

## TRUSTEE COMPANIES BILL

### EXPLANATORY NOTE

THIS Bill contains provisions that are to apply to all trustee companies, being companies that are authorised by Act of Parliament to administer the estates of deceased persons and other trust estates. There are at present five such companies, each deriving its authority from a separate Act, namely:

- (a) The Trustees, Executors, and Agency Company of New Zealand (Limited), authorised by Act of 1882, No. 4 (Private):
- (b) The Guardian, Trust, and Executors Company of New Zealand (Limited), authorised by Act of 1883, No. 2 (Private):
- (c) The Perpetual Trustees, Estate, and Agency Company of New Zealand (Limited), authorised by Act of 1884, No. 1 (Private):
- (d) The New Zealand Insurance Company Limited, authorised by Act of 1916, No. 1 (Private):
- (e) Pyne, Gould, Guinness, Limited, authorised by Act of 1934, No. 3 (Private).

*Clauses 1 and 2* relate to the Short Title and interpretation of the Bill.

#### *Group Investment Funds*

*Clauses 3 to 9* provide for trustee companies to establish and keep Group Investment Funds which will be operated in much the same way as the Common Funds of the Public Trustee and the Maori Trustee.

*Clause 3* authorises any trustee company to establish one or more of these Funds. All funds forming part of a Group Investment Fund must be invested in such class or classes of authorised investments as the company which establishes the Group Investment Fund determines at the time when that Fund is established. Trust funds in individual estates administered by the company may be invested either separately or as part of a Group Investment Fund established by the company, being a Fund the investment of which is limited to the class or classes of investments in which the funds might lawfully be separately invested. Funds held by a trustee company as agent may also be invested in a Group Investment Fund. Provision is made for a Group Investment Fund to take over investments of an individual estate or person at the fair market value.

*Clause 4* provides for the whole of the income from a Group Investment Fund to be distributed proportionately among the investors in the Fund and for the capital to be held proportionately for those investors.

*Clause 5* provides for a valuation of the investments of a Group Investment Fund to be made as at the 15th day of each month: and for investments in and withdrawals from the Fund to be made on the 15th day of a month or within two business days thereafter, and on the basis of the valuation made as at the 15th of that month. Interest on any amount withdrawn is to be allowed only to the 15th of the month in which the withdrawal is made.

*Clause 6* provides that a trustee company is not to get separate commission on a Group Investment Fund which it administers. It will, of course, be entitled to its usual commission on the individual estates.

*Clause 7* confers on trustee companies the normal powers of management in respect of Group Investment Funds.

*Clause 8* provides for the examination of Group Investment Funds by a solicitor or accountant authorised by a person beneficially interested.

*Clause 9* declares that, except as expressly provided in the Bill, nothing in the Bill shall affect the rights, powers, and duties of trustee companies.

#### *Remuneration of Trustee Companies*

*Clause 10:* Each of the five separate Acts constituting the existing trustee companies contains a section authorising the company to charge a commission to be fixed from time to time by the Board of Directors of the company, but not exceeding 5 per cent. Four of the five sections are qualified by a proviso to the effect that the commission to be charged by the company shall not exceed in each case the amount of the published scale of charges of the company at the time when the estate was committed to the company. The last of the sections to be enacted, namely, section 10 of the Pyne, Gould, Guinness (Limited) Trust Act 1934, contains no such proviso. *Clause 10* repeals the four provisos.

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Hon. Mr Mason

## TRUSTEE COMPANIES

### ANALYSIS

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### A BILL INTITULED

#### An Act to make better provision for the operation of trustee companies

BE IT ENACTED by the General Assembly of New Zealand  
5 in Parliament assembled, and by the authority of the same, as follows:

1. **Short Title**—This Act may be cited as the Trustee Companies Act 1960.

