

ELIZABETH II



1971 CHAPTER XXV

An Act to vary the trusts of a settlement created by John Hollis for the benefit of employees of Hollis Bros. & E.S.A. Limited; to modify certain of the provisions of the settlement; to confer powers on the trustees of that settlement; and for other purposes. [12th May 1971]

WHEREAS the late John Hollis by a deed of settlement dated 24th June, 1932, appointed trustees and transferred to them certain ordinary shares of Hollis Bros. & Co. Limited (hereinafter in this Act referred to as "the Company") to be held on trust to pay pensions to former employees of the Company and for the benefit of employees of the Company, their widows, children and dependants and by a further deed dated 7th December, 1938, transferred to the trustees more such shares and varied in certain respects the provisions of the original deed of settlement:

And whereas the Company was in the year 1911 incorporated under the Companies (Consolidation) Act, 1908, as a private 1908 c. 69. company to acquire and take over the business of Hollis Bros. & Co. as timber merchants and importers, saw millers and wood flooring contractors and in the year 1953 the Company became a public company:

c. xxv *John Hollis Trust for Employees (Amendment)*
Act 1971

And whereas the business of the Company which is based in the city and county of Kingston-upon-Hull expanded and has been diversified:

And whereas so as to carry on such business more efficiently the Company formed a number of wholly-owned subsidiaries and as from 1st October, 1967, the Company carried on business only through such subsidiaries:

And whereas in the year 1968 the Company acquired the whole of the issued share capital of The Educational Supply Association Limited and changed its name to Hollis Bros. & E.S.A. Limited the name which it now bears:

And whereas The Educational Supply Association Limited and its subsidiaries are now wholly-owned subsidiaries of the Company and as a result the whole of the trading activities of the Company are carried on by means of subsidiaries and while the number of the employees of the Company and its subsidiaries has substantially increased the number of employees of the Company has been reduced to a very small number:

And whereas the trustees of the settlement have every reason to believe that it would be in accordance with the wishes of the late John Hollis and it is in the interests of the Company, its subsidiaries and the former employees and employees of its subsidiaries that the trusts of the settlement should be varied so as to enable the trustees to award pensions to former employees and benefits to the employees of the subsidiaries, their widows, children and dependants as these may be awarded by the trustees to the present beneficiaries of the settlement:

And whereas the settlement includes provisions whereby, in the event of the Company being wound up in pursuance of a scheme of amalgamation, absorption or reconstruction arranged with any other company, the trusts of the settlement are to enure for the benefit of the former employees and employees of such other company as if they were the former employees and employees of the Company and it is expedient that in such event the trusts should enure for the benefit also of the former employees and employees of subsidiaries of such other company as under the said provisions they enure for the benefit of the former employees and employees of that company:

And whereas under the terms of the settlement the trusts will in certain events terminate by the effluxion of time within a

relatively short period and it is expedient and in the public interest that the said trusts should continue so long as the business of the Company continues:

And whereas the powers of the trustees for the investment of the trust funds are unduly limited and should be extended:

And whereas the purposes of this Act cannot be attained without the authority of Parliament:

May it therefore please Your Majesty that it may be enacted, and be it enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the John Hollis Trust for Employees Short title. (Amendment) Act 1971.

2.—(1) In this Act, unless otherwise expressly provided or Interpretation. the subject or context otherwise requires, the following words and expressions have the meanings assigned to them respectively, that is to say:—

“ the Company ” means Hollis Bros. & E.S.A. Limited;

“ enactment ” means any enactment, whether public general or local, and includes any order, rule, regulation, scheme or other instrument having effect by virtue of an enactment;

“ the settlement ” means—

(a) the deed of settlement dated 24th June, 1932, and made between John Hollis of the one part and Henry Clive Burnett Hollis and Christian Hollis Seaton of the other part; and

(b) the deed of settlement dated 7th December, 1938 (supplemental to the said deed dated 24th June, 1932), and made between the said John Hollis of the one part and the said Henry Clive Burnett Hollis and Harold Speechley Kennington of the other part;

and any reference in this Act to a clause of the settlement identified by a number shall be construed as a reference to the provisions of the clause of that number contained in the said deed of settlement dated 24th June, 1932, including those provisions as imported by reference under and by virtue of the said deed of settlement dated 7th December, 1938;

1948 c. 38.

“ subsidiary ” has the meaning assigned thereto by section 154 of the Companies Act, 1948;

“ the trustees ” means the trustees for the time being of the settlement.

(2) Any reference in this Act to any enactment shall be construed as a reference to that enactment as applied, extended, amended or varied by, or by virtue of, any subsequent enactment, including this Act.

