL syndicate applications witnessed by the writer contained terms specifying the intended syndicate property. As a result the money was held on expressed trust by JBL Consolidated Ltd for the purpose of purchasing the specified property.[65] Hence use of the money by JBL Consolidated Ltd for other purposes amounted to a breach of trust and the company would be liable to account for that money to investors.[66] As much of this money was used by subsidiary companies[67] it would be recoverable directly from them as they would be impressed with the terms of the trust as constructive trustees.[68] Furthermore, the directors and solicitors of the company may be individually liable.[69]

The major difficulty in calling a promoting company to account for invested money held on trust occurs upon insolvency.

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64. Skinner v. The Trustee of the Property of Reed (A Bankrupt) [1967] Ch 1194 at 1200. However, this view was criticised by Pennycuick J, in Potters v. Loppert]1973[1 All E.R. 658 at 665, as being against the trend of authority. Thus he held that stakeholders were mere agents.
65. See text: ante, p 17.
66. Ibid.
67. See text: ante, p 16.
68. Barclays Bank Ltd v. Quistclose Investments Ltd [1970] A.C. 567.
69. See text: ante p 22-23 for solicitor's liability.

In these circumstances the beneficiary investors would take priority over all secured and unsecured creditors.[70] In the event of there not being sufficient funds caused by the promoting company having disposed of the money, the investors would have an action in rem.[71] Thus the invested amounts could be traced and recovered until it reaches the hands of a bona fide purchaser for value without notice; his title is inviolable.[71a] In both the JBL Consolidated and Circuit situations it is likely that the money could be traced to the assets of the companies or to subsidiaries all of which would have constructive notice.

In the event of the funds of the insolvent company being mixed with other funds to the extent that they cannot be sufficiently distinguished the whole amalgum of the trustees property must be regarded as the trust property.[72]

In addition to remedies against the promoting companies other persons could be held to account.[73] The officers of the company may be prosecuted for theft of the trust funds. The

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70. The Insolvency Act 1968, s.42(3) stipulates that:

"subject to section 43 of this Act, but notwithstanding anything else in this Act, property held by the bankrupt in trust for any other person shall not pass to the Assignee."

Thus preferential creditors would have first priority over the company's assets, but as the beneficaries' property never passes in liquidation under the Act then they would in effect take first priority.

71. Re Diplock's Estate [1948] Ch 465.

71a. Petit, Equity & The Law of Trusts 3ed at p.467.

72. Lupton v. White (1805), 15 Ves 465.

73. For solicitors liability see text: ante p. 22-23.

main difficulty in this course would be that the officers may raise the defence of "colour of right".[74] The difficulty of such an action for the investors, under section 220 of the Crimes Act 1961 is that this probably would not directly lead to recovery of the investors' funds unless the court ordered restitution. Another possible remedy may be under section 224.[75/76]

A civil action against the directors in persons of the promoting company may be possible in two ways. Firstly, it is submitted that as officers of the promoting company they owed a fiduciary duty to the syndicate investors.[77] Secondly, it is submitted that the directors may be liable to investors as trustees de son tort.[78]

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74. The Crimes Act 1961 s.220 stipulates that theft is:

"...the act of fraudulently and without colour of right taking, of fraudulently and without colour of right converting to the use of any person, anything capable of being stolen..."

These elements must subsist in order to establish liability for theft. The analogous defence to this, in English Law, succeeded in the case of R v. Hall [1973] 1 Q.B. 127 which involved similar factual circumstances: Namely the use of funds held by a travel agent company by an officer of the company for other purposes than which they were deposited. However, that case can be distinguished from the trustee syndicate promoter on the facts as it was held that the money was not subscribed to the travel company on the terms of any trust and thus the company officer could use it for any purpose. In R. v. Prast the accused was charged under section 224 and the defence failed. See note 42: ante, pp 17 & 18.

75. Section 224 is the theft provision for misappropriating proceeds held under direction. It is submitted that, given that a trust exists, the promoters would be liable under this section as the circumstances are very similar to R v. Prast. See note 42:ante p.18.

76. The difficulty of a prosecution under section 224 would be overcoming the proviso. However, if on the facts a trust exists then the proviso does not apply to enure to the director's benefit.

77. See text:post, p 31.

78. See text:ante, p 20.

C. The Liability of the Promoter to Purchase Suitable Property

In those applications in which a particular syndicate property was specified the promoter as trustee for the investors would have been bound to purchase th property as a term of the trust. If the property turned out to be unsuitable the only relief the syndics had was at common law if there had been a misrepresentation. On the other hand, if the application did not stipulate any proposed syndicate property then the promoter had an absolute discretion, as trustee, to purchase any real estate that he wanted.[79] Moreover if the promoter employed an agent to purchase any property for the syndicate and loss was caused through an act of the agent then the promoter was exempt from liability under the provision of section 29 of the Trustee Act 1956.(80).

IV THE LIABILITY OF PARTIES AFTER THE SYNDICATE IS ESTABLISHED:

A. The Liability of the Management Company to the Syndicate

The following discussion is restricted to syndicates which employed a separate management company to administer the running of the syndicate. Those syndicates based on the limited liability company usually appointed their own directors who administered the syndicate; in these circumstances the directors were liable at common law and under the Companies Act to the syndic shareholders.

The obligation of a management company to non-company syndicate was determined by its contract set out in the deed of

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79. Tempest v. Lord Camoys. (1882) 21Ch.D. 571.

80. In Re Vickery [1931] 1 Ch.572 the section was construed to mean that on the facts the trustee was not liable for failure to exercise supervision over the acts of his agent.

syndication (if there was one). Since Harbutt Plasticine Ltd v. Wayne Tank & Pump Co. Ltd[81] it would seem that the Management Company could not contract out of all liability to the syndicate because this would, on one line of reasoning, amount to a negation of the contract itself in relation to its management. However, provided consideration is not completely illusory, the Court will not say that the contract falls. Thus management companies probably did in specific instances, disclaim liability and by picking judiciously the areas where liability is most likely to arise it could have left the contract intact but in effect exclude virtually all liability. This is because the Court will not look at the adequacy of the consideration but only at whether the exclusion clause amounts to an option to perform the contract or not. If it does not, the Court will not enquire into adequacy.

