

[AS REPORTED FROM THE JUSTICE AND LAW REFORM
COMMITTEE]

House of Representatives, 15 August 1991.

Words struck out are shown in italics within bold round brackets; words inserted are shown in roman underlined with a single rule.

Hon. Fran Wilde

NEW ZEALAND PERMANENT TRUSTEES LIMITED

[PRIVATE]

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A BILL INTITULED

An Act—

- 5 **(a) To provide for East Coast Permanent Trustees Limited to continue in existence under the name New Zealand Permanent Trustees Limited; and**
- 10 **(b) To authorise the Company to transact business with The National Mutual Life Association of Australasia Limited and with other subsidiaries and related companies of that company; and**

No. 25—2

*Price
incl. GST \$2.30*

**(c) To repeal the East Coast Permanent Trustees
Limited Act 1962**

WHEREAS—

- A. East Coast Permanent Trustees Limited was duly incorporated under the name East Coast Perpetual Trustees Limited on the 17th day of June 1929 as a private company under the Companies Act 1908 and on the 7th day of November 1929 the name of the Company was changed to East Coast Permanent Trustees Limited: 5
- B. The Company is authorised by its Memorandum of Association and by the East Coast Permanent Trustees Limited Act 1962 to act as executor and trustee and in various other fiduciary capacities and has from the date of its incorporation carried on and now carries on trustee company, trust, and agency business: 10
- C. The Company is a trustee company under and within the meaning of the Trustee Companies Act 1967 and carries on the business of a trustee company: 20
- D. All the shares in the Company are now held by or on behalf of Sanduka Holdings Limited, a private company incorporated under the Companies Act 1955:
- E. Sanduka Holdings Limited has agreed, subject to the passing of this Act, to transfer the shares in the Company to The National Mutual Life Association of Australasia Limited, a company incorporated in Victoria, Australia, and having its principal place of business in New Zealand at Wellington (hereinafter called “NMLA”): 30
- F. The Company wishes to change its name to New Zealand Permanent Trustees Limited:
- G. The Company wishes to be able to transact with NMLA or any subsidiary or related company of NMLA, should it think fit to do so, any business in connection with any estate or trust property that the Company may from time to time administer: 35
- H. The East Coast Permanent Trustees Limited Act 1962 contains provisions which are no longer appropriate to the business of the Company: 40
- I. Legislation is the only expedient means by which the name of the Company can be changed and the Company

5 empowered to transact business with NMLA and subsidiaries and related companies of NMLA efficiently and economically without interference to the conduct and continuity of the Company, the trusts under its administration, the clients of the Company, and persons having business with the Company:

J. Legislation is necessary to repeal the East Coast Permanent Trustees Limited Act 1962:

10 K. The objects of this Act cannot be attained otherwise than by legislation:

BE IT THEREFORE ENACTED by the Parliament of New Zealand as follows:

15 **1. Short Title and commencement**—(1) This Act may be cited as the New Zealand Permanent Trustees Limited Act 1991.

(2) This Act shall come into force on the 1st day of *(August)* September 1991.

20 **2. Interpretation**—In this Act, unless the context otherwise requires,—

“The Company” means East Coast Permanent Trustees Limited which on and after the 1st day of *(August)* September 1991 will be called New Zealand Permanent Trustees Limited:

25 “Fiduciary rights, obligations, and liabilities” includes all rights, capacities, authorities, discretions, duties, obligations, and liabilities as executor, trustee, administrator, receiver, liquidator, committee, guardian, attorney, agent, or as a fiduciary in any capacity:

30 “Liabilities” means liabilities, debts, charges, and duties of every description (whether present or future, actual or contingent, and whether payable or to be observed or performed in New Zealand or elsewhere):

35 “Property” means property of every kind whether tangible or intangible, real or personal, or corporeal or incorporeal; and, without limiting the generality of the foregoing, includes—

40 (a) Choses in action and money; and

(b) Goodwill; and

(c) Rights, interests, and claims of every kind in or to property, whether arising from, accruing under,

created or evidenced by, or the subject of, an instrument or otherwise, and whether liquidated or unliquidated, and whether contingent or prospective: “Rights” means all rights, powers, privileges, and immunities, whether actual, contingent, or prospective: 5

“Subsidiary” and “related company” have the same meanings as in the Companies Act 1955:

“Trust property” means all property held as executor, trustee, administrator, receiver, liquidator, committee, guardian, attorney, agent, or as a fiduciary in any capacity. 10

3. Act to bind the Crown and other persons—This Act binds the Crown and every person whose rights, obligations or liabilities are affected by any provision of this Act. 15

4. Change of name—(1) On and after the 1st day of *(August)* September 1991 the name of the Company shall be New Zealand Permanent Trustees Limited.

