

TRUSTEE COMPANIES BILL

EXPLANATORY NOTE

THIS Bill consolidates and amends the Trustee Companies Act 1960 and the Trustee Companies Protection Act 1934–35. It extends the provisions governing the operation of trustee companies. There are at present six of these 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):
- (f) The East Coast Permanent Trustees Limited, authorised by Act of 1962, No. 5 (Private).

Clause 1 relates to the Short Title to the Bill.

Clause 2 defines terms used in the Bill.

PART I

TRUSTEE COMPANIES

Clause 3 declares that every trustee company shall be deemed to be a trust company for the purposes of the Administration Act 1952, and a trustee corporation for the purposes of the Trustee Act 1956.

Clause 4 incorporates in this legislation the provisions of section 42 of the Administration Act 1952 and section 2 of the Administration Act 1958, which relate to grants of letters of administration to a trustee company.

Clause 5 follows substantially a provision that appears in each of the trustee company Acts, and provides that in every case in which any trustee is empowered to apply for probate of the will or letters of administration of the estate of any deceased person, it shall be lawful for the Court in which, or the officer before whom, the application is made to receive and act upon an affidavit made by a director or manager of the company in place of any affidavit required by the said Court to be made by persons making application for probate or letters of administration.

Clause 6 follows substantially a provision that appears in each of the trustee company Acts, and provides that the capital, both paid and unpaid, and all other assets of every trustee company shall be charged with all liability of the company for any failure of the company to ensure the proper administration of all estates entrusted to the charge of the company.

Clause 7 authorises a trustee company to accept appointments to and act in the offices and positions specified in *subclause (2)*.

Clause 8 authorises executors, administrators, and trustees to appoint to their offices either a trustee company solely or a trustee company acting together with any other person or persons.

Clause 9 provides that a trustee company may be appointed administrator or trustee with the consent of the Supreme Court, notwithstanding that some person whose consent is required refuses or is unable to consent.

Clause 10 provides that in every case in which the personal attendance of the holder of any office or position mentioned in *subclause (2) of clause 7* of the Bill is required in a Court or elsewhere, if a trustee company is the holder of the office or position, the company shall be entitled to make the attendance in the person of any director or officer of the company, and the personal duties of the company as holder of the office or position may be discharged on behalf of the company by any director or officer of the company. The statutory personal liability of the manager of a trustee company for the proper discharge of the duties of the company is being dropped.

Clause 11 provides that, subject to section 42A of the Administration Act 1952, the power of any trustee company to act as executor of the will, or administrator (with or without the will annexed) or trustee of the estate, of any deceased person, and the power of any trustee company to act in any of the offices or positions mentioned in *subclause (2) of clause 7* of the Bill, may be exercised by the company either alone or jointly with another person, firm, company, or corporation.

Clause 12 provides that, where by any power of attorney any trustee company is appointed attorney, all powers conferred upon the company by the power of attorney may be exercised by any two directors of the company, or by a manager of the company acting in conjunction with any director of the company.

Clause 13 applies to powers of attorney appointing trustee companies the provisions of sections 134 and 135 (1), (2), and (5) of the Property Law Act 1952 and section 399 of the Companies Act 1955, which provisions govern the execution of documents by an attorney, and the continuance of powers of attorney. *Subclauses (2) to (4)* are based on sections 116 and 117 of the Public Trust Office Act 1957, and provide that a declaration of non-revocation is not necessary where a trustee company executes as attorney; also that a trustee company is protected where it acts under a power of attorney without knowledge that the donor of the power was dead or had done some act to avoid the power.

Clause 14 empowers a trustee company to act as trustee of legacies of infants, on similar terms to section 65 of the Public Trust Office Act 1957.

Clause 15 follows the lines of section 67 of the Public Trust Office Act 1957, and makes provision authorising the administration of benefit funds by trustee companies.

Clause 16 follows the lines of section 56 of the Public Trust Office Act 1957, and authorises the appointment of a trustee company to represent parties in legal proceedings.

Clause 17 provides that no transfer of shares in a trustee company (whether the transfer has been executed before or is executed after the commencement of the Bill) shall be registered unless and until the transfer has been approved by the directors of the company, who are given an absolute discretion to register or refuse to register any such transfer and are not bound to assign any reason for refusing to register any transfer. The exercise of the discretion of the directors under this clause cannot be called in question in any proceedings whatsoever. Where any trustee company is deemed, for the purposes of the Companies Act 1955, to be a subsidiary of another company incorporated in New Zealand, the clause is to apply to transfers of shares in that other company.

Clause 18 gives trustee companies the right to charge and receive fees for preparing and lodging returns in connection with the assessment of duties and taxes, other than estate duty; also fees in cases where their duties do not involve the receipt of money or assets. The existing scales do not apply in cases where the companies do not receive money or assets.

Clause 19 provides that the Supreme Court may vary the charges of a trustee company. Charges may be reduced by the Court on an application by a beneficiary, or increased by the Court where the company carries on or manages any business or undertaking or takes active part in the management or direction of any company or when any other circumstances have arisen which justify additional remuneration. The increase may be of such additional fee or percentage as the Court thinks fit having regard to the work, care, skill, and responsibility involved in administering the estate or carrying on or managing the business, undertaking, or company.

Clause 20 authorises any trustee company to appoint a local or special Board of Directors. Every such local or special Board is to have a seal, which shall have the same force and effect as the seal of the company.

Clause 21 contains normal provisions authorising delegations by and within a trustee company.

Clause 22 authorises a trustee company to appoint a deputy of its general manager, any branch manager, or the secretary.

Clause 23 provides that notice shall be taken judicially without further proof of—

- (a) The seal of every trustee company and of every local or special Board of Directors of the company; and
- (b) The appointment and signature of every director and manager of any trustee company.

Clause 24 makes provision, on the lines of section 127 of the Public Trust Office Act 1957, to enable a trustee company to evidence and register dealings in land when acting in more than one capacity in connection with a transaction.

Clause 25 declares that section 102 of the Companies Act 1955 shall not apply to any charge on any real or personal property created by a trustee company in a fiduciary capacity.

Clause 26 provides that the entry of a trustee company by its name in the register of shareholders in a company shall not constitute notice of a trust; also that a company shall not be entitled to object to enter the name of a trustee company in its register of shareholders by reason only that the trustee company is a trustee or is a corporation. The clause also authorises a trustee company to enter its own name or the name of any company of which it is a subsidiary in its register of shares in respect of any shares to which the trustee company is entitled in a fiduciary capacity.

Clause 27 provides that where a trustee company is realising the goods, chattels, and effects of any estate administered by it, and those goods, chattels, and effects are not of a greater value than \$500 and are situated at a distance of more than 10 miles from the usual place of business of a licensed auctioneer, they may be offered for sale by auction by a person other than a licensed auctioneer.

Clause 28 follows section 108 of the Public Trust Office Act 1957, and provides that, subject to any order of the Court, where any person is life tenant of any land comprised in an estate being administered by a trustee company, the company may fix the conditions on which the tenant for life may be allowed into possession of the land.

PART II

GROUP INVESTMENT FUNDS

Clauses 29 to 35 substantially repeat existing provisions which 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. It has been made clear that trust funds belonging to an estate administered by another trustee may be invested in a Group Investment Fund of a trustee company.

Clause 29 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, whether administered by the company or another trustee, 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 30 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 31 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 32 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 33 confers on trustee companies the normal powers of management in respect of Group Investment Funds.

Clause 34 provides for the examination of Group Investment Funds by a solicitor or accountant authorised by a person beneficially interested.