In this situation there would seem to be little authority to sustain the liability of the management company. In all the syndicates considered the management company also promoted the syndicate. But, according to dicta of Lord Lindley M.R., in the Lagnus Nitrate case[82] the promoting company would discharge its duties to the investors as a promoter, if the real truth of the transaction was disclosed to those who are induced to join the venture, once it was established. As a result the fiduciary duties of the company as a promoter could not have been imprinted upon the company as manager: in short the company is wearing different hats which cannot be interchanged.

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81. [1970] 1 Q.B. 447.

82. [1899] 2 Ch. 392 at 426.

There is a possibility that a disclaimer of a management company may be negated if a fiduciary relationship could be erected between it and the syndicate, on the basis of the decision in Fawcett v. Whitehouse.[83] In Fawcett's case the Court held that a person employed on behalf of himself and his co-partners to negotiate a lease, is not entitled to any private advantage from the lessors. If he receives such an advantage he must hold it on trust. This reasoning would apply to those syndicates in which the management company held an interest. Mutatis mutandis the decision could apply to other management companies which hold no interest because they are agents of the syndicate and as such would be liable to account for any personal benefit they obtained from the syndicate.

The next problem is whether the managers of an insolvent management company can be held personally liable to a syndicate. One of the most complete descriptions of a director's position is the dicta of Lord Selborne in Great Eastern Rly Co. v. Turner.[84] He said:

> "The directors are mere trustees or agents of the company - trustees of the company's money and property; agents in the transactions they may enter into on behalf of the company."

In Bath v. Standard Land Co.[85] the majority view was that an agent of a trustee cannot stand in a fiduciary relationship to the cestui que trust. To deem an agent as a fiduciary of the

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83. [1829] 1 Russ & M. 132, 39 E.R. 51.

84. L.R. 8 Ch. at 152.

85. [1911] 1 Q.B. 447.

1 Ch. 618

cestui que trust would have entailed lifting the veil of corporate personality. It is therefore, unlikely that directors would be liable to a syndicate. However, there may be some force in the view that the dissenting judgment of Fletcher-Moulton L.J. in Bath's case would be accepted now as the courts have lifted the veil and found directors personally liable on winding up for fraudulent trading under section 320 of the Companies Act. It is submitted that section 320 is analogous to a breach of trust. In Fletcher-Moulton L.J.'s view the correct rule is that a man does not come into this relationship merely by becoming an agent of a trustee. But the mere fact that he is only an agent to the trustee does not per se place him outside the scope and ambit of that relationship. In order to establish a fiduciary relationship, between the director agent and the investor beneficiaries of the trustee management company, one must look at the facts.[86] Thus a director who acts with the knowledge that he is profiting out his position of acting for the syndicate may make himself liable to the syndicate; his being an agent of the trustee company would be no defence against his being held liable.

B. The Liability of the Syndics to Each Other and Third Parties

The liability of the members to each other depends upon the structure of the syndicate. In the limited liability company syndicate the liability of syndics to each other would be

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86. Idem at p. 633-634 & 639.

governed by section 34 of the Companies Act as all the members are shareholders. Their liability as shareholders to third parties is limited to the unsubscribed amount of their shares. As in all of these syndicates the shares in the company constitutes the capital invested to purchase the syndicated property then each syndic's liability would cease once this amount is paid. The syndics would not be liable if the syndicate company defaulted on its mortgage.

In the co-ownership or joint ownership syndicate the liability of members to third parties is unrestricted. They are jointly and severally liable for the mortgages over the syndicate property.[87] In the event of a mortgagee sale not extinguishing the debt a syndic, any sundic, could be personally liable. He would then have to recover from the other syndics at his own expense. The liability of joint owners between themselves is prescribed in the deed of syndicate. If there is no deed or if the deed does not set out the syndics liability inter se then they are fiduciaries for each other.

The worst pitfall that could befall the members of a joint ownership syndicate is that it be construed a partnership. Even a disclaimer to this end in the deed of syndication would not prevent a court from taking this course.[88] The danger point occurred when syndics consciously or unconsciously slipped out of their passive role as joint owners and actively became involved in the "carrying on" of an enterprise. The foregoing

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87. And any other charge over the property.

88. National Insurance Co. Ltd v. Bray. [1934] N.Z.L.R.67

was more likely to apply to smaller syndicates which exhibited the features of a business such as: audited annual accounts; funds passing through a solicitor's trust account; syndics appearing on the title themselves, syndics being assured that matters affecting the business of the syndicate will be referred to them. In this situation the liability of syndics would have been that set down in such sections as 31, 32 and 33 of the Partnership Act. Furthermore syndicates would be subject to the provisions of section 45 of the Partnership Act. Thus if there are more than 25 Syndics the association may be declared illegal.[89]

V. THE PROBLEMS OF SYNDICATE PROMOTERS

The last three years three syndicate promoters have suffered financial difficulties. In two instances (the JBL Group in 1972 and Circuit Investments Ltd in 1975) this has resulted in the collapse of the promoting company. In the other instance (the strife this year of Gemco Company Ltd) it is not clear, as yet, whether the promoting company will completely collapse: needless to say all the indications point to the fact that many syndics will lose some of their money.

The reasons for the collapse of these companies are not found to be inherent in the nature and structure of syndication organisation. Rather it has been caused by the internal economics of these companies and the incorrect financial premises upon which they made their decisions. It is the writer's view that these collapses were, given the economic conditions prevailing, inevitable once the promoting companies

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89. Although this is not clear because of the disparity between section 456 of the Companies Act & s.45 Partnership Act.

had made their initial decisions as to the nature of their syndication ventures. As a result they could not and should not be prevented operating by legislative provisions purportedly designed at preventing such outcomes. Before expanding on this proposition it would be advisable to postulate the essential reasons for the collapses in order to avoid an impression that the proposition is completely non-paternalistic.