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

“Court” means the Supreme Court:

“Group Investment Fund” or “Fund” means a Group Investment Fund established under section 3 of this Act:

15 “Interest” includes dividends from shares:

“Person” includes a corporation sole, and also a body of persons, whether corporate or unincorporate;

“Trust” means a trust within the meaning of the Trustee Act 1956:

“Trustee company” means a company that is authorised by any Act of the General Assembly to administer the estates of deceased persons and other trust estates. 5

*Group Investment Funds*

**3. Group Investment Funds**—(1) A trustee company may from time to time establish and keep in its books one or more Funds, each of which shall be called a Group Investment Fund. Where more than one Group Investment Fund is so established, each such Fund shall be given an appropriate distinguishing number. 10

(2) All funds forming part of any Group Investment Fund shall be invested in such class or classes of investments as the company which establishes the Group Investment Fund determines at the time when the Fund is established, being investments authorised by the instrument (if any) creating the trust under which the funds are held or otherwise authorised by the Trustee Act 1956 for the investment of those funds. 15

(3) Subject to the provisions of this section, a trustee company may invest any trust funds in its possession, whether at the time in a state of investment or not, whether they came into its possession before or after the commencement of this Act, and whether they comprise the whole or part of the trust estate to which they belong, either— 20

(a) On a separate account in respect of the trust estate to which the funds belong; or

(b) If the funds are not directed to be invested in some other specified manner and investment in a Group Investment Fund is not inconsistent with the terms of the trust instrument (if any) governing the funds, as part of any Group Investment Fund established and kept in the books of the company, being a Fund the investment of which is limited to the class or classes of investments in which the funds might lawfully be invested on the separate account of the trust estate. 25 30 35

(4) Where a trustee company is a co-trustee of any trust funds, those trust funds may be invested as aforesaid in a Group Investment Fund with the consent of every other co-trustee of those trust funds. 40

(5) Where so authorised by the power of attorney or other written authority by which it is appointed as agent by any person, and subject to the provisions of this section, a trustee company may invest any funds held by it for that person in, 5 or transfer any investments held by it for that person to, a Group Investment Fund as if they were trust funds.

(6) Subject to subsection (5) of this section, where any funds of a trust estate or person are in the possession or control of a trustee company and are lawfully invested in an invest- 10 ment in which a Group Investment Fund established by the company may be invested, the company may transfer that investment to the Group Investment Fund and give credit in the Fund to the trust estate or person for the fair market value of the investment at the time of the transfer. Upon any 15 investment being so transferred, it shall cease to belong to the trust estate or person which formerly owned it.

(7) Investments made from funds forming part of a Group Investment Fund shall not be made on account of or belong to any particular trust estate or person, but the trustee 20 company which established the Fund shall cause to be kept in the books of the company an account showing at all times the entitlement of each trust estate or person in the Fund.

(8) A trustee company may in its discretion withdraw any amount for the time being to the credit of a trust estate or 25 person in a Group Investment Fund—

(a) For the purpose of investing the amount on the separate account of the trust estate or person or in another Group Investment Fund; or

30 (b) For any other purpose relating to the exercise and discharge of its duties, powers, authorities, and functions:

Provided that the withdrawal of any amount to the credit of a trust estate of which the trustee company is a co-trustee shall be conditional on the consent of every other co-trustee.

35 (9) Where amounts are so withdrawn from a Group Investment Fund—

(a) They may, in the discretion of the trustee company, be paid or provided in cash or rateably in investments, or partly in cash and partly rateably in investments:

40 (b) No person shall, as from the date of their withdrawal, have any claim on that Fund in respect of the amounts for interest or otherwise.

(10) Any profit or loss upon the realisation of any invest- 45 ment in a Group Investment Fund shall be credited or debited (as the case requires) to the Group Investment Fund.