Clause 35 declares that, except as expressly provided in this Part of the Bill, nothing in this Part of the Bill shall affect the rights, powers, and duties of trustee companies.

PART III

ELECTIONS TO ADMINISTER AND CERTIFICATES OF ADMINISTRATION

Clauses 36 and 37 follow provisions in sections 72 and 73 of the Public Trust Office Act 1957, and authorise trustee companies to file elections to administer in respect of estates not exceeding \$2,000 in value instead of applying to the Court for a grant of administration. An election under the clause may not be filed unless there is endorsed thereon a certificate by a solicitor that he is satisfied that the Court would, on application duly made, make a grant corresponding to the election.

Clause 38 requires every trustee company to notify the Commissioner of Inland Revenue in the form required by the Commissioner in all cases where it files an election under *clause 36* or *clause 37* of the Bill.

Clause 39 declares that property situated out of New Zealand at the time of the filing of an election to administer shall not be taken into account in determining the value of the property to which the election relates, but in all other respects every election shall extend and apply to and include property situated out of New Zealand in the same manner and to the same extent as a grant of administration would extend or apply to or include that property.

Clause 40 makes provision for the revocation of elections filed in error.

Clause 41 prescribes the Court fees payable on elections and other documents that are filed in Court under this Part of the Bill.

Clause 42 makes provision, on the lines of section 78 of the Public Trust Office Act 1957, authorising trustee companies to issue certificates of administration.

Clause 43 consequentially amends the definitions of the terms "administration" and "administrator" in section 2 (1) of the Administration Act 1952.

PART IV

TRUSTEE COMPANIES PROTECTION

THIS Part of this Bill substantially repeats the provisions of the Trustee Companies Protection Act 1934-35, except that the provisions may be applied to a company by the Attorney-General by notice in the *Gazette* instead of by the Governor-General by Order in Council.

Clause 44 provides that the Attorney-General may from time to time, by notice in the *Gazette*, apply this Part of this Bill to any trustee company. No such notice may be given except pursuant to a resolution passed by the Board of Directors of the trustee company.

Clause 45 provides that every application for shares in a trustee company to which this Part of the Bill applies, and every transfer of shares in any such trustee company that is lodged with the trustee company for registration, shall be accompanied by a certificate by the applicant or transferee (as the case may be) in the prescribed form, and no shares in any such trustee company shall be allotted, nor shall any transfer of shares in any such trustee company be registered, unless the application or transfer, as the case may be, is accompanied by such a certificate.

Clause 46 provides that, at any general meeting of shareholders in a trustee company to which this Part of this Bill applies, the chairman of the meeting may, before calling for a show of hands or taking a poll, require each shareholder or any shareholder or shareholders present in person to sign and lodge with him a certificate in writing in the prescribed form. Any shareholder who refuses or neglects to do so, or refrains from doing so is not entitled to vote. A vote by proxy is not valid unless the vote is given under the authority of a proxy in writing accompanied by a certificate in the prescribed form.

Clause 47 provides that no trustee company to which this Part of this Bill applies or to which this Part of this Bill or the Trustee Companies Protection Act 1934-35 has at any time applied, nor any person dealing with the shares in any such company, nor the Registrar of Companies, shall be affected by notice of any trust by reason of any certificate under any of the provisions of this Part of this Bill.

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Hon. Mr Hanan

TRUSTEE COMPANIES

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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 in Parliament assembled, and by the authority of the same, 5
 as follows:

1. Short Title—This Act may be cited as the Trustee Companies Act 1967.

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

“Administration” and “administrator” have the meanings specified in the Administration Act 1952:

“Assistant general manager”,—

(a) In relation to a trustee company that also carries on business other than trust business as empowered by this Act, means the assistant general manager of the trust department of the company: 15

(b) In relation to any other trustee company, means the assistant general manager of the company:

“Branch manager”,— 20

(a) In relation to a trustee company that also carries on business other than trust business as empowered by this Act, means the manager of a branch of the trust department of the company:

(b) In relation to any other trustee company, means the manager of a branch of the company: 25

“Court” means the Supreme Court:

“Director”, in relation to any trustee company, means a director of the company; and includes a member of a local or special Board of Directors of the company:

5 “General manager”,—

(a) In relation to a trustee company that also carries on business other than trust business as empowered by this Act, means the general manager of the trust department of the company:

10 (b) In relation to any other trustee company, means the general manager of the company:

“Group Investment Fund” or “Fund” means a Group Investment Fund established under section 29 of this Act:

15 “Interest” includes dividends from shares:

“Manager”, in relation to any trustee company, includes the general manager, the assistant general manager, the secretary, and any branch manager of the company:

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

“Secretary”,—

25 (a) In relation to a trustee company that also carries on business other than trust business as empowered by this Act, means the secretary of the trust department of the company:

(b) In relation to any other trustee company, means the secretary of the company:

30 “Trust” and “trustee” have the meanings specified in the Trustee Act 1956:

35 “Trustee company” means any of the following companies, namely, the Trustees, Executors, and Agency Company of New Zealand (Limited), the Guardian, Trust, and Executors Company of New Zealand (Limited), the Perpetual Trustees, Estate, and Agency Company of New Zealand (Limited), the New Zealand Insurance Company Limited, Pyne, Gould, Guinness, Limited, and East Coast Permanent Trustees Limited.

PART I

TRUSTEE COMPANIES

3. Application of other Acts—Every trustee company shall be deemed to be—

- (a) A trust company for the purposes of the Administration Act 1952: 5
- (b) A trustee corporation for the purposes of the Trustee Act 1956.

Cf. 1962, No. 5 (Private), s. 23

4. Grant of letters of administration to trustee company— 10

(1) Any trustee company may apply for and obtain administration in respect of a deceased person, either with or without the will annexed, and may perform and discharge all other acts and duties of an administrator as fully and effectually as a private individual may do when granted letters of administration. 15

(2) Notwithstanding anything to the contrary in section 73 of the Court of Probate Act 1857 of the United Kingdom Parliament, it shall not be necessary, in the absence of evidence to the contrary, for any trustee company to prove in the case of any estate, whether insolvent or not, that there is any circumstance rendering it necessary or convenient to appoint it rather than any other person who would by law be entitled to a grant of administration of the estate. 20

(3) Letters of administration shall not be granted to a syndic or nominee on behalf of a trustee company. 25

(4) Where any interest in any estate which was vested in a syndic on behalf of a trustee company acting as administrator under letters of administration of a deceased person became, by virtue of section 3 of the Statutes Amendment Act 1945, vested in the trustee company, the syndic shall be kept indemnified by the company in respect of that interest. 30

(5) All securities registered or subscribed in the name of a syndic on behalf of a trustee company or any estate or interest in land registered under the Deeds Registration Act 1908 or under the Land Transfer Act 1952 in the name of a syndic shall be transferred by the syndic to the trustee company or as it directs. 35

(6) This section shall have effect whether the testator or the intestate died before or after the commencement of this Act, and no such vesting or transfer as aforesaid shall operate or be deemed to have operated as a breach of any covenant or condition against alienation or give or be deemed to have given rise to forfeiture.

Cf. 1952, No. 56, s. 42; 1958, No. 55, s. 2

5. Court may act upon affidavit of director or manager—

In every case in which any trustee company is empowered to apply for administration in respect of any deceased person, it shall be lawful for the Court in which, or the officer before whom, the application is made to receive and act upon an affidavit made by a director or manager of the company in place of any affidavit required by the said Court to be made by persons making application for administration.