(2) On or after the 1st day of *(August)* September 1991 the Registrar of Companies must enter the new name of the Company on the register in place of the former name and must issue a certificate of incorporation altered accordingly. 20

(3) Nothing in this Act prevents the name of the Company being changed in accordance with the Companies Act 1955.

5. Company to continue under this Act—(1) On and after the 1st day of *(August)* September 1991 the Company is and shall continue to be the same body corporate as the body corporate existing before that date and called East Coast Permanent Trustees Limited. 25

(2) In particular, and without limiting the generality of subsection (1) of this section, but subject to this Act,— 30

(a) The rights, obligations, and liabilities (including fiduciary rights, obligations, and liabilities) of the Company are not affected by the enactment of this Act; and

(b) All property, and all trust property, belonging to or vested in the Company immediately before that date shall, on and after that date, continue to belong to or be vested in the Company; and 35

(c) All actions, arbitrations and other proceedings that are pending at that date by or against the Company may 40

be continued in the same manner notwithstanding the enactment of this Act; and

- 5 (d) Every reference in any Act, will, trust deed, document, sign, poster, notice or other place to “East Coast Permanent Trustees Limited”, whether before or after that date, is deemed to be a reference to New Zealand Permanent Trustees Limited.

6. Company may act as executor and obtain probate—

10 Where the Company is appointed as executor, whether alone or jointly, of the will of any person, the Company is entitled—

- (a) To be and act as executor of the will, whether alone or jointly; and
(b) To apply for and obtain probate of the will; and
15 (c) To perform and discharge all the acts and duties of an executor in the same way and to the same extent as an individual appointed as an executor.

7. Company’s liability to be same as individual—

20 In acting as executor, trustee, administrator, receiver, liquidator, committee, guardian, attorney, or agent, or in any other similar capacity, the Company is, in addition to the liabilities and restrictions imposed by this Act and the Trustee Companies Act 1967, subject to the same control and liability to removal as an individual appointed to act in the same capacity.

8. Court or Judge may order account—

25 (1) A trustee, executor, legatee, administrator, beneficiary, next-of-kin, creditor or other person entitled to or interested in an estate that is in the possession or under the control of the Company who is unable, on applying to the Company, to obtain a sufficient account of the property and assets of the estate or of
30 the disposal and expenditure of or out of the estate, may apply to the High Court or to a Judge of that Court for an account.

(2) Notice of the application must be served on the Company.

(3) The Court or Judge may, if satisfied that the Company has not provided a sufficient account to the applicant, order the
35 Company to provide the applicant with an account in such form as the Court or Judge thinks fit.

(4) The Court or Judge may make such order as to costs either against the Company or against the applicant, or as to payment of costs out of the estate, as the Court or Judge thinks
40 fit.

9. Court or Judge may order examination of records—

(1) The High Court or a Judge of that Court may, on application under **section 8** of this Act, in addition to or in substitution for an order that an account be provided by the Company, make an order appointing a person named in the order to examine the books and accounts of the Company in relation to the estate to which the order relates. 5

(2) Where the Court or a Judge makes an order under **subsection (1)** of this section, the Company must—

- (a) Deliver to the person named in the order a list of all books kept by the Company; and 10
- (b) Produce to that person at all reasonable times when required those books and all accounts, vouchers, papers and other documents of the Company; and
- (c) Provide that person with all information and facilities necessary to enable that person to make the examination. 15

(3) The Court or Judge may make such order as to costs either against the Company or against the applicant, or as to payment of costs out of the estate, as the Court or Judge thinks fit. 20

10. Company not to wind up without approval of Court—

(1) So long as an estate in respect of which the Company is executor, administrator, or trustee remains in whole or in part unadministered, it shall not be lawful— 25

- (a) To proceed to wind up the Company voluntarily; or
- (b) For NMLA to dispose of any shares it holds in the Company that are not fully paid up,—

without the approval of the High Court or of a Judge of that Court. 30

(2) A person interested in any such estate or who may have a claim in respect of that estate may apply to that Court or to a Judge of that Court for an order to restrain the winding-up voluntarily of the Company or to restrain NMLA from disposing of any such shares. 35

(3) On an application under this section the Court or Judge may make such order as the Court or Judge thinks fit.

11. Unclaimed money—(1) Money held by the Company as executor, trustee, administrator, receiver, liquidator, committee, guardian, attorney, or agent, or in any other capacity under this Act that remains unclaimed, and of which no lawful owner is known, for a period of 6 years after its 40

receipt by the Company, must, at the end of the next financial year, be paid by the Company to the Commissioner of Inland Revenue under and in accordance with the Unclaimed Money Act 1971.