As the difficulties of the Circuit Group and, even more so, Gemco Ltd are so recent, it is perhaps dangerous to analyse in depth the reasons behind their troubles. This problem is compounded in both cases because of the freeze on official information concerning the position of the two promoting companies; the reason for this is pending civil and possibly criminal litigation.[90] On the other hand due to the time lapse since the demise of JBL Group more information is available. Nevertheless some of this is still in cold storage because of possible criminal action.[91]

A. As to the JBL Group:

Although JBL used syndication as an inte gral part of their business enterprise this use of syndication did not in the company's view amount to syndication in pure terms. This is because syndication had a functional role within the gamut of the whole financial structure of the Group: Syndicates were not promoted merely as a subsidiary scheme. The role of syndication within the Group structure was as a means of acquiring a constant cash flow for use by the Group. Syndicate funds

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90. The Evening Post 16 November 1975 p.1

91. Ibid.

were settled in the particular syndicate for which they were subscribed. In addition syndicates provided an internal market for the sale of any property constructed by the Group.[92] As a result the Group circumvented the need to seek equity stock in order to expand.

The success of this scheme depended upon the congruence of several factors:

(a) A continued inflow of syndicate funds;

(b) Proper management of the Group affairs so as to ensure that the funds were not committed to activities that required longterm lending in order to succeed;

(c) Avoiding satiating the demand for property services in the syndicated area.

In all three of these prerequisites the JBL Group made miscalculations. Taking them in their reverse order; firstly JBL created a surplus of office, retail and industrial buildings, especially in Auckland, so that the demand for rentals dminished and sites were left vacant for periods of time which put a strain on the Group resources as they had promised syndics a guaranteed return.[92a] Secondly, the affairs of the Group were mismanaged so that they were almost completely reliant on incoming syndicate funds to establish and fund new enterprises or prop up existing enterprises that were in difficulty. As a result short-term funds were committed to activities that required longterm funds especially after the economic reversal in 1968. Thirdly, various factors such as the implementation

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92. E.g. Te Atatu Mall Syndicate was built and promoted by JBL see note 13: ante, p.6.

92a. E.g. the Te Atatu Mall Syndicate offered a guaranteed return of ten percent per annum see note 13: ante, p.6.

of section 153BB of the Land and Income Tax Act and a limited pool of people interested in investing in syndicates meant that the inflow of cash eventually became almost a trickle.[92b]

The result of satiating the property market in one type of building should have been self-evident to the Group managers. Thus this failure had elements of mismanagement. Once the demand for tenantable space diminished the position of the syndicates was weakened. Whereas before they had been in a strong bargaining position in gaining tenants for high returns now they were forced to lower the rents or suffer from vacant lots. The end result was that returns dropped and the Group had to bear the loss because of its indemnification of syndicate returns. Over and above this some buildings were slow in being settled on syndicates because of the problem of finding tenants. The effect snowballed. As the Group depended upon new funds to commence new projects progress on new sites was halted, thus debilitated company funds had to be used to bolster established and completed buildings. This situation was exacerbated by financial mismanagement in the non-syndicate activities of the Group.

Whereas elements of breach of trust may have occurred in the manner in which the group redefined syndication so as to use syndicate funds for its own purposes, the other forms of mismanagement in the Group would have engendered no legal liability. These decisions were instrumental in bring about the collapse of the Group. They were primarily mistaken

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92b. These comments are based on the views found in Birchfield The Rise and Fall of JBL loc cit note 38; ante, p.16.

decisions concerning the direction that the Group should take in the surrounding economic circumstances. Such matters as misjudging the economic climate, miscalculating when to expand and to what extent compounded to bring about the Group's demise. All these types of mismanagement do not involve a breach of managerial duties unless decisions were made mala fide; mere negligence is insufficient.

B. As to the Circuit Group

The Circuit Group was foremost engaged in syndicate promotion. Thus its whole activity and continued success depended upon an ongoing demand for syndicated property of a nature that they promoted. Moreover as they promoted insurance funded schemes the Group's success depended upon convincing investors of a likely continuing access to borrowed insurance funds and a capital appreciation on property. Once the availability of loan money declined in 1972 to 1973 and the capital appreciation on real property slowed down the Group's problems became inevitable.

C. As to Gemco

Gemco's operation consisted of syndicating beasts. These were primarily beef stock.[93] Each beast or herd was syndicated. The return on the investment came from the sale of the beast once it had fattened. The company itself was dependant upon a commission for farming the beasts. As soon as the overseas beef market experienced a downturn the return on the syndicated beasts proportionately declined. The net result was a decline in Gemco's commission quantum. The death of some of the herd exacerbated the company's position.

In light of these analyses the writer is of the view that any comprehensive legislation controlling the operation of syndicates was inadvisable. In the first place the

93. These observations are made from WNTV1 programmes. Further details are not yet available.

collapses of the promotion companies, with the possible exception of the JBL Group, did not harm the syndicates that were operative to a major extent. The nature of syndication itself did not bring about these collapses, rather it was the financial bases upon which the syndicates were founded. In order to legislate against this type of business mistake an enactment would have to take a large proportion of investor freedom out of the market. This may be achieved by making the requirements for a promoting company so rigid that the expense of promoting a syndicate would mean that the property itself would be so expensive that the small investor could not invest. In the second place the legislation could have the effect on the investing public of "syndication euphoria". That is the public may incorrectly assume that the legislation is the panacea of all the risks entailed in any commercial syndicate enterprise and thus be duped into not investigating the financial viability of the investment. Such a conclusion would be fallacious as any syndicate subject to the 1973 Act could collapse financially for the same reasons as the three aforementioned enterprises have collapsed.

VI THE PRESENT LIMITS OF SYNDICATION: THE SYNDICATES ACT 1973

The intention of the Syndicates Act is to regulate public syndicates. In introducing the first reading of the Bill the Honourable Sir Roy Jack said that: [94]

> "This Bill gives effect to the Government's proposals announced last year to control syndicates. The

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94. (1972) 380 N.Z.P.D. 2131

Government is aware that opportunities exist for the investing public to be duped because of the absence of provisions similar to those that surround the formation and promotion of companies and unit trusts. The Bill closes the gap."

In particular concern was expressed at payments of money by syndics that were not appropriated to the syndicate.[95] Also referred to was the need to protect the unsophisticated investor. In short the Bill sought to extend the aegis of investor protection to syndicates. Before the passing of the Syndicates Act the investing public enjoyed a measure of protection against careless or fraudulent promoters in other commercial enterprises by virtue of the Companies Act, the Unit Trusts Act 1963 and the Protection of Depositors Act 1968.

It is the intention of the part of the paper to investigate:

(a) the objects of the Act;

(b) how they were enacted into the provisions of the Act;

(c) the extent to which the Act has filled the gap in investor protection in other forms of commercial enterprise than those already protected;

(d) comment on the utility with which the Act should regulate syndicates.