Cf. 1962, No. 5 (Private), s. 5

6. Assets of company liable—(1) The capital, both paid and unpaid, and all other assets of every trustee company shall be charged with all liability of the company for any failure of the company to ensure—

(a) The proper administration of all estates entrusted to the charge of the company; and

(b) The proper discharge of the duties committed to the company in respect of any office or position mentioned in subsection (2) of section 7 of this Act that is accepted by the company.

(2) The said liability of the capital and other assets of the company shall be sufficient security for the discharge of those duties in place of any bond required from other persons when appointed to any of the offices or positions mentioned in subsection (2) of section 7 of this Act; and in any case where, to secure the discharge and performance of its duties, the trustee company has deposited with the Public Trustee a sum of money invested in securities approved by the Public Trustee or executed any bond as set out in the First Schedule hereto, then, to the extent (if any) required from time to time by the provisions of any other Act, that deposit shall be maintained as part of the assets of the company liable for the discharge of those duties, and the bond shall in like manner be kept in full force and effect.

7. Company may be appointed trustee and hold other fiduciary positions—(1) In all cases in which any Court or any person, company, or corporation appoints any trustee company to any of the offices or positions mentioned in subsection (2) of this section, it shall, notwithstanding anything to the contrary in any other enactment, be lawful for but not obligatory on the company to accept appointment to and act in the office or position, and to perform and discharge all acts and duties pertaining to the office or position, either in its corporate capacity or (where the circumstances so require) by any director or officer of the company.

(2) The offices and positions referred to in section 6 of this Act and in subsection (1) of this section are:

- (a) Executor under any will or codicil:
- (b) Trustee under any deed, will, codicil, settlement, or other document:
- (c) Guardian of any infant:
- (d) Trustee of any money or damages to which section 66 of the Public Trust Office Act 1957 applies:
- (e) Receiver:
- (f) Manager:
- (g) Committee of the estate under any law for the time being in force in New Zealand relating to mentally defective persons:
- (h) Liquidator of any limited liability company:
- (i) Manager of any estate under the Aged and Infirm Persons Protection Act 1912:
- (j) Guardian *ad litem* for the purposes of proceedings in any Court:
- (k) Attorney under any power of attorney, or agent without power of attorney, for any trustee, person, company, or corporation:
- (l) Agent for the purpose of resealing in New Zealand any probate or letters of administration (within the meaning of Part II of the Administration Act 1952) granted outside New Zealand:
- (m) Trustee for debenture holders or holders of unsecured notes under any debenture or debenture trust deed or other deed:
- (n) Arbitrator or umpire for the purposes of the Arbitration Act 1908 or pursuant to any submission to arbitration by parties to any dispute:

(o) Sole commissioner under section 21 of the Electric Power Boards Amendment Act 1927, section 59 of the Fire Services Act 1949, section 131 of the Municipal Corporations Act 1954, section 155 of the Counties Act 1956, and section 86 of the Local Authorities Loans Act 1956:

Provided that nothing in this paragraph shall restrict section 88 of the Local Authorities Loans Act 1956:

(p) Trustee of any unit trust under the Unit Trusts Act 1960:

(q) Custodian trustee under section 50 of the Trustee Act 1956:

(r) Share or debenture or note registrar for any company carrying on business in New Zealand:

(s) Trustee or assignee for the benefit of creditors:

(t) Trustee under Part XV of the Insolvency Act 1967.

Cf. 1962, No. 5 (Private), s. 9

8. Appointment of trustee company by executors, administrators, and trustees—(1) With the consent of the Supreme Court, and subject to the approval of the appointee or appointees being obtained thereto,—

(a) Executors, whether appointed before or after the commencement of this Act, may, unless expressly prohibited, before or after taking out probate, appoint any trustee company as sole executor or appoint as co-executors any trustee company and any other person or persons, whether or not the other person or persons include all or any of the executors making the appointment:

(b) Other administrators under a grant of administration with or without a will annexed, whether appointed before or after the commencement of this Act, may, unless expressly prohibited, appoint any trustee company as sole administrator or appoint as co-administrators any trustee company and any other person or persons, whether or not the other person or persons include all or any of the administrators making the appointment.

(2) Where, pursuant to subsection (1) of this section, any executor or administrator with a will annexed appoints any trustee company as executor or administrator, or appoints any trustee company and any other person or persons as co-executors or co-administrators, the appointee or appointees shall, by virtue of the appointment, be also the sole trustee

or co-trustees (as the case may be) in all cases where the executor or administrator was trustee, or where there was no trustee appointed by the trust instrument or in existence at the date of the appointment under this section.

(3) Where there are more trustees, or persons having power to appoint a trustee, or executors, or administrators, than one, any one trustee, or any one of those persons having power to appoint a trustee, or any one executor (whether before or after proving a will), or any one administrator, may, with the consent of the proposed appointee or appointees, apply to the Supreme Court to have any trustee company appointed as sole trustee, executor, or administrator, or to have appointed as co-trustees, co-executors, or co-administrators any trustee company and any other person or persons, whether or not the other person or persons include all or any of the trustees, persons having power to appoint a trustee, executors, or administrators.

(4) On any application to the Supreme Court under this section, the Court shall have power to make such order as it thinks fit.

Cf. 1957, No. 36, s. 44

9. Appointment of trustee company where person whose consent is required refuses or is unable to consent—Where the consent of any person is requisite to the appointment of an administrator or other trustee and the person refuses to consent to a specified trustee company being appointed, or where the person to consent is absent from New Zealand, or is not of full age or full mental capacity or is under any other disability, an appointment of the trustee company may be made without that consent if the Supreme Court consents thereto.

Cf. 1957, No. 36, s. 47

10. Authority of director or officer to attend on behalf of trustee company—In every case in which the personal attendance of the holder of any office or position mentioned in subsection (2) of section 7 of this Act is required in a Court or elsewhere, if a trustee company is the holder of the office or position, the company shall be entitled to make the attendance in the person of any director or officer of the company, and the personal duties of the company as holder of the office or position may be discharged on behalf of the company by any director or officer of the company.

Cf. 1962, No. 5 (Private), s. 12

5 **11. Company may act alone or jointly**—Subject to section 42A of the Administration Act 1952, as inserted by section 4 of the Administration Amendment Act 1960, the power of any trustee company to act as executor of the will, or administrator (with or without the will annexed) or trustee of the estate, of any deceased person, and the power of any trustee company to act in any of the offices or positions mentioned in subsection (2) of section 7 of this Act, may be exercised by the company either alone or jointly with another person,
10 firm, company, or corporation.

12. Company may act under power of attorney by officers—Where by any power of attorney any trustee company is appointed attorney by any person, company, or corporation, all powers conferred upon the company by the power of
15 attorney may be exercised by any two directors of the company, or by a manager of the company acting in conjunction with any director of the company; but in all cases the company shall be liable to ensure the due execution of the powers so conferred on the company.

20 Cf. 1962, No. 5 (Private), s. 10

13. Powers of attorney in favour of trustee company—
(1) The provisions of section 134 and subsections (1), (2), and (5) of section 135 of the Property Law Act 1952, and of section 399 of the Companies Act 1955, shall extend and
25 apply, as the case may require, to every power of attorney by which any trustee company is appointed by any person, company, or corporation.

(2) Where any trustee company executes any document as attorney, it shall not be obligatory for the company, nor
30 shall any person require the company, to furnish evidence by way of statutory declaration that no notice or information of the revocation of the power of attorney by death or otherwise has been received by the company.