**4. Income and capital of Group Investment Fund**—The trustee company which establishes a Group Investment Fund shall—

- (a) Pay or allocate the income from that Fund proportionately to or among the trust estates and persons entitled to the amounts invested in the Fund according to the amounts of their several interests in the Fund and the period for which they remain invested in the Fund: 5
- (b) Hold the capital of the Fund proportionately for the trust estates and persons entitled to the amounts invested in the Fund according to the amounts of their several interests in the Fund. 10

**5. Monthly capital valuation of investments of Fund**—

(1) Each trustee company shall determine the capital value as at the fifteenth day of every month of the investments and funds comprising each Group Investment Fund established by it. For the purposes of any such determination, in respect of any security listed on a Stock Exchange,— 15

- (a) A quotation published in respect of similar securities by a Stock Exchange on the day as at which the determination is made, or (if there is no such quotation on that day) at any time within seven days before that day, shall be conclusive evidence of the value of the security, including accrued interest (if any), as on the date of the determination; and the capital value of the security shall be determined accordingly by making such adjustment (if any) as the company thinks proper in respect of accrued interest: 20 25 30
- (b) If there is no such quotation, a valuation by a registered member of the Stock Exchange shall be conclusive evidence of that value. 30

(2) No investment in or withdrawal from a Group Investment Fund shall be made, except— 35

- (a) On the fifteenth day of any month or within two business days thereafter; and
- (b) On the basis of the valuation made as at the fifteenth day of that month.

(3) On a withdrawal from a Group Investment Fund, interest on the amount so determined shall be allowed, in accordance with paragraph (a) of section 4 of this Act, to the fifteenth day of the month in which the withdrawal is made. 40

**6. No separate commission on Fund**—A Group Investment Fund shall be deemed not to be a separate trust estate on which commission or other recompense or remuneration is payable; and no trustee company maintaining such a Fund shall make any charge against it for the management thereof nor pay any commission or other recompense or remuneration out of the Fund for management:

Provided that—

- 10 (a) A trustee company may, out of a Group Investment Fund which it establishes, reimburse itself for all reasonable expenses incurred by it in the administration of the Fund; and
- 15 (b) A trustee company shall be entitled to receive from any trust estate or person whose funds are invested in a Group Investment Fund the same commission or other recompense or remuneration as it would be entitled to receive if the funds were not so invested.

**7. Powers of trustee company in respect of Funds**—Subject to the provisions of this Act, a trustee company may exercise in respect of the investments and funds comprising a Group Investment Fund—

- 25 (a) All the powers which it could exercise under the Trustee Act 1956 if the investments and funds were trust property not forming part of a Group Investment Fund:
- 30 (b) Such further powers as may be conferred on the company by the Court, being powers which could be conferred on the company by the Court if the investments and funds were trust property not forming part of a Group Investment Fund.

**8. Examination of Group Investment Funds**—The provisions of section 83A of the Trustee Act 1956 (which section was enacted by section 10 of the Trustee Amendment Act 1957) shall apply to every Group Investment Fund as if it were a trust estate:

35 Provided that any examination made under that section shall be restricted to an examination of the investments and funds comprising the Group Investment Fund, and the income of the Fund, and the expenses payable out of the Fund, and 40 the proportion to which the person who required the examination, or the estate in which he is a beneficiary, is entitled; and access to the company's books and vouchers shall be restricted accordingly.

**9. Duties, etc., of trustee companies not affected by Act—**  
 Except as otherwise expressly provided in this Act, nothing in this Act shall affect the rights, powers, and duties of trustee companies.

*Remuneration of Trustee Companies*

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**10. Trustee company's remuneration for services—**The following enactments are hereby repealed:

- (a) The proviso to section 8 of the Trustees, Executors, and Agency Company Act 1882:
- (b) The proviso to section 8 of the Guardian, Trust, and Executors Company Act 1883: 10
- (c) The proviso to section 9 of the Perpetual Trustees, Estate, and Agency Company Act 1884:
- (d) The proviso to section 11 of the New Zealand Insurance Company Trust Act 1916. 15