A. The Objects of the Act

There are four objects expressing the philosophy behind this Act. They are:

(a) To ensure that funds are not procured from investors without full disclosure of such information as will enable the investor to form a judgment on the proposal offered.

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95. Dr Finlay idem. 2132.

(b) To provide the regulatory machinery that ensures that the funds subscribed by the investing public are in fact employed for the purpose for which they were sought and supplied.

(c) To regulate and provide the mechanism to control syndicate managers.

(d) To clarify the rights and duties of members between themselves.

B. The Scheme of the Act

The scheme of the Act is that before any syndicate proposal is offered to the public there must be an approved form of deed and an approved prospectus. In addition, the promoter must obtain a bond from an approved surety and nominate a trustee to hold any subscription pending settlement of the syndicate. Once the syndicate is settled the Act prescribes the method by which managers must be appointed and regulates the duties of the managers to the syndicate.

C. The Scope of the Act

Commercial enterprises which must comply with the provisions of the Act are those encompassed within the definition of "syndicate" in section 2. This definition covers

> "any partnership, special partnership, joint venture or other unincorporated association of persons established.....to undertake with a view to profit or gain, any financial or business scheme, venture or enterprise."

Thus the definition excludes syndicates which use the structure of limited liability and non-profit unincorporated bodies. An important area of commercial investment not covered by the definition and, therefore, left unregulated is that of the mutual superannuation trust fund. The limiting words "undertake

with a view to profit or gain" are similar to section 456 of the Companies Act. In Smith v. Anderson [96] it was held that persons who held units in a trust were not associating for the purpose of gain. On this authority mutual funds would be outside the scope of the Act.[97] In addition syndicates set out in the First Schedule are exempted from complying with the Act. In particular these are Registered Friendly Societies and syndicates where the sole undertaking is the practise, conduct and operation of any profession, operated by a qualified person.

The definition of "syndicate" is wide enough to include partnerships which are not carrying on the activity of real estate syndication. Thus a public offering of shares in a joint grocery or farming venture may have to comply with the Act.[98] Similarly the definition is broad enough to cover contributory mortgages that are offered to the public.[99] For these are "joint ventures" that are undertaken for "financial enterprise." The suitability of some of the provisions of the Act in relation to joint mortgages is questionable. For example section 46 which regulates the dissolution of a syndicate and the provision of Parts II and III would have no application.

1. Public Invitation to Acquire Interests in a Syndicate

The application of the Act to many joint enterprises is restricted by Part I. Section 5, which corresponds with section 48 of the Companies Act, requires that a prospectus shall be issued with any form of application which is offered

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96. (1880), 15 Ch.D.247.
97. Most mutual funds are excluded from the scope of the Unit Trusts Act because s.2 excludes "any superannuation fund approved by the Commissioner of Inland Revenue."
98. That is if they are offered to the public for purchase.
99. Contributory mortgages are not regulated by the Companies Act because of the provisions of s.48A.

to the public to subscribe for or purchase an interest in a syndicate. The relevant case law under the Companies Act can be imported into section 5 because of the use in section 2(4) & (5) of the same language as is used in section 63 of the Companies Act. These cases mean that the provisions of the Act only apply to offers to the public to purchase any interest in a syndicate. If a private approach is made by a promoter to individual investors, a prospectus would not have to be issued. Likewise any invitation to the public to take out an option to purchase interests in a syndicate or to take out an option in a syndicate owning company would not have to issue a prospectus. It is suggested that the Act is inconsistent in not regulating options to purchase.

Section 4 makes it an offence to issue a prospectus in respect of a syndicate unless the four matters stipulated therein are complied with.[100] These are:

(a) The appointment of a statutory trustee under section 7. According to that section this trustee must be a trustee corporation under the Trustee Act 1956 or a company or bank approved by the Secretary for Justice. The duties of the statutory trustee are found in section 8. In brief they are to hold subscriptions for the syndicate in trust until the deed of syndication has come into effect and the bank account required by section 33 has been opened. Once these preconditions are fulfilled the statutory trustee must pay the money into that bank account. If the deed does not come into effect the trustee must hold the subscription in trust pending the direction of the subscribers. Any excess subscription must be returned to the subscribers.

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100. The fine is "not exceeding $5,000."

It is the object of these requirements to prevent any misapplication by the promoter of subscribed money pending settlement of the syndicate. In this respect section 8(5) gives the provisions teeth as every person who receives money intended to be applied to the syndicate must pay it to the trustee or be liable to a fine.[101] It is the writer's view that this solves the problem that existed before the Act. To this extent the provision is welcomed. However, the writer expresses two reservations: Firstly, a sharp operator may calculate that the profit to be made from establishing a syndicate without complying with the Act is sufficient so that the possibility of a fine if caught is worthwhile as there is no provision to police promoters; secondly, the protection of these funds could have been achieved more cheaply by establishing a promoter fidelity fund or by licensing promoters, such as is done with Moter Vehicle Dealers;[102] or by specific legislation aimed at regulating the activities of promoters rather than directed at each syndicate.

(b) A bond in the sum of $20,000 must be entered into under section 9 by approved sureties with the statutory trustee conditioned to secure compliance by every promoter of the syndicate with his duties and obligation under the Act. A mere breach of his duties and obligations by a promoter is insufficient in itself to claim compensation out of the sum bonded. In addition to a breach the claimant must prove he sustained a loss as a result of the breach. It should be noted that "all persons" sustaining a loss are entitled to recover and not merely investors.

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101. Ibid.

102. Under the Motor Vehicle Dealers Act 1956 all dealers must be licensed (s.3) and a bond of $10,000 is necessary (s.10).

Presumably once the syndicate is established the Limitation Act applies in respect to any claim unless the breach can be construed as ongoing. The bond does not cover default by a manager nor ordinary commercial failure unless caused by a breach of the promoter's duties.