(3) The execution by any trustee company of any document as attorney shall be accepted by all Courts and persons
35 as conclusive proof of the non-revocation of the power of attorney at the time when the document was executed.

(4) Any trustee company, acting or paying money in good faith under or in pursuance of any power of attorney, shall not be liable for any such act or payment by reason of the fact that at the time of the payment or act the person who gave the power of attorney was dead or had done some act to avoid the power, if this fact was not known to the company at the time of its so acting or paying. 5

Cf. 1957, No. 36, ss. 116, 117; 1962, No. 5 (Private), s. 11

14. Payment of legacies of infants to trustee company— 10

(1) With the consent of the company, any trustee may pay to any trustee company any money, being the whole amount, or the whole remaining amount, of any legacy or share in any estate to which an infant is entitled, whether indefeasibly or contingently, under a will, instrument, trust, or intestacy; and by writing in a form approved by the company direct the company to account for the legacy or share according to the provisions of the will, instrument, trust, or intestacy. 15

(2) The writing shall declare that the amount therein stated is the whole amount or (as the case may be) the whole remaining amount to which the infant is so entitled, and how much of the amount is capital and how much thereof is income and how much (if any) of the capital and income has been expended, whether for the maintenance, education, advancement, or benefit of the infant or otherwise, and (in the case of money to which the infant is contingently entitled) the person or persons who will become entitled to the money or so much as remains in the event of the infant failing to become indefeasibly entitled, and the shares and interests of those persons, and such other matters as the company may require. 20
The writing shall be certified correct by the trustee; and the company shall not be under any obligation to inquire into the accuracy of the certificate nor shall the company incur any liability through acting upon any statement contained in the writing. 25

(3) Upon the foregoing provisions of this section being complied with in any case, the writing shall vest in the company all the powers of the trustee in respect of the legacy or share, whether conferred by the will or trust instrument or by any enactment or in any other manner howsoever. 30
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(4) The trustee shall, at the time of completing the certificate and directions referred to in the foregoing provisions of this section, furnish to the company where applicable a true copy of the will or trust instrument affecting the legacy or share; and the company shall act in pursuance of the trusts therein contained.

(5) The provisions of this section shall extend to all wills, trusts, trust instruments, intestacies, and transactions, whether they took effect before or after the commencement of this Act.

10 Cf. 1957, No. 36, s. 65

15. Administration by trustee company of benefit fund—

(1) In any case where a fund is raised by public or private subscriptions for the benefit or relief of any person or class of persons, the following provisions shall apply:

- 15 (a) The fund may be placed with any trustee company to be administered by the company and to be invested in investments authorised by law for the investment of trust funds:
- 20 (b) The company may recognise as a committee any persons whom it believes to have organised the appeal for the subscriptions or to have been appointed or authorised or recognised as a committee by a substantial number of the subscribers:
- 25 (c) The company, after conferring with the committee, if any, may apply to the Supreme Court for directions as to the administration of the fund, and for that purpose shall submit a scheme of administration:
- (d) The Court may approve the scheme, with or without modification, as the Court thinks fit:
- 30 (e) The company shall administer the fund in accordance with the scheme as approved:
- 35 (f) On the application of the Attorney-General, or of the company, or of any member of the committee, or of any person claiming an interest in the fund, the Court at any time may vary the scheme so far as it relates to the powers of the company in respect of the fund and the mode of administering the fund, or give directions on any point or question relating to the scheme or the fund:

(g) The company shall obey all such directions:

(h) Where the fund was raised for the benefit of two or more persons, any scheme under this section may provide that the income and capital of the fund or any specified part thereof may be applied by the company in its discretion for or towards the maintenance or education (including past maintenance or education) or advancement or benefit of those persons or of any one or more of them to the exclusion of the other or others of them in such shares and proportions and generally in such manner as the company from time to time thinks fit; and in pursuance of any such provision the company may so apply money notwithstanding that only one of those persons remains alive.

(2) This section shall apply to funds raised as aforesaid either before or after the commencement of this Act.

(3) Notwithstanding the foregoing provisions of this section, where the fund does not exceed four thousand dollars,—

(a) The company, instead of applying to the Supreme Court for directions as to the administration of the fund, may, with the consent of the committee (if any) or the majority of the members thereof, and the further consent of the Attorney-General, settle a scheme of administration:

(b) The scheme so settled may be incorporated in a declaration of trust by the company, which, for the purpose of the trust instrument, shall be deemed to be the settlor of the trust:

(c) Any statements or recitals in any such trust instrument shall be sufficient evidence of the truth thereof, and the provisions of the declaration of trust shall be final and binding on all persons, whether beneficially interested thereunder or otherwise:

Provided that the company may, if it thinks fit so to do, and with the consent of the surviving members of the committee (if any) in New Zealand or a majority of them, and the further consent of the Attorney-General, at any time modify the scheme so far as it relates to the powers of the company in respect of the fund and the mode of administering the fund, and the declaration of trust shall be amended accordingly.

(4) Nothing in this section shall restrict section 67 of the Public Trust Office Act 1957.

Cf. 1957, No. 36, s. 67

16. Trustee company may be appointed to represent parties in legal proceedings—(1) Any trustee company (if it consents) may be appointed or directed by any Court to represent any party in any proceedings or any person or class of persons
5 interested therein.

(2) The company shall be entitled to be represented in the proceedings, and the costs and expenses of any such representation as between solicitor and client, together with a reasonable fee for the company's services, shall be paid to
10 the company out of any estate or funds or property the subject of the proceedings, or otherwise as the Court thinks fit.

Cf. 1957, No. 36, s. 56

17. Restriction on registration of transfers of shares—

(1) Notwithstanding anything to the contrary in the articles
15 of association of the company, no transfer of shares in any trustee company (whether the transfer has been executed before or is executed after the commencement of this Act) shall be registered unless and until the transfer has been approved by the directors of the company, and the said
20 directors shall have an absolute discretion to register or refuse to register any such transfer and shall not be bound to assign any reason for refusing to register any such transfer nor shall the exercise of any such discretion be called in question in
any proceedings whatsoever.

(2) If any trustee company is deemed, for the purposes
25 of the Companies Act 1955, to be a subsidiary of another company incorporated in New Zealand, the provisions of subsection (1) of this section shall, so far as they are applicable and with the necessary modifications, apply to
30 transfers of shares in that other company.

Cf. 1934–35, No. 52, s. 5

18. Remuneration—(1) In respect of any estate under its administration or management, any trustee company shall be
35 entitled to charge and receive a reasonable fee or remuneration for work involved in the preparation and lodging of returns for the purpose of or in connection with the assessment of any duties or taxes, other than estate duty.

(2) In cases where its duties do not involve the receipt of
40 money or assets, any trustee company shall be entitled to charge a fee commensurate with the work done and services rendered by the company.

(3) Nothing in this section shall restrict any other right of a trustee company to receive and be paid commission.

