

New Zealand Guardian Trust Company Amendment Bill

Private Bill

As reported from the Commerce Committee

Commentary

Recommendation

The Commerce Committee has examined the New Zealand Guardian Trust Company Amendment Bill and recommends that it be passed by majority with only minor technical amendments.

This is a private bill. We report that the statements in the preamble have been proved to our satisfaction.

Introduction

This bill amends the New Zealand Guardian Trust Company Act 1982 (the Act). The purpose of this bill is to expressly authorise the New Zealand Guardian Trust Company to transact business with its present parent company, Promina Group Limited, and the parent company's subsidiaries and associated companies, whether or not they are overseas companies.

Proposal to approve a new parent company by Order in Council

We spent some time considering a proposal that the bill be amended to enable New Zealand Guardian Trust to seek an Order in Council, made by the Governor-General on the recommendation of the Minister of Justice, after consultation with the Minister of Commerce, to approve any future change in its ownership. This would mean that New Zealand Guardian Trust would no longer need to amend the

private Act that establishes it by a private bill whenever its parent company changes.

Reason for proposal

There are four trustee companies, established by private Act, that may undertake the administration of estates and personal trust work:

- New Zealand Guardian Trust Company Limited
- Trustees Executors Limited (formerly TOWER)
- Perpetual Trust Limited and PGG Trust Limited, trading together
- New Zealand Permanent Trustees Company Limited.

Trustee companies are each expressly authorised by the private Acts that establish them to transact business with their specified parent companies. This power is a significant departure from the general rule that trustees cannot take unauthorised profit from their administration of a trust and is provided by the naming of the trustee company's parent company in its Act. Each time there is a change in parent company, a trustee company must secure changes to its private Act to authorise it to transact business with its new parent company. While this situation was previously rare, it is now common enough that a conflict has arisen between the need to protect beneficiaries, by scrutinising the new parent company to ensure that it is appropriate for the power to be extended to it, and the appropriateness of using Parliament's time to provide this scrutiny.

The proposal

Under this proposal New Zealand Guardian Trust would need to demonstrate to the Minister of Justice that its systems and procedures place beneficiaries' best interests before its own commercial advantage. Information likely to be relevant to the decision includes the financial statements of New Zealand Guardian Trust and its new parent company, the financial ratings of both from approved agencies, and New Zealand Guardian Trust's arrangements to ensure the appointment of independent directors and independence in governance and investment practices.

The Minister would decide whether it is appropriate to authorise the company to trade with a new parent company, after consulting with

the Minister of Commerce. Consultation with the Minister of Commerce is desirable because of this Minister's expertise and resources in the commercial area.

The name of the parent company would then be amended in the schedule of the Act by Order in Council made by the Governor-General. The Order in Council could be subject to review by the Regulations Review Committee and the decisions made in relation to it could be judicially reviewed.

Committee decision

While we feel this proposal has merit, most of us believe that the ability of a trust company to transact business with its parent company is such a significant departure from the general rule against trustees taking profit from their administration of a trust that approval to allow this should remain in Parliament's hands.

Most of us consider that the preparation and introduction of a private bill to Parliament does not constitute an onerous liability on a company. Further, this obligation sends a clear message to trust companies, and their parent companies, about the paramount importance of their obligations to their beneficiaries and the trust that these beneficiaries place in them.

Most of us are therefore not willing to support this proposal until, as has been recommended by several committees before us, the Government completes a thorough review of the regime for statutory companies in respect of the naming of current parent companies in trustee legislation. We note that in 2001 the Minister of Justice informed the previous Commerce Committee that such a review would be undertaken by the Ministry of Justice and completed by mid-2003. This review is now long overdue.

National Party minority view

The National Party supports the proposal to approve a new parent company by Order in Council and is disappointed with the decision of the committee in not supporting this initiative.

Appendix

Committee process

The New Zealand Guardian Trust Company Amendment Bill was referred to the committee on 20 October 2004. The closing date for submissions was 6 December 2004. We received and considered 5 submissions from interested groups and individuals.

We received advice from the Ministry of Justice.

