

# **Trustees Executors Limited Amendment Bill**

Private Bill

As reported from the Commerce Committee

## **Commentary**

### **Recommendation**

The Commerce Committee has examined the Trustees Executors Limited Amendment Bill and recommends that it be passed with the amendments shown.

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

### **Introduction**

This bill amends the TOWER Trust Limited Act 2002, and changes the name of the principal Act to the Trustees Executors Limited Act 2002. The purpose of this bill is to expressly authorise Trustees Executors Limited to transact business with its current parent company, Sheffield Investments Incorporated (NZ) Holdings Limited, whose name has changed to Sterling Grace (NZ) Limited, and with the parent company's subsidiaries. It also introduces a regulation-making power authorising the Governor-General, to amend by Order in Council the Schedule to the principal Act by adding, amending, or deleting the name of a body corporate that is a holding company of Trustees Executors Limited.

Our commentary focuses on the main issues examined. We have also recommended some minor amendments to reflect changes in drafting style.

One submission raised the risk to beneficiaries of trusts lending funds to their parent company. This bill does not amend or change any of the existing protections, which we are satisfied are sufficient.

### **Order in Council process**

The bill contains a provision for an Order in Council to be made by the Governor-General on the recommendation of the Minister of Justice (after consultation with the Minister of Commerce), to amend the Schedule to the principal Act by adding the name of a body corporate that is a holding company of Trustees Executors Limited. As Trustees Executors Limited is authorised to transact business with any body corporate named in the Schedule, this would mean that Trustees Executors Limited would no longer need to secure amendment of the private Act that establishes it by a private bill whenever its parent company changes.

### **Parliamentary scrutiny of name changes**

There are four trustee companies established by private Act which may undertake the administration of estates and personal trust work. Trustee companies are each expressly authorised by their establishing Acts to transact business with their specified parent companies. This power is a significant departure from the general rule that trustees cannot take unauthorised profit from their administration of a trust; it is conferred by the naming of the trustee company's parent company in its Act. Each time there is a change in parent company, a trustee company must secure changes to its private Act to authorise it to transact business with its new parent company.

While this situation was previously rare, it is now common enough that questions have arisen about balancing the need to protect beneficiaries by scrutinising the new parent company, against the use of Parliament's time to provide this scrutiny, and on the costs to the trustee company of securing an amendment to its private Act each time its parent company's name changes.

### **Previous proposals**

The New Zealand Guardian Trust Company Amendment Bill in 2005 proposed amendments seeking the same outcome as proposed in the bill, but conferring much wider powers. The previous Commerce Committee considered that while the proposal had merit, the ability of a trust company to transact business with its parent company was such a significant departure from the general rule against

trustees taking profit from their administration of a trust that its approval should remain in Parliament's hands.

The previous committee noted that several select committees had recommended that the Government should undertake a thorough review of the regime for statutory companies in respect of the naming of current parent companies in trustee legislation, before individual private acts were amended.

### **Regulation-making power appropriate**

We are satisfied that it is appropriate to amend the principal Act by way of delegated legislation and do not recommend amending this provision.

The general principle is that delegated legislation should not be used to override primary legislation, and the power to do so should be granted only in rare cases, and with strict controls.

In this bill there are specific protections for the beneficiaries of the trust, including requirements for approval by Ministers, publication, and parliamentary scrutiny by the Regulations Review Committee. We are satisfied that there are sufficient protections in trust law to protect the interests of beneficiaries. We consider that the Government scrutiny entailed in the regulation-making process may also be beneficial.

### **Holding company name change**

We were requested by the bill's promoters to amend the name of the holding company to Sterling Grace (NZ) Limited from the originally proposed name of Sheffield Investments Incorporated (NZ) Holdings Limited. We were told that following the bill's introduction the holding company had reached an agreement by which the right to use the Sterling Grace name in New Zealand was regained.

## **Appendix**

### **Committee process**

The Trustees Executors Limited Amendment Bill was referred to the committee on 22 February 2006. The closing date for submissions was 24 March 2006. We received and considered four submissions from interested groups and individuals. We heard four submissions. Hearing of evidence took one hour and eight minutes and consideration took 31 minutes.

We received advice from the Ministry of Justice and drafting assistance from the Parliamentary Counsel Office.