19. Review of charges—(1) Notwithstanding anything to the contrary in this Act or any other enactment, if the Supreme Court is of the opinion that any commission, fee, or remuneration charged by a trustee company is excessive, that Court may reduce the amount of the commission, fee, or remuneration. 5

(2) Application for any such reduction of any commission, fee, or remuneration of a trustee company may be made by or on behalf of any person who would receive a greater benefit from the capital or income of the estate out of which the commission, fee, or remuneration is payable in the event of the commission, fee, or remuneration being reduced. 10

(3) No application to the Court under the foregoing provisions of this section may be made by or on behalf of any person after the expiration of six months from the date of delivery to that person of accounts in which are shown the commission, fee, or remuneration to which the application relates. 15

(4) When any trustee company, at or after the commencement of this Act, in connection with any estate under its administration or management, lawfully carries on or manages (whether alone or in partnership or through an agent) any business or undertaking, or (through a representative or otherwise) takes any active part in the management or direction of any company, or when any other circumstances have arisen which justify additional remuneration, the trustee company may apply to the Supreme Court to fix, in addition to any commission, fee, or remuneration to which it is otherwise entitled, either an additional fee or an additional commission by way of percentage; and that Court may allow to the trustee company such additional fee or additional commission by way of percentage as it thinks fit, having regard to the work, care, skill, and responsibility involved in administering the estate or carrying on or managing or directing the business, undertaking, or company, and the extent of the interest of the estate in the business, undertaking, or company, and the amount of its share in the profits or income therefrom. 20
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Cf. Trustee Companies Act 1958, ss. 17, 18 (Victoria)

20. Local and special Boards of Directors of trustee companies—(1) Any trustee company may from time to time, by resolution of its Board of Directors,— 40

(a) Appoint a local Board of Directors in any specified area in New Zealand:

- (b) In the case of a trustee company that also carries on business other than trust business as empowered by this Act, appoint a special Board of Directors in respect of its trust department:
- 5 (c) Appoint any suitable person as a member of any such local or special Board, whether or not he is or has been a member of that Board:
- (d) Terminate the appointment of all or any of the members of any such local or special Board of Directors.
- 10 (2) While any such local or special Board of Directors remains in existence, it shall have a seal which shall have the same force and effect as the seal of the company.

Cf. 1957, No. 36, s. 10.

21. Delegations to local or special Board of Directors, etc.—

- 15 (1) Any trustee company may from time to time, by resolution of its Board of Directors, delegate to any local or special Board of Directors of the company, or to such director or directors or officer or officers or employee or employees of the company, as it thinks fit, all or any of its functions, powers, authorities,
- 20 discretions, rights, and duties, whether under this Act or any other Act or otherwise howsoever, including any functions, powers, authorities, discretions, rights, and duties delegated to it by or under any enactment or otherwise, and including this present power of delegation:

25 Provided that nothing in this subsection shall authorise the delegation of—

- (a) The use of the seal of the company otherwise than as authorised by or under any other enactment:
- (b) The use of the seal of any local or special Board of
- 30 Directors of the company to any person other than that local or special Board or a member or members thereof.

(2) Subject to any general or special directions given or conditions attached by the trustee company, by resolution of

35 its Board of Directors, the local or special Board of Directors, director, officer, or employee to which or to whom any functions, powers, authorities, discretions, rights, or duties are delegated or subdelegated under this section may exercise, perform, or discharge them in the same manner and with the

40 same effect as if they had been conferred or imposed upon it or him directly by this section and not by delegation or sub-delegation:

Provided that the local or special Board of Directors, director, officer, or employees shall, in respect of all matters delegated or subdelegated under this section, continue to be under the direction, control, and supervision of the Board of Directors of the company and of every local or special Board of Directors, director, officer, and employee by or through whom the matters were delegated or subdelegated. 5

(3) Every local or special Board of Directors, director, officer, and employee of any trustee company purporting to act in the course of its or his duties pursuant to any delegation or subdelegation under this section shall be presumed to be acting in accordance with the terms of the delegation or subdelegation in the absence of proof to the contrary; and no person, Court, or Judge shall be concerned to inquire whether or not the delegation or subdelegation has been made; and all things done or omitted by any local or special Board of Directors, director, officer, or employee in the course of its or his duties shall have the same consequences and effect as if they had been done or omitted by the company. 10 15

(4) Any delegation or subdelegation under this section may be made to a specified director or officer or employee or to directors or officers or employees of a specified class, or may be made to the holder or holders for the time being of a specified office or class of offices. 20

(5) Every delegation and subdelegation under this section may be revoked or suspended at will, and no such delegation or subdelegation shall prevent the exercise, performance, and discharge of any function, power, authority, discretion, right, or duty by the Board of Directors of the company, or by any local or special Board of Directors, director, officer, or employee by which or whom it was delegated or subdelegated. 25 30

(6) Any such delegation or subdelegation shall, until revoked, continue in force according to its tenor, notwithstanding that all or any of the members of the Board of Directors or local or special Board of Directors, or the director, officer, or employee by which or whom it was made may have ceased to hold office, and shall continue to have effect as if made by the members of the Board of Directors or local or special Board of Directors for the time being in office, or the successor in office of the director, officer, or employee, as the case may be. 35 40

Cf. 1957, No. 36, s. 11

22. Appointment of deputies of certain officers—(1) In the event of the absence from his headquarters of the person for the time being holding any of the following offices in a trustee company, namely, general manager, assistant general
5 manager, branch manager, or secretary, from whatever cause the absence arises, or on the occurrence from any cause of a vacancy in any such office (whether by reason of death, resignation, retirement, or otherwise), and from time to time while the absence or vacancy continues, all or any of the
10 functions, powers, authorities, discretions, rights, and duties of the holder of the office or pertaining to the position may be exercised and performed by any other officer or employee of the trustee company for the time being appointed by the company either generally or for any particular occasion to exercise
15 and perform them as a deputy; and any such appointment may be made before the absence or vacancy occurs or while it continues.

(2) No such appointment and no acts done by any person acting or purporting in good faith to act pursuant to any such
20 appointment shall be questioned by any person, Court, or Judge on the ground that the occasion for the deputy to act as such had not arisen or had ceased, or on the ground that the person had not been so appointed.

Cf. 1957, No. 36, s. 9

23. Judicial notice of certain seals, appointments, and signatures—Notice shall be taken judicially without further proof of—

- (a) The seal of every trustee company and of every local or special Board of Directors of the company; and
- 30 (b) The appointment and signature of every director and manager of any trustee company.

Cf. 1957, No. 36, s. 12

24. Trustee company may evidence and register dealings in land when acting in different capacities—(1) Notwithstanding anything in the Land Transfer Act 1952 or the
35 Property Law Act 1952 or the Deeds Registration Act 1908 or any rule of law or other enactment to the contrary, it shall be lawful for any trustee company, in any case where it is registered as the proprietor of any estate or share or
40 interest in land by virtue of its appointment or status as administrator or trustee under this Act or under any other Act or under any will or deed or order or instrument,

or in any case where it is otherwise so registered as proprietor, to transfer, assign, convey, mortgage, or lease the estate, share, or interest or any part thereof, or to grant easements in respect of the same, to itself in any other capacity, and to enter into covenants and agreements in respect of any such transaction with itself in the one capacity so as to bind itself in the other capacity as fully and effectually in all respects as if it were a separate person in each capacity, and every such covenant and agreement shall be binding upon or (as the case may be) operative in favour of any assignee of the trustee company taking from it in any such capacity. 5 10

(2) In this section the term "trustee" shall be deemed to include a trustee company in its own corporate capacity, whether as trustee of funds comprised in a Group Investment Fund and the various investments of any such Fund or otherwise howsoever. 15

(3) For the purposes of section 128 of the Land Transfer Act 1952 no instrument shall constitute notice of a trust by reason only of its being made by a trustee company in favour of itself. 20

(4) Upon any such transfer, assignment, conveyance, mortgage, lease, or grant being registered under the Land Transfer Act 1952 or the Deeds Registration Act 1908, no person thereafter having dealings in respect of the estate, share, or interest or in respect of the transfer, assignment, conveyance, mortgage, lease, or grant shall be affected by any notice of trust contained in or evidenced by the transfer, assignment, conveyance, mortgage, lease, or grant, nor shall any person be concerned to see or inquire whether the trustee company possessed lawful authority to enter into the transaction. 25 30

Cf. 1957, No. 36, s. 127

25. Charges created by trustee companies in a fiduciary capacity—Section 102 of the Companies Act 1955 shall not apply to any charge on any real or personal property created by a trustee company in a fiduciary capacity. 35

26. Registration of shares—(1) The entry of a trustee company by its name in the register of shareholders of a company shall not constitute notice of a trust.