(c) The terms on which the interests in the syndicate are to be acquired, held and disposed and in which the objects of the syndicate are set out must be provided in a deed of syndicate.[103] The deed of syndicate must meet the approval of the Registrar of Companies. Under section 10 of the Registrar has wide power to supervise the promotion of the syndicate. He must enusre that the provisions of section 4 are complied with. Also he must ascertain as to whether the deed of syndicate meets the requirements of Part II of the Act. Curiously there is no sanction that can be brought against a promoter who fails to submit the deed to the Registrar for approval. It is the writer's view that this is a major loophole in Part I and should be remedied in order to give the Registrar's vetting power potency. Submissions for approval of the deed to the Registrar could be removed altogether because it is inconsistent to require that the deed be submitted for approval and not require that the prospectus be submitted. Given that investors in this area now have the guidelines as to the requirements of these documents they could check the documents themselves.

(d) The prospectus that is issued must comply with the various provisions of the Act. Firstly, it must have been published within the period of six months preceeding the date on

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103. s.20.

which the form of application offering interests to the public was issued.[104] Secondly, the particulars prescribed in the Second Schedule must be included in the prospectus. These particulars include details with respect to the real property which the syndicate intends to purchase so that investors can form a judgment on the viability of the proposal. Some of the most important details are: the valuation of the property given by an independent valuer and the government; the independent value must have been completed not more than six months before the date of issue; the intended duration of the syndicate; the price the syndicate will pay for the property; information concerning any proposed mortgage; the name of the vendor; the total needed to be subscribed; any contracts with managers; any interest that a promoter or manager has in the syndicate; parties to any transactions relating to such property within the last two years; what planning permission is needed for the proposal. As such the Act fulfills the object of full disclosure in regard to real property syndication. However, these provisions are not easily applied to other forms of syndication enterprise such as beasts, fishing boats and commercial partnerships all of which are still being promoted.

Any undertaking in the prospectus to purchase or lease the syndicate property at a future date is secured by a bond under section 14. Sections 16 and 17 import from the Companies Act those provisions which deal with the civil and criminal liability of persons who issue a prospectus. Section 19 restricts door to door sales of any form of application for an interest in

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104. s.5(2).

a syndicate. A salesman would only come within the scope of this section if he moves from house to house issuing invitations to the public.

2. The Deed of Syndicate

Part II of the Act extends the disclosure object of the Act so that syndics are aware of the manner in which their interests are acquired, held and disposed of. Furthermore this Part of the Act gives syndics information as to the statutory liability of managers and trustees. This Part applies only to syndicates in respect of which a prospectus has been issued since the commencement of the Act.[105]

Section 20 specified those matters which must be included in the deed of syndicate. Section 21 stipulates the regulatory provision that the deed must contain pertaining to the appointment of managers. But it should be noted that it is not mandatory for a manager to be appointed. If a manager is appointed he may not be appointed for a term longer than three years; he may be removed by special resolution; the syndics determine his remuneration; the deed may appoint the first manager and thereafter the manager is appointed by the general meeting of the syndics. It is important to note that a syndic may not be appointed sole manager and that the provisions do not apply to special partnerships.

The writer has reservations as to the suitability of the management provisions (which are mostly from the Companies Act) for syndicates; because of their small nature a simpler and cheaper form of control over management seems possible.

The deed of syndicate may also provide for the appointment of a trustee other than the statutory trustee for any purpose.

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105. section 57.

Section 22 sets out the requirements relating to such a trustee. It seems that the provisions of the Act are shaped in such a way as to assist such a trustee in his role as watchdog over the manager. For example, the disclosure provisions in Part III give the trustee right to access to certain information and power to overrule a manager's decision if it is not in the syndicates interest.

Section 49 of the Act confers on the Court the same power to grant relief to the trustee, manager or other officer who is found to be in default as it has under section 468 of the Companies Act.

It is important to note that any syndicate established before the commencement of the Act in respect of which a prospectus has been issued may vary or supplement the terms on which all the interests are acquired held or disposed of by a deed made between the syndics so as to enable it to be registered. Upon registration of the variation the provisions of Part II, III, IV would apply.

Part III of the Act deals with the management and administration of syndicates and is not retrospective. As such it enacts the legislature's intention to regulate and control the affairs of syndicates and in particular managers and trustees. The duties of managers are detailed in section 28. This is a departure from the Companies Act which does not, in detail, set out managers duties. These include: a duty to use skill to ensure that the syndicate is conducted efficiently; diligence and vigilance as a standard; to account to syndics; invest only as directed; to supply members and trustees with information. Sections 29 and 30 set out the powers and duties of trustees. These are extensive. A trustee can override a manager; enforce the managers duties; and call an extraordinary meeting. None of

these duties should be too onerous for a reasonable manager.

The rest of Part III of the Act extends to syndicates the provisions of the Companies Act relating to the keeping of books, annual reports, auditing, the holding of special meetings and the holding of general meetings.

3. Provisions of General Application

Part IV applies to all syndicates. Section 46 provides a procedure for the dissolution of a syndicate as if it was a partnership governed by section 38 of the Partnership Act. However, most of the utility of this provision is removed by subsection 2 which restricts the application of this provision to syndicates with total assets of not more than $3,000. This limit would exclude most publicly financed syndicates.

Section 47 provides that in the event of legal proceedings being brought by or against a syndicate under its name as specified in the deed it may be sued as if it were a partnership.

D. Conclusion

The Syndicates Act provides investors in publicly funded syndicates with basic information about this investment in the prospectus, deed of syndicate and audited account provisions. As such it follows the pattern of the Companies Act. In setting down the detail of the manager's duties and by giving a trustee power to supervise these duties the Act goes further than the Companies Act. While acknowledging the advantage of clarifying a manager's duties in statutory form rather than relying on the common law, it is submitted that the Act has been overzealous in the name of investor protection in this area. For no syndicate has failed through the collapse of a manager company. While some managers gained advantages at the expense of the syndicate these could have been prevented by adequate disclosure.

Moreover, it is the writer's view that the Act has not fully solved the problem of the unscruplous manager. Indeed no enactment can do this.

Some of the other provisions in the Act seem to have been an over reaction to the demise of the JBL Group.[106] The bond which each promoter of a publicly funded syndicate must take is an administrative and financial burden that only increases the cost of the syndicate which is passed on to the syndic. This could have been avoided if the legislation had directed its attention to the promoter rather than individual syndicates. Promotion companies and indivduals could have been licensed and required to subscribe to a fidelity fund or to take out one bond covering all the promotion to be entered into by that promoter. Furthermore, if the financial stability of the promoter and a scrutiny of just his activities were the subject of legislation there would be no need to introduce the concept of a statutory trustee.