5 (2) Payment of money under **subsection (1)** of this section, to the extent of the amount paid, discharges the Company of the trust to which the money is subject.

10 (3) Nothing in **subsection (1)** or **subsection (2)** of this section limits or affects the provisions of an instrument creating a trust to which the money is subject or that confers on the Company a power, authority, discretion, or duty in relation to the money.

12. Company authorised to transact business with NMLA or subsidiaries or related companies—

15 (1) Notwithstanding the fiduciary rights, obligations, and liabilities of the Company whether arising under this Act or otherwise, the Company is authorised to transact with NMLA or any subsidiary or any related company of NMLA any business including but not limited to insurance business in connection with any estate or trust property that it may
20 administer from time to time where, after considering all the circumstances of the case (including appropriate business arrangements offered by other companies), the Company is satisfied on reasonable grounds that it is in the best interests of the estate or trust property to do so.

25 (2) Notwithstanding any enactment or rule of law, NMLA or a subsidiary or related company of NMLA is entitled to receive and retain all fees, premiums, commissions, and other payments properly chargeable or payable in respect of such business in the same manner as it would have been entitled to
30 do if the Company was not a trustee of such estate or the Company was not a subsidiary of NMLA or the company with which the business was transacted was not a subsidiary or related company of NMLA, as the case may be.

35 (3) Any payment to which **subsection (2)** of this section applies must be clearly identified in the account rendered in respect of the estate or trust property.

13. Jurisdiction and powers of High Court not affected—

40 (1) Nothing in this Act affects the powers or jurisdiction of the High Court in respect of trustees, and such powers and jurisdiction may be exercised in relation to the Company in respect of all trusts undertaken by it.

(2) Without limiting subsection (1) of this section, nothing in this Act affects the power of the High Court to remove the Company from any office even though it holds that office by virtue of this Act.

14. Release of bond or securities held for purposes of Trustee Companies Act 1967—(1) The First Schedule to the Trustee Companies Act 1967 is hereby amended by omitting the item relating to East Coast Permanent Trustees Limited. 5

(2) On request by the Company, the Public Trustee must release to the Company any bond given to or any securities deposited with the Public Trustee by the Company under and for the purposes of section 6 of the East Coast Permanent Trustees Limited Act 1962 and section 6 (2) of the Trustee Companies Act 1967. 10

(3) The receipt of the Secretary of the Company is a full and sufficient discharge to the Public Trustee for any securities released, and the Public Trustee is not required to see to the application of the securities released. 15

15. Registers—(1) No Registrar of Deeds or District Land Registrar or other person charged with the keeping of any books or registers is obliged solely by reason of this Act to change the name of the Company in those books or registers or in any document. 20

(2) The presentation to any such Registrar or person of any instrument, whether or not comprising an instrument of transfer by the Company,— 25

(a) Executed or purporting to be executed by the Company; and

(b) Relating to property held immediately before the commencement of this Act in the name of East Coast Permanent Trustees Limited; and 30

(c) Containing a recital that the name of the Company has been changed by virtue of this Act—
is, in the absence of proof to the contrary, sufficient evidence that the property is vested in the Company as so named. 35

(3) Except as provided in this section, nothing in this Act derogates from the provisions of the Land Transfer Act 1952.

(4) The registrar of a register relating to property which is transferable only in books kept by a company or in a manner directed by or under an Act must, on written application under the seal of the Company, register it in its new name as the holder of the property that is shown in the register as being 40

vested in or held by the Company, and note the change of name of the Company.

5 **16. Consequential amendments**—(1) Section 2 of the Trustee Companies Act 1967 is hereby amended by omitting from the definition of the term “trustee company” the words “East Coast Permanent Trustees Limited” (as substituted by section 20 (1) (c) of the New Zealand Guardian Trust Company Act 1982) and substituting the words “New Zealand Permanent Trustees Limited”.

10 (2) Section 2 of the Trustee Companies Act 1967 is hereby further amended by omitting from the definition of the term “trustee company Act” (as added by section 2 (2) of the Trustee Companies Amendment Act 1972 and amended by section 20 (2) of the New Zealand Guardian Trust Company Act 1982) the words “East Coast Permanent Trustees Limited Act 1962”, and substituting the words “New Zealand Permanent Trustees Limited Act 1991”.

15 **17. Repeals**—The following enactments are hereby repealed:

- 20 (a) The East Coast Permanent Trustees Limited Act 1962:
 (b) The Trustee Companies Act 1967: So much of the Third Schedule as relates to the East Coast Permanent Trustees Limited Act 1962:
 (c) The East Coast Permanent Trustees Limited Amendment Act 1972:
25 (d) Section 3 (1) (d) of the Trustee Companies Amendment Act 1979.

18. Private Act—This Act is hereby declared to be a private Act.