(2) A company shall not be entitled to object to enter the name of a trustee company in its register of shareholders by reason only that the trustee company is a trustee or is a corporation. 40

(3) Notwithstanding anything to the contrary in the Companies Act 1955 or any other enactment or rule of law, a trustee company may enter its own name, or the name of any company of which it is a subsidiary, in its register of shareholders in respect of any shares to which the trustee company is entitled in a fiduciary capacity; and the trustee company may hold any such shares:

Provided that no regard shall be had to this subsection in determining whether any such shares are an authorised investment in any case.

Cf. 1957, No. 36, s. 126 (1), (2)

27. Sale of goods by auction—Where any trustee company is realising the goods, chattels, and effects of any estate administered by it, and those goods, chattels, and effects are not in the opinion of the company of greater value than five hundred dollars, and are situated at a distance of more than ten miles from the usual place of business of a licensed auctioneer, those goods, chattels, and effects may be offered for sale by auction by some person to be appointed by the company; and that person, for the purpose of the sale, shall not require to take out an auctioneer's licence.

Cf. 1957, No. 36, s. 102

28. Conditions on which tenant for life may be allowed into possession—(1) Subject to any order of the Court, where any person is equitable tenant for life of any land comprised in an estate being administered by a trustee company, that person shall not be entitled to the use, occupation, and enjoyment of, or to receipt of the income, rents, issues, and profits of the land, until he has given such undertaking, and (where necessary) such security, as the trustee company may require to comply with such terms and conditions as to keeping the trust property in repair and punctual payment of rates, taxes, insurance premiums, assessments, rents, impositions, and other outgoings, or otherwise, as the trustee company may think fit:

Provided that nothing in this subsection shall enable the trustee company to impose any terms and conditions other than those which the Court could impose if application were made to it in that behalf.

(2) Should the person who is in occupation of the land fail to observe any of the duties or obligations attaching to him as such tenant for life or as imposed by the trustee

company or the Court, or should the trustee company for any other reason consider it necessary or expedient to enter into possession of the said land, the trustee company may, by notice in writing personally delivered to the person or forwarded by registered letter to him at his last known address, direct the person to give up possession of the land on or before a date to be specified in the notice not being less than one month from the date thereof. 5

(3) Subject to any order of the Court, on failure to give up possession of the land on the expiry of the date specified in the notice, the person shall be deemed to be a trespasser, and the trustee company may take the necessary legal proceedings to have the person ejected. 10

(4) It shall be no defence to any such proceedings that the person sought to be ejected is an equitable life tenant of the land. 15

Cf. 1957, No. 36, s. 108

PART II

GROUP INVESTMENT FUNDS

29. 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. 25

(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. 30

(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, whether the trust estate to which they belong is under administration by the trustee company or by any other trustee or trustees, and whether they comprise the whole or part of that trust estate, either— 35

(a) On a separate account in respect of the trust estate to which the funds belong; or 40

5 (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.

10 (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.

15 (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, or transfer any investments held by it for that person to, a Group Investment Fund as if they were trust funds.

20 (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 investment 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 investment being so transferred, it shall cease to belong to the trust estate which, or person who, formerly owned it.

25 (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 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.

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

35 (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

40 (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.

(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:

(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 investment in a Group Investment Fund shall be credited or debited (as the case requires) to the Group Investment Fund.

Cf. 1960, No. 98, s. 3

30. 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:

(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.

Cf. 1960, No. 98, s. 4

31. 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,—

(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 determina-

tion; 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:

5 (b) If there is no such quotation, a valuation by a registered member of the Stock Exchange shall be conclusive evidence of that value.

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

10 (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.

15 (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 30 of this Act, to the fifteenth day of the month in which the withdrawal is made.

Cf. 1960, No. 98, s. 5

20 **32. 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
25 nor pay any commission or other recompense or remuneration out of the Fund for management:

Provided that—

30 (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

35 (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, whether (in the case of a trust estate) the trust estate is under administration by the trustee company or by any other trustee or trustees and whether
40 or not the trustee company is the trustee of the trust estate.

Cf. 1960, No. 98, s. 6

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

(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: 5

(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. 10

Cf. 1960, No. 98, s. 7

34. 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: 15

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 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. 20 25

Cf. 1960, No. 98, s. 8

35. Duties, etc., of trustee companies not affected by this Part of Act—Except as otherwise expressly provided in this Part of this Act, nothing in this Part of this Act shall affect the rights, powers, and duties of trustee companies. 30

Cf. 1960, No. 98, s. 9

PART III

ELECTIONS TO ADMINISTER AND CERTIFICATES OF ADMINISTRATION 35

36. Power of trustee companies to elect to administer small estates without grant of administration—(1) Where any person has died intestate or testate, whether in or out of New Zealand and whether before or after the commencement 40

of this Act, leaving property situated in New Zealand, the gross value of which as estimated by any trustee company does not at the time of the election hereinafter mentioned exceed two thousand dollars, and no person has obtained
5 a grant of administration in New Zealand, the trustee company, in any case where it would be entitled to obtain such a grant, may, in accordance with this section, instead of obtaining such a grant, file in the Supreme Court an election in writing, under the seal of the company or of a local or special
10 Board of Directors of the company, to administer the estate of the deceased person.

(2) On any such election being filed, the trustee company shall be deemed to be the executor of the will or the administrator of the estate, as the case may be, in like manner
15 and to the same extent in all respects as if administration had been duly granted to it.

(3) Every such election shall set forth the name, residence, and occupation of the deceased so far as they are then known to the trustee company, and the date of the death of the
20 deceased and the property situated in New Zealand of the deceased as then known.

(4) The election shall contain in every case where the deceased died intestate a statement to that effect, and in every case where the deceased died testate a statement that
25 after due inquiries the trustee company believes that the document annexed to the election is the testator's last will (or an exemplification thereof where administration has been granted out of New Zealand) and that the will has been validly executed according to the law governing the execution
30 of wills.

(5) No such election may be filed under this section unless there is endorsed thereon a certificate by a solicitor (whether in the employment of the company or not) that (as the case may require) he is satisfied that the Court would, on applica-
35 tion duly made, grant to the trustee company—

- (a) Probate of the will to which the election relates; or
- (b) Letters of administration with the will to which the election relates annexed; or
- (c) Letters of administration of the estate of the deceased
40 person without a will annexed.

(6) Any such election to administer shall be filed in the registry of the Supreme Court in which an application for a grant of administration of the will or estate of the deceased person is required to be filed.