As is evidenced by the recent problems with the Perpetual

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106. The Syndicate Act was introduced into Parliament in 1972 soon after the collapse of the JBL Group. As was stated in the introduction of the Bill (see), this was a reaction to the collapse of that Group. As a result the legislation is aimed at the particular problems that arose in real property syndication as practised by the JBL Group. Owing to this the legislation tended to ignore the possibility of syndicates over property of a different nature and other means of controlling the use and dispersement of funds given to syndicate promoters with the intention that they be settled only on syndicate property.

Trustees and Estate Agency Co. NZ Ltd[107]. There is no special inviobility surrounding the status of statutory trustee except perhaps that government is anxious to legislate to protect investors in times of emergency especially when a large group of investors is affected.[108] One of the premises of the Act was that statutory trustees were the best way of protecting investors funds before syndicates were settled and for providing a watchdog over syndicate managers. While this solution has some merit it is expen sive and somewhat cumbersome. The same protection could have been achieved more simply.

Prior to the passing of the syndicate Act the legislature was faced with the problem of reconciling the seeming paradox of the need for investor protection with maintaining access for the small and large investor in syndicate schemes. The investing public, especially the small investor whose expertise is limited, needed protection from three things. Firstly, he needed protection from inadequate disclosure of information upon which a decision could be made as to the economic viability and security of his investment. Secondly he needed protection from high pressure door to door salesmen who were cajoling investors into syndication; especially in the area of insurance syndication. Thirdly, once the money was in the hands of the promoter the investor needed an assurance that it will only be used for the purpose for which it was entrusted; namely be used for settling the syndicate. Once the syndicate was

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107. Details of the problems besetting this company were outlined in the Evening Post 15 August 1975. pp 1 and 4.

108. As is evidenced by the legislation enacted after the Cornish Group collapse it maybe Parliament's concern to prevent large groups of small investors losing all their money rather than just giving special protection to trustee companies. See The Cornish Company's Management Act 1974.

established the investor needed to know how the syndicate was going to be managed and what his rights were in relation to management and the other syndics: This can be achieved by adequate disclosure at promotion stage.

It would have been possible to have drafted legislation which would have provided for all the above requirements without the expensive and complex provisions of the Syndicate Act. The object of disclosure could have been achieved by requiring of promoters to publish a standard form of prospectus which contained certain information necessary for the investor to make his decision as to security of his investment and the likely financial success of the enterprise. Such information cannot given an assurance that the venture is fool-proof; the investor would have to judge this for himself. If he cannot determine this he should either accept the risk or not invest. The disclosure provisions could be aimed at regulating promoters and drafted in sufficiently wide terms so as to pertain to all forms of property syndication.

The object of preventing high pressure door to door salesmanship could be achieved by alternative measures. Either the Door to Door Sales Act 1962[109] could be extended to include syndicate promotion activity, or the provisions of a new Syndicates Promoters Act could regulate this activity to the same effect.

The object of preventing misapporpriation of investors funds could be fulfilled by deeming promoters as trustees in the legislation. This could be done in two ways. On the one hand

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109. There is one of two possibilities. Either door to door sales of interests in syndicates could be proscribed by the Act or section 6 (could be extended to ensure adequate disclosure)and section 7 be extended (to give investors in syndicates the right to cancel during a cooling off period).

the legislation could deem that all promoters of syndicates hold funds in trust for the investors before and after the syndicate is settled. On the other hand the same result would be achieved by requiring a standard form application be supplied to investors the words of which by statute must contain phrases to the effect that the promoter holds the funds on trust for the investor. Any breach of trust in these circumstances could be deemed equivalent to liability at common law and would amount to theft if the funds were used for any other purposes than settling the syndicate. This would give investors as much protection as they receive under the present legislation, while at the same time being less expensive than the present requirements.

Much concern was expressed before the Statutes Revision Committee over the management of syndicates after the syndicate was established; in particular attention was focused on the abuses that could occur. This resulted in extensive provisions in the Act regulating management and defining the rights of syndics. (Part III & IV). In the writer's opinion the problem was overstated and the solution was directed to the wrong area. No syndicate has had post settlement management problems. Once syndicates have been established they seem to have run smoothly taking into account the normal vicissitudes of financial return caused by external economics. Management abuses have invariably been created at promotion stage by the use of various devices which gave management an extra profit out of their position. For example the use of a head lease could be used to camouflage the actual return received from a property. These abuses could be prevented by furnishing investors with adequate information at promotion stage through the use of the prospectus provisions.

Thus before the investment was made the investor would know of his rights as a syndic, the way in which the syndicate was to be managed and the liability and duties of management. Whereas at present the investor must be aware of the provisions of the Syndicates Act and the particular deed of syndication in order to find this information. The writer's solution would place the burden on the promoter and seem to fulfill the need to protect investors in a more streamline manner while at the same time not being too expensive so as to add to the cost of promotion.

The suggested legislation outlined above could be bolstered by requiring of promoters some means whereby they be registered in order to know who is in the business so that spot checks could be expedited to ensure that the legislation is being complied with. By turning the legislative sanction on promoters in a simple way through the use of existing legal liabilities all the requirements of legislation concerning syndicates would be met without the spin-off effects that the present legislation has engendered. As well some of the loopholes that subsist in the present provisions would be eradicated such as the failure to give power to insist on policing prospectus. The effect of the administrative requirements of the Act when coupled with the Income Tax legislation has been to place syndicate investment beyond the means of the small investor. Thus in the interest of investor protection the legislature has curtailed the opportunity of a sector of the investing public to invest. It is suggested that in an enterprise of high returns all that the investor needs is disclosure by promoters on which to make a decision; with a high return the investor must expect that his investment is speculative.

The wide definition of "syndicate" contained in the Act

extends to commercial enterprises not dealing in real estate. However, the prospectus is almost entirely geared to information concerning real property. It is probably for this reason that syndications of beasts have not complied with the provisions of the Act. It is the writer's view that these ventures are far more of a risk than real estate syndication for the small investor and should be subject to the disclosure and management provisions of the Act.