Committee membership

Mark Peck (Chairperson)

Hon Roger Sowry (Deputy Chairperson)

Brent Catchpole

Brian Connell

Russell Fairbrother

Hon Damien O'Connor

H V Ross Robertson

Kenneth Wang

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (majority)

Subject to this Act,

Text struck out by a majority

New (majority)

Subject to this Act,

Text inserted by a majority

<Subject to this Act,>

Words struck out by a majority

<Subject to this Act,>

Words inserted by a majority

Hon Judith Tizard

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Preamble

- (1) The New Zealand Guardian Trust Company Act 1982 vested in The New Zealand Guardian Trust Company Limited (the **company**)—
 - (a) the trust department undertaking of The New Zealand Insurance Company Limited; and 5
 - (b) the undertaking of The South British Guardian Trust Company Limited:
- (2) The company carries on a trust and agency business as an executor, as a trustee, in other fiduciary capacities, and as a trustee company: 10
- (3) The New Zealand Guardian Trust Company Act 1982 authorises the company to transact business with Royal & Sun Alliance Insurance Group plc (as its parent company) and with that parent company's subsidiaries and associated companies: 15
- (4) Royal & Sun Alliance Insurance Group plc has sold some of its businesses to Promina Group Limited, which is the company's current parent company:
- (5) The company wishes—
 - (a) to be able to transact business with its current parent company and with its current parent company's subsidiaries and associated companies, whether or not they are overseas companies; and 20
 - (b) to validate business transacted with its various parent companies, or subsidiary or associated companies of those parent companies, whether or not they are overseas companies, on or between the commencement of 25

- the principal Act and the commencement of this Act;
and
- (c) to ensure that the principal Act reflects the company's current ownership structure:
- (6) The objects of this Act cannot be achieved without legislation: 5

The Parliament of New Zealand therefore enacts as follows:

1 Title

- (1) This Act is the New Zealand Guardian Trust Company Amendment Act 2004. 10
- (2) In this Act, the New Zealand Guardian Trust Company Act 1982¹ is called "the principal Act".
- ¹ 1982 No 3 (P)

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent. 15

3 Interpretation

Section 2 of the principal Act is amended by repealing the definitions of **parent company**, **related company**, and **subsidiary** and substituting, in *<the>* *<their>* appropriate alphabetical order, the following definitions: 20

"**parent company** means Promina Group Limited

"**related company** has the same meaning as in section 2(3) *<and (4)>* of the Companies Act 1993; but, for the purposes of this Act, the term **company** in that section includes *<an overseas company, as that term is defined in section 2(1) of the Companies Act 1993>* *<a body corporate that is incorporated outside New Zealand>* 25

"**subsidiary** has the same meaning as in section 5 of the Companies Act 1993*<; but, for the purposes of this Act, the term company in that section includes an overseas company, as that term is defined in section 2(1) of the Companies Act 1993>* *<and, for the avoidance of doubt, includes a body corporate that is incorporated outside New Zealand>*". 30

4 Validation of certain previous transactions

Section 21 of the principal Act is deemed to have always applied on and after the commencement of the principal Act until the commencement of this Act as if—

- (a) **parent company** meant a holding company (within the meaning of sections 158 and 158A of the Companies Act 1955 or sections 5 and 6 of the Companies Act 1993, as the case may be) of The New Zealand Guardian Trust Company Limited~~<~~, which, for the avoidance of doubt, includes a body corporate that is incorporated outside New Zealand~~>~~; and

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- (b) **related company** had the same meaning as in section 2(5) and (6) of the Companies Act 1955 or section 2(3) and (4) of the Companies Act 1993, as the case may be; and

New (majority)

- (b) **related company** had, as the case may be, the same meaning as in—
- (i) section 2(5) and (6) of the Companies Act 1955; but, for the purposes of this Act, the term **company** in that section includes a company incorporated outside New Zealand; or
- (ii) section 2(3) and (4) of the Companies Act 1993; but, for the purposes of this Act, the term **company** in that section includes a body corporate that is incorporated outside New Zealand

- (c) **subsidiary** had the same meaning as in sections 158 and 158A of the Companies Act 1955 or sections 5 and 6 of the Companies Act 1993, as the case may be~~<~~; and~~>~~, which, for the avoidance of doubt, includes a body corporate that is incorporated outside New Zealand.~~>~~

Struck out (majority)

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|-----|--|---|
| (d) | the term company in sections 2(6), 158, and 158A of the Companies Act 1955 included an overseas company, as that term is defined in section 2(1) of that Act; and | |
| (e) | the term company in sections 2(3) and (4), 5, and 6 of the Companies Act 1993 included an overseas company, as that term is defined in section 2(1) of that Act. | 5 |

Legislative history

7 October 2004
20 October 2004

Introduction (Bill 208-1)
First reading and referral to Commerce Committee