(7) If after filing any such election as aforesaid the gross value of the property situated in New Zealand to be administered is found to exceed the sum of three thousand dollars, the trustee company shall as soon as practicable thereafter file in the registry of the Supreme Court in which the election to administer was filed a memorandum under the seal of the company or of a local or special Board of Directors of the company stating the fact; and shall thereupon proceed in the ordinary manner to obtain a grant of administration in New Zealand; and for that purpose may uplift from the Court any will or exemplification filed with the election. 5 10

(8) An election may be filed under this section in respect of any informal will made in writing in accordance with the provisions of the Wills Amendment Act 1955. Nothing in this section shall apply to any other informal will within the meaning of that Act. 15

Cf. 1957, No. 36, s. 72

37. Elections in respect of unadministered balance of an estate—(1) Where a grant of administration (in this section referred to as “the original grant”) has been made in New Zealand in respect of the estate of any deceased person (in this section referred to as the original estate) and the persons to whom the original grant or any substituted grant of administration was made have died, whether before or after the commencement of this Act, leaving part of the original estate unadministered, and the gross value of the property situated in New Zealand so left unadministered, as estimated by the trustee company at the time of the election hereinafter mentioned, does not exceed the sum of two thousand dollars, and no person has since the death of the last administrator taken out letters of administration *de bonis non* in New Zealand in respect of the original estate, the trustee company may, in accordance with this section, instead of applying for an order to administer *de bonis non* in New Zealand, file in the registry of the Supreme Court out of which the original grant was issued an election in writing under the seal of the company or of a local or special Board of Directors of the company setting forth the fact of the original grant, the death of the executors or other administrators, and the particulars of the property situated in New Zealand so left unadministered, and electing to administer the part of the original estate so left unadministered. 20 25 30 35 40

(2) On the election being filed, the trustee company shall be deemed to be administrator of the original estate left unadministered in like manner and to the same extent in all respects as if an order to administer *de bonis non* had been
5 duly granted to it.

(3) No such election may be filed under this section unless there is endorsed thereon a certificate by a solicitor (whether in the employment of the company or not) that he is satisfied that the Court would, on application duly made,
10 grant to the trustee company an order to administer *de bonis non* in respect of the part of the original estate so left unadministered.

(4) If after the filing of any such election the gross value of the property situated in New Zealand to be administered
15 by the trustee company is found to exceed the sum of three thousand dollars, the trustee company shall, as soon as practicable thereafter, file in the said registry of the Supreme Court a memorandum under the seal of the company or of a local or special Board of Directors of the company stating the
20 fact, and shall thereupon proceed in the ordinary manner to obtain in New Zealand an order to administer *de bonis non* (either with or without the will annexed, as the case may be) in respect of the said estate, and for that purpose may uplift from the Court any will or exemplification filed with the
25 election.

Cf. 1957, No. 36, s. 73

38. Commissioner of Inland Revenue to be notified of filing of election—Every trustee company shall notify the Commissioner of Inland Revenue in the form required by
30 the Commissioner in all cases where it files an election under section 36 or section 37 of this Act.

39. Operation of election to administer as regards property overseas—In determining the value of the property of any person that is situated in New Zealand for the purposes of
35 the foregoing provisions of this Part of this Act, that property shall not include or be deemed to include property situated out of New Zealand at the time of the filing of any election to administer, whether or not the property may afterwards be transferred to New Zealand (whether to the trustee
40 company or to any other person) in due course of administration, whether for the purposes of distribution to the persons beneficially entitled thereto or otherwise howsoever; but in

all other respects every election referred to in the foregoing provisions of this Part of this Act shall extend and apply to and include the property situated out of New Zealand in the same manner and to the same extent in all respects as a grant of administration obtained by the trustee company would in the circumstances of each particular case extend or apply to or include that property. 5

Cf. 1957, No. 36, s. 74

40. Revocation of elections filed in error—(1) Where any trustee company has, pursuant to any of the provisions of this Part of this Act, filed an election to administer the estate of a deceased person, and the trustee company subsequently discovers that the election is invalid or ineffective by reason of the discovery of a will or a later will, or of the revocation or invalidity of a will, or for any other reason, then and in any such case the company may file in the registry of the Supreme Court in which the election to administer was filed a memorandum under the seal of the company or of a local or special Board of Directors of the company setting out the facts and certifying that the election already filed is invalid or ineffective. 10 15 20

(2) Upon any such memorandum being filed, the election to administer previously filed shall cease to be of any effect whatsoever, and thereafter an application for administration may be made or a fresh election may be filed in all respects as if the election to administer previously filed had not been filed. 25

Cf. 1957, No. 36, s. 76

41. Court fees payable on elections, etc.—(1) The fee payable to the Registrar of the Supreme Court for the filing of any election under this Part of this Act shall be four dollars or such other amount as may from time to time be prescribed by the Governor-General by Order in Council. 30

(2) A copy of any such election certified as a correct copy under the seal of the Supreme Court or a Registrar thereof shall be equivalent to an exemplification of that election for all purposes, and the only fee payable in respect thereof shall be a sealing fee of one dollar or such other fee as may be so prescribed. 35

Cf. 1957, No. 36, s. 77

42. Certificate by trustee company as to its legal status in any matter—(1) Where the trustee company is executor or other administrator or is by law authorised to administer the estate of any deceased person, or where it is acting as
5 trustee, guardian, manager, agent, attorney, liquidator, committee, or receiver, or in any other capacity, a certificate by the company under the seal of the company or of a local or special Board of Directors of the company stating, in the case of
10 a deceased person, the name, residence, and occupation of the deceased person at the time of his death, and the date of his death, and certifying that the trustee company has obtained a grant of probate or an order to administer or is otherwise authorised to administer the estate and stating the
15 date when the probate or order to administer was granted or the manner in which and the time at which the trustee company became authorised to administer and, in any case where the trustee company is acting as trustee, guardian,
20 manager, agent, attorney, liquidator, committee, receiver, or in any other capacity, certifying that the trustee company is authorised to act as such trustee, guardian, manager, agent, attorney, liquidator, committee, or receiver or in such other
capacity, and stating the manner in which and the time at which he became so authorised to act shall, notwithstanding
any law or statutory provision to the contrary, be accepted
25 by all Courts, officers, and persons, whether acting under any Act or not, as sufficient evidence in the case of a deceased person of the death of that person, and of the appointment of the trustee company as executor or other administrator, and of its right to administer, and in any of the other cases
30 mentioned of the trustee company's right to act, without any other proof whatsoever.

(2) In every case where a trustee company acquires title by operation of law in respect of any estate or interest in any land under the Land Transfer Act 1952, or of any mining
35 privilege under the Mining Act 1926, or of any shares, stock, or property in any bank, company, body, or association, an appropriate certificate under this section shall be sufficient evidence that the company has so acquired the title; and no District Land Registrar, or Mining Registrar,
40 or bank, or company, or body, or association to which any such certificate is produced shall be concerned to inquire concerning the trusts on which the trustee company holds any such land or mining privilege or shares or stock or property or as to its authority to transfer or deal with it.
45 In the case of land under the Deeds Registration Act

1908, the certificate shall be equivalent for registration purposes to the probate, order to administer, election to administer, trust instrument, order, power of attorney, or other document or authority under which the trustee company is acting, and it shall not be necessary to register the probate, order to administer, trust instrument, order, power of attorney, or other document or authority. 5

(3) A statement of the purport of any trust instrument, order, power of attorney, or other document or authority in any assurance, certificate, or instrument by a Trustee company under the seal of the company or of a local or special Board of Directors of the company shall be sufficient evidence thereof, and no one shall be concerned to inquire beyond that statement. 10

Cf. 1957, No. 36, s. 78 15

43. Consequential amendment—Subsection (1) of section 2 of the Administration Act 1952 is hereby amended—

- (a) By inserting in the definition of the term “administration”, after the words “Public Trustee”, the words “or a trustee company”: 20
- (b) By inserting in the definition of the term “administrator”, after the words “Public Trustee”, the words “or a trustee company”:
- (c) By inserting in the definition of the term “administrator”, after the word “he”, the words “or it”. 25

PART IV

TRUSTEE COMPANIES PROTECTION

44. Application of this Part—(1) The Minister of Justice may from time to time, by notice in the *Gazette*, apply this Part of this Act to any trustee company or trustee companies specified in the notice, and this Part of this Act shall apply only to those trustee companies to which it is for the time being so applied by the Minister of Justice. 30

(2) Any notice given under subsection (1) of this section may be at any time revoked by the Minister of Justice by notice in the *Gazette*. 35

(3) No notice applying this Part of this Act to any trustee company shall be given except pursuant to a resolution passed by the Board of Directors of that trustee company, and transmitted to the Minister of Justice. 40

(4) Every notice given under this section shall have effect according to its tenor, and shall come into force on a date to be specified therein in that behalf (being not earlier than the date of the notice).