Two promoters have in recent years been most active in this type of syndication venture: They are Gemco and Pacific Syndicates Ltd. Under these schemes, in particular the writer studied the Pacific Syndicate Scheme, beasts are purchased either singularly or in herds by joint owning syndics.[110] The beast is usually a female. The intention of the syndicate is to breed from the beast. Money procured from the sale of the progeny over a period of years represents the return on the investment. The brochures promise returns up to 50% per annum for each progeny sold. Security is gained by insuring the female beast and the progeny. As well each joint owner is registered as owner of the beast with the appropriate breeding authority; for example, the New Zealand Racing Conference for mares. The management company, if required by the owners invariably it is, receives a commission for handling the beast. The promoters make their profit on the undisclosed difference between the purchase price of the beast and the price at which it is sold to the syndics.[111]

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110. See Appendix IV.

111. The writer's assumption.

This type of syndication is a higher risk than real estate syndication because of several factors. Firstly, the nature of the syndicated property is very fragile when compared to commercial property. Although in most ventures the beast is insured once the beast dies the investor cannot salvage any part of his asset. Moreover because of the various administration costs involved in insurance the investor is unlikely to get full reimbursement of his capital sum. In short the statistical chances of a beast dieing are high: if this happens the investor stands to loose some of his capital as well as all his interest. Secondly, the means of gaining a return on the beast and the promise of capital appreciation are based on dubious assumptions. It would seem to be generally accepted that the capital value of a beast decreased over time commensurable to the projected number of progeny it can foster in the rest of its fertile life. Thus, although inflation may cause the value of the beast to increase over the previous year, in absolute terms the rate of this increase would, when compared with real property, be very small. In fact the beast depreciates; especially in times of falling stock prices. As for the return on the investment from the progeny, this would depend upon certain eventualities which are not certain. In the first place the beast must conceive. If it fails to there would be no return for that year; Worse still, money would be owed for caring for the beast and service charges. Given that statistically a beast will breed at the most twice in three years then the propounded returns are very misleading. If the beast fails to conceive in one of the three years the return may be as low as 7%.per annum for the three years. In the second place the return is predicated upon a good stock market for young progeny. Recent events have pointed to the dubiousness of

this assumption. If the market falls then even if the beast does breed the return must decrease.

It is the writer's view that these syndicate projects are subject to the provisions of the Syndicate Act. This is because they come within the requirements of section 2. In point, the beasts are "jointly owned" with potentially as many as twenty owners in some beasts and thus they constitute a "partnership" for the purposes of the Act. Furthermore the ownership is acquired "with a view to profit" and would amount to "a financial scheme." As such the promoters should comply with the various provisions of the Act and follow the requisite procedure stipulated in the Act. No doubt promoters of these syndicates do not consider themselves bound by the Act because of the fact that much of its detail relates to real estate.[112] For example, the disclosure provisions in the Second Schedule could not be applied to the syndication of beasts without major amendments. Similarly, the provisions relating to management

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112. These schemes do not comply with the Act in many aspects that they could. Some of these are:

(a) The requisite information concerning purchase price, valuation report, promoter's interest and previous contracts are not supplied.

(b) The details of a deed of syndicate are not referred to.

(c) The money is not lodged with a Statutory Trustee. For details of the prospectus of one of these schemes. see appendix IV.

are hardly applicable to the farming of beasts and it would be unrealistic to require a deed of syndicate for each syndicated beast. These circumstances illustrate the schizophrenia between the wide definition of syndicate and the narrow casting of the disclosure provisions in the Act. This was brought about by the legislature limiting its thinking to the immediate problem of real estate syndicates rather than providing overall legislative provisions for all types of syndicate. The legislation posted above by the writer would remedy this problem as it regulates promoter not the syndicate. The affect of the present Act is that syndication is confined to the large investor because of the expense of complying with the Act's provisions. As such the Act gives these large investors protection in an area of high return whereas the small investor has been deprived of this avenue of investment except where the Act is avoided, either legally or otherwise, and thus receives little or no protection.

The writer is of the opinion that fairness would be achieved by legislating the activities of advertising and promoting interests in syndicates rather than legislation, which at present, aimed at regulating the activities of each individual syndicate.

APPENDIX I

APPLICATION FORM

Investment Department,
JBL Consolidated Limited,
P.O. Box 3744,
AUCKLAND.

Phone: 360.150

Dear Sirs,

Please reserve me an investment in "Te Atatu Mall Syndicate" for the sum of $2000. I enclose my cheque for $200 being 10% of the purchase price of the investment reserved for me.

I understand that the balance of the purchase price will be required and made available upon advice from you, under the terms stated in the Proposal. I further understand that participations will be allocated in order of receipt and that all over-subscriptions will be refunded in full.

Minimum Participation	$2,000
and thereafter in multiples of	$1,000

BLOCK LETTERS PLEASE

SURNAME FIRST NAMES

Mr
Mrs
Miss

ADDRESS:

Phone No. OCCUPATION:

Signed: Date: 24th Nov 1968

Note: Cheques should be made payable to JBL Consolidated Limited and remitted to P.O. Box 3744, C.P.O., Auckland.

PARKS, E. Syndication.

APPLICATION

Pacific Syndicates (NZ) Ltd
First Floor D.M.S. House,
145-147 Worcester Street
Christchurch
P.O. Box 13-176 Phone 65-820

Our brokerage allocation ensures prompt placement.
Please remit to:
DERICK WATSON & ASSOCIATES
P.O. Box 631, Wellington
Cheque is, however, drawn as per brochure.

Dear Sirs,
I enclose my cheque for $ _____ being my investment reserved of $_____ in the Redwood Industrial Syndicate

Cheques should be made payable to Pacific Syndicates (N.Z.) Ltd and submitted with this application to P.O. Box 13-176 Christchurch.

BLOCK LETTERS PLEASE

FIRST NAMES SURNAME

MR
MRS _____
MISS

ADDRESS _____

OCCUPATION _____

PHONE No. BUS. _____ PRIV. _____

SIGNED _____ DATE _____

PARKS, E. Syndication.

APENDIX II

APPLICATION FORM

To: The Manager,
CIRCUIT DEVELOPMENTS LIMITED,
P.O. Box 33-320,
Takapuna, Auckland, 9.

Dear Sir,

I/We the undersigned wish to invest the amount of $..... in your "HAMPTON COURT" Syndicate.