Variation of trusts of settlement.

3. As from the passing of this Act the trusts of the settlement shall be varied so as to authorise the trustees, notwithstanding anything in any enactment or rule of law to the contrary, to apply the available trust income for the benefit of any employee, former employee or the widow, child or dependant of any employee or former employee of the Company and any subsidiary either of the Company or (in the event of the Company being wound up in pursuance of a scheme of amalgamation, absorption or reconstruction made with any other company as described in paragraph (i) of clause 5 of the settlement) of such other company; and accordingly—

(a) the expressions “ employees ” and “ employee ” defined in paragraph (b) of clause 1 of the settlement shall be deemed to include an employee or employees (as the case may be) of any subsidiary of the Company; and

(b) in paragraph (i) of clause 5 of the settlement reference to the employees of such other company as is there mentioned shall be deemed to include reference to the employees of subsidiaries of such other company.

Period of trust.

4. So much of clause 11 of the settlement as provides that the trusts of the settlement are to cease and determine as soon as the longest liver of the grandchildren of His late Majesty King Edward VII existing on 24th June, 1932, or on 7th December, 1938, as the case may be (being the dates of the deeds constituting the settlement) had died and twenty-one years afterwards shall cease to have effect and the rule of law relating to perpetuities shall not apply to the settlement as varied by this Act.

Reimbursement by trustees of moneys paid by Company.

5. The trustees may out of the trust funds of the settlement or the income thereof repay to the Company any sums paid by the Company between 1st July, 1970, and the passing of this Act which if they were paid by the trustees out of the trust funds or such income (as the case may be) would be authorised by the settlement as varied by this Act.

Powers of investment.

6.—(1) Any moneys for the time being in the hands of the trustees which are not immediately required as mentioned in

clause 8 of the settlement may, notwithstanding anything in that clause, be invested in the purchase of any investments or property of any description either real or personal and wheresoever situate and whether or not being investments or property otherwise authorised by law for the investment of trust funds, or upon loan upon the security of any property of any description or without security.

(2) Moneys which the trustees do not think fit immediately to invest may be deposited at any bank.

(3) The trustees may from time to time at their discretion transpose or vary their investments for or into any others authorised by this section.

(4) In relation to land, whether freehold or leasehold, acquired as an investment, the trustees may exercise all the powers of management, improvement or development which could be exercised by an absolute owner holding the land beneficially.

(5) Nothing in this section shall authorise the making of any investment in contravention of the provisions of the Exchange Control Act, 1947.

1947 c. 14.

7.—(1) In the exercise of the powers of investment conferred by the last foregoing section of this Act, the trustees shall have regard— Duty of trustees in choosing investments.

(a) to the need for diversification of investments of the trust funds of the settlement in so far as is appropriate to the circumstances of those funds;

(b) to the suitability to those funds of investments of the description of investment proposed and of the investment proposed as an investment of that description.

(2) Before making any investment the trustees shall obtain and consider proper advice on the question whether the investment is satisfactory having regard to the matters mentioned in paragraphs (a) and (b) of the foregoing subsection.

(3) The trustees retaining any investment shall determine at what intervals the circumstances, and in particular the nature of the investment, make it desirable to obtain such advice as aforesaid, and shall obtain and consider such advice accordingly.

(4) For the purposes of the two foregoing subsections, proper advice is the advice of a person who is reasonably believed by the trustees to be qualified by his ability in and practical experience of financial matters; and such advice may be given by a person notwithstanding that he gives it in the course of his employment.

c. xxv *John Hollis Trust for Employees (Amendment)*
Act 1971

(5) The trustees shall not be treated as having complied with subsection (2) or (3) of this section unless the advice was given or has been subsequently confirmed in writing.

(6) Subsections (2) and (3) of this section shall not apply to a trustee where he is the person giving the advice required by this section to the trustees and shall not apply where powers of the trustees are lawfully exercised by a person competent under subsection (4) of this section to give proper advice.

1925 c. 19.

(7) Without prejudice to section 8 of the Trustee Act, 1925, the advice required by this section shall not include, in the case of a loan on the security of freehold or leasehold property in England and Wales or Northern Ireland or on heritable security in Scotland, advice on the suitability of the particular loan.

Costs of Act.

8. All costs, charges and expenses preliminary to and of and incidental to the applying for and the preparing, obtaining and passing of this Act shall be paid by the trustees out of the trust funds of the settlement and may in whole or in part be defrayed out of the reserve fund constituted under clause 3 of the settlement.

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