5 Cf. 1934-35, No. 52, s. 3

45. Certificate to accompany applications for and transfers of shares—Every application for shares in a trustee company to which this Part of this Act applies, and every transfer of shares in any such trustee company that is lodged
10 with the trustee company for registration, shall be accompanied by a certificate by the applicant or transferee (as the case may be) in the form No. 1 in the Second Schedule to this Act or to the effect thereof, and no shares in any such trustee company shall be allotted, nor shall any transfer of
15 shares in any such trustee company be registered, unless the application or transfer, as the case may be, is accompanied by such a certificate.

Cf. 1934-35, No. 52, s. 4

46. Voting at general meetings of shareholders—(1) At
20 any general meeting of shareholders in a trustee company to which this Part of this Act applies, the chairman of the meeting may, before calling for a show of hands or taking a poll, require each shareholder or any shareholder or share-
holders present in person to sign and lodge with him a
25 certificate in writing in the form No. 2 in the Second Schedule hereto. No shareholder who, upon being required by the chairman of the meeting to sign and lodge such a certificate, refuses or neglects so to do, or refrains from so
30 doing, shall be entitled to vote either upon a show of hands or upon a poll on any resolution submitted to that meeting.

(2) No vote by any person acting on behalf of any shareholder at any general meeting of shareholders in a trustee company to which this Part of this Act applies shall be valid
35 unless the vote is given under the authority of a proxy in writing under the hand of that shareholder complying with the articles of association of the trustee company, accompanied by a certificate by that shareholder in the form No. 3 in the Second Schedule hereto.

(3) In the case of shares in a trustee company to which
40 this Part of this Act applies belonging to the estate of any deceased person, or to any estate which is being administered under the Mental Health Act 1911, or the Aged and Infirm Persons Protection Act 1912, the registered holder or other

persons entitled to vote in respect of the shares shall not be deemed, for the purposes of any certificate to be signed by him under this section, to have given any undertaking or to be under any obligation to the beneficiary or beneficiaries of the estate as to the exercise of his voting or other rights or powers in respect of the shares. 5

(4) Any person who signs for the purposes of this Part of this Act a false certificate commits an offence, and is liable on summary conviction to a fine of two hundred dollars.

Cf. 1934–35, No. 52, s. 6 10

47. Certificates for purposes of this Part of this Act not to constitute notice of any trust—No trustee company to which this Part of this Act applies or to which this Part of this Act or the Trustee Companies Protection Act 1934–35 has at any time applied, nor any person dealing with the shares of any such company, nor the Registrar of Companies, shall be affected by notice of any trust, whether express, implied, or constructive, by reason of any information which may have been contained in any certificate made under any of the provisions of this Part of this Act or any declaration made under the corresponding provisions of the Trustee Companies Protection Act 1934–35. 15 20

Cf. 1934–35, No. 52, s. 7

PART V

MISCELLANEOUS PROVISIONS 25

48. Repeals—The enactments specified in the Third Schedule to this Act are hereby repealed.

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SCHEDULES

FIRST SCHEDULE

Section 6 (2)

DEPOSITS BY TRUSTEE COMPANIES

Name of Company	Nature and Amount of Deposit
The Trustees, Executors, and Agency Company of New Zealand (Limited)	Securities to the value of \$20,000.
The Guardian, Trust, and Executors Company of New Zealand (Limited)	Securities to the value of \$20,000.
The Perpetual Trustees, Estate, and Agency Company of New Zealand (Limited)	Securities to the value of \$20,000.
Pyne, Gould, Guinness (Limited)	Securities to the value of \$50,000.
East Coast Permanent Trustees Limited	Bond for \$50,000 or otherwise as may for the time being be required by section 6 of the East Coast Permanent Trustees Limited Act 1962.

SECOND SCHEDULE

FORM NO. 1

Section 45

Certificate to Accompany Every Application for or Transfer of Shares
 I, _____, of _____, do hereby certify, with reference to the shares in the [Name of company] mentioned in the accompanying application (or transfer)—

- * (a) That the shares have been or are being purchased or otherwise acquired (or are applied for) by me in my own right and on my own behalf absolutely, and that the consideration (if any) for the transfer of, or the money payable to the company for, the said shares has been or is to be provided exclusively out of my own property or money, and that no other person or persons, or corporation or corporations, has or have or is or are intended to have any right, title, or interest in or control over the said shares or any of them, and that I have not given or agreed to give to any other person or persons, or corporation or corporations, any undertaking (whether legally binding or not), and that I am not now nor is it contemplated that I shall be under any obligation, as to the exercise of any voting or other rights or powers to which the holder of the said shares or any of them may at any time be or become entitled; or
- * (b) That I am applying for or acquiring the said shares as trustee or nominee for [Name, address, and occupation, in full], and that to the best of my knowledge, information, and belief the said _____ will be (or is) beneficially entitled to the said shares; or

THIRD SCHEDULE

Section 48

ENACTMENTS REPEALED

- 1882, No. 4 (Private)—The Trustees, Executors, and Agency Company Act 1882: Sections 3, 4, 5, 6, 7, and 15, and the Schedule.
- 1883, No. 2 (Private)—The Guardian, Trust, and Executors Company Act 1883: Sections 3, 4, 5, 6, 7, and 15, and the Schedule.
- 1884, No. 1 (Private)—The Perpetual Trustees, Estate, and Agency Company Act 1884: Sections 3, 4, 5, 6, 7, 8, and 16, and the Schedule.
- 1884, No. 2 (Private)—The Trustees, Executors, and Agency Company Act 1882 Amendment Act 1884: Sections 3 and 4.
- 1911, No. 17 (Local)—The Guardian, Trust, and Executors Amendment Act 1911: Sections 3, 4, and 9.
- 1916, No. 1 (Private)—The New Zealand Insurance Company Trust Act 1916: Sections 4, 5, 6, 7, 8, 9, 10, and 15, and the Schedule.
- 1934–35, No. 52—The Trustee Companies Protection Act 1934–35 (1957 Reprint, Vol. 16, p. 233).
- 1934, No. 3 (Private)—The Pyne, Gould, Guinness (Limited) Trust Act 1934: Sections 3, 4, 5 (2), 6, 7, 8, 9, 14, and 15, and the Schedule.
- 1952, No. 56—The Administration Act 1952: Section 42. (1957 Reprint, Vol. 1, p. 56.)
- 1958, No. 55—The Administration Amendment Act 1958.
- 1960, No. 98—The Trustee Companies Act 1960.
- 1962, No. 5 (Private)—The East Coast Permanent Trustees Limited Act 1962: Sections 4, 5, 8, 9, 10, 11, 12, 17, and 23, and the Second Schedule.