I/We enclose herewith my/our cheque for $..... being my/our 10% deposit.

or:

I/We understand that the balance of the purchase monies will be required no later than the 30th November 1973 and that interest will be adjusted from the date of payment. I also understand that one seventh of my total subscription is to be held in a Trust Account to be invested on first mortgage at 8% nett, pending the installation of two new lifts and should for any reason the lifts not be installed then these funds shall be returned to me on a pro-rata basis, together with other syndicate members.

All subscriptions will be allocated in order of receipt and over-subscriptions will be refunded in full.

(Please use BLOCK letters)

Name in full .....

Address .....

Occupation .....

Date .....Signature.....

NOTE:
Would those whose funds are currently invested in either first or second mortgages at 8% nett or 10% nett respectively, kindly complete the authority below should they wish to transfer to this project.

To: Messrs, Butterworth & Jones,
Barristers & Solicitors,
P.O. Box 1226, Auckland.

To: The District Manager,
The Perpetual Trustees,
P.O. Box 3376, Auckland.

} Please delete whichever does not apply

I/We hereby authorise you to transfer $..... invested on my/our behalf in Classified Mortgages to Circuit Developments Limited for re-investment into the "HAMPTON COURT" Syndicate.

Signed .....Date .....

APPENDIX III

CIRCUIT MANAGEMENTS LIMITED

CIRCUIT . . . . . .

APPLICATION FORM

Mr/Mrs/Miss . . . . . .

Address . . . . . .

. . . . . .

Phones: Residence . . . . . .

Business . . . . . .

Age . . . . . .

Employer or name of business . . . . . .

Occupation . . . . . .

I hereby apply for a participation in a PROPERTY INVESTORS' CIRCUIT and agree to complete an application for an endowment policy with an approved Life Assurance Company for a . . . . . year term and with an annual premium not less than $340-00.

I understand that my application fee of $50-00 will be refunded in full if my application is not accepted or if the policy applied for is not issued.

Date . . . . . .

Signature . . . . . .
(Applicant)

FOR OFFICE USE ONLY

Agent . . . . . Circuit Number . . . . . .

Investment Consultant . . . . . Receipt No. . . . . .

Register Page . . . . . Acceptance letter . . . . . .

Agent's Page . . . . . Index card . . . . . .

Policy No. . . . . Proposal completed on . . . . . .

Member's card completed on . . . . . References . . . . . .

Policy expected . . . . . .

industry — However, it is not necessary for investors to accept these management proposals and should 75% or over by value of the purchasers of any brood mare offered desire to manage their purchase, they are at liberty to do so.

FUTURE SERVICING OF MARES. For the 1975/6 season each mare in this offering will be serviced by the newly imported stallion 'Castle' details and pedigree of which appear in the front of this brochure. A decision as to further servicing in subsequent years will be made prior to the commencement of each season as it is the intention that other well performed stallions with excellent bloodlines will also be imported from time to time and be available to investors for stud purposes. To facilitate this the stallions available each year will be circularised to investors whose preference will be recorded and should differences arise the mare will be serviced by the stallion requested by the majority in value of the members owning each brood mare.

While everything possible will be done to ensure a mare is put in foal no responsibility can be accepted by the stud should she not return a positive pregnancy test. Statistics show that the average brood mare produces three foals every four years and this is accepted as normal in the thoroughbred industry.

SECURITY. Each mare purchased by a number of people will be registered with the N.Z. Racing Conference in the names of those members and consequently, full and titled ownership is ensured. In addition, the brood mare and its progeny are fully insured for their total capital cost, therefore, in the event of unexpected death the complete capital amount becomes refundable.

INSURANCE. In every instance the mare is insured for the full capital amount as outlayed by the investor with his initial investment, thus in the instance of an unexpected death of a mare complete reimbursement is made. In addition, each unborn foal is insured from the time the mare returns a positive pregnancy test until 30 days after birth for a sum amounting to three times that of the stallion's service fee. From 30 days of age the foal is then insured through to sale as a yearling for a sum amounting to five times that of the stallion's service fee. The investor is therefore assured of complete security whatever the circumstances that may arise, and in addition is guaranteed of a return on his investment immediately the mare returns a positive pregnancy test which will usually be the case.

TAXATION CONCESSIONS. Taxation concessions in the form of depreciation on the brood mare are available to all investors. However net profits received by way of sale of progeny will of course be taxable in the hands of the investor. A full taxation statement applicable to this investment will be prepared and forwarded to each investor annually for attaching to his or her taxation return. Consequently, investors have absolutely no taxation or accounting problems whatsoever with the investment.

PROGRESS REPORTS. Apart from normal business transactions regarding the sale of progeny or servicing of mares when contact will be made with owners at that particular point in time, a six monthly report will be furnished to investors covering all aspects of their mare and her progeny. Investors will be most welcome to discuss with management at any time, any aspects they so desire regarding their investment.

Application

FIRST THOROUGHBRED BREEDING PROJECT

Pacific Syndicates (N.Z.) Ltd.
First Floor D.M.S. House.
145-147 Worcester Street.
Christchurch.
P.O. Box 13-176 Phone 65-820

Dear Sir,
I enclose my cheque for $ being for the purchase of a proportionate share in the following brood mare/s

	Name of Mare	Lot No.	Amount
1st Choice	.....	.....	
2nd Choice	.....		
3rd Choice	.....		

Please make 3 choices in case original preferences have been oversubscribed.

Cheques should be made payable to:
Pacific Syndicates (N.Z.) Ltd and submitted with this Application to P.O. Box 13-176, Christchurch.

I wish/do not wish (please delete one) to appoint **PACIFIC SYNDICATES (N.Z.) LIMITED** to be the Manager of the brood mare in which I have purchased the above share **AND** if I wish Pacific Syndicates (N.Z.) Limited to manage the said brood mare I authorise the said company to act on my behalf in accordance with the attached brochure in all matters pertaining to the management of the said brood mare the sale of any progeny therefrom and generally to act in all matters relating thereto **AND** the said company shall act in such management as aforesaid and shall accept and act on the directions of 75% in value of the holders of an interest in the brood mare and the company shall be served only by the directions of such majority.

BLOCK LETTERS PLEASE

	FIRST NAMES	SURNAME
MR		
MRS	.....	.....
MISS		

ADDRESS .....

OCCUPATION .....

PHONE NO. BUS..... PRIV.....

SIGNED ..... DATE .....

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PARKS, E. Syndication.

rxPA PARKS, E. Syndication.