### **Committee membership**

Katherine Rich (Chairperson)

Gordon Copeland (Deputy Chairperson)

Chris Auchinvole

Shane Jones

Hon Luamanuvao Winnie Laban

Hon Mahara Okeroa

Maryan Street

Chris Tremain

Pansy Wong

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

**Struck out (unanimous)**

Subject to this Act,

Text struck out unanimously

**New (unanimous)**

Subject to this Act,

Text inserted unanimously

*(Subject to this Act,)*

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

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*Hon Marian Hobbs*

## **Trustees Executors Limited Amendment Bill**

Private Bill

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### **Preamble**

- (1) The TOWER Trust Limited Act 2002 (now to be called the Trustees Executors Limited Act 2002)—
  - (a) provides for a change of name, and for future changes of name, by the Trustees, Executors, and Agency Company of New Zealand (Limited), now known as Trustees Executors Limited (the **Company**); and 5
  - (b) expressly authorises the Company to transact with its parent companies, and subsidiaries of its parent companies, business in connection with any estate or trust property that the Company administers; and 10
  - (c) consolidates and amends the provisions of the Trustees, Executors, and Agency Company Act 1882 and its amendments:
- (2) Since its incorporation the Company has carried on trustee company, trust, and agency business, including as a trustee company under the Trustee Companies Act 1967: 15

- (3) The TOWER Trust Limited Act 2002 expressly authorises the Company to transact business with TOWER Limited (as its parent company), other holding companies of the Company, and subsidiaries of any of them:
- (4) TOWER Limited has sold the Company (then known as TOWER Trust Limited) to *(Sheffield Investments Incorporated (NZ) Holdings) Sterling Grace (NZ) Limited*, which is the Company's current parent company: 5
- (5) TOWER Trust Limited has changed its name to Trustees Executors Limited, the Company's current name: 10
- (6) The Company wishes to—
- (a) amend the title of the TOWER Trust Limited Act 2002 to reflect the Company's current name; and
  - (b) be able to transact business with its current and future parent companies and with those parent companies' subsidiaries; and 15
  - (c) ensure that the principal Act reflects the Company's current ownership structure:
- (7) The objects of this Act cannot be achieved without legislation. 20

**The Parliament of New Zealand therefore enacts as follows:**

- 1 Title**  
This Act is the Trustees Executors Limited Amendment Act 2006.
- 2 Commencement** 25  
This Act comes into force on the day after the date on which it receives the Royal assent.
- 2A Principal Act amended**  
This Act amends the Act that was previously called the TOWER Trust Limited Act 2002. 30
- 3 Title repealed**  
The Title is repealed.

#### 4 Name of principal Act changed

- (1) *(After)* As from the commencement of this Act, the principal Act is called the Trustees Executors Limited Act 2002.
- (2) Section 1 is consequentially amended by omitting “TOWER Trust” and substituting “Trustees Executors”.

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#### 5 Interpretation

- (1) Section 4 is amended by repealing the definition of **Company** and substituting the following definition:

“**Company** means the company that,—

“(a) before the commencement of this Act was called the Trustees, Executors, and Agency Company of New Zealand (Limited); and 10

“(b) on and after the commencement of this Act until 1 August 2003 was called TOWER Trust Limited; and

“(c) from 1 August 2003 is called Trustees Executors Limited (unless its name is changed under the Companies Act 1993)”.

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- (2) Section 4 is amended by inserting the following definition after the definition of **fiduciary rights, obligations, and liabilities**:

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“**holding company** has the same meaning as in section 5 of the Companies Act 1993 and, for the avoidance of doubt, includes a body corporate that is incorporated outside New Zealand”.

- (3) The definition of **parent company** in section 4 is repealed. 25

- (4) The definition of **related company** in section 4 is amended by adding “; but, for the purposes of this Act, the term **company** in that section includes a body corporate that is incorporated outside New Zealand”.

- (5) The definition of **subsidiary** in section 4 is amended by adding “and, for the avoidance of doubt, includes a body corporate that is incorporated outside New Zealand”.

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- (6) Section 4 is amended by adding the following subsection as subsection (2):

- “(2) The Governor-General may, by Order in Council made on the recommendation of the Minister of Justice given after consultation with the Minister of Commerce, amend the Schedule to— 35



- “(a) add the name of a body corporate that is a holding company of the Company:
- “(b) amend a reference to a body corporate named in the Schedule in order to reflect a change in that body corporate’s name, provided that that body corporate continues to be a holding company of the Company: 5
- “(c) omit the name of a body corporate that ceases to be a holding company of the Company.”
- 6 Company must not be put into liquidation without approval of Court** 10  
 Section 12 is amended by adding the following subsection:  
 “(4) In this section, **parent company** means a holding company of the Company.”
- 7 Company authorised to transact business with parent company or subsidiaries** 15  
 Section 14 is amended by adding the following subsection:  
 “(5) In this section, **parent company** means a holding company of the Company specified in the Schedule.”
- 8 (Repeal)Section 20 repealed** 20  
 Section 20 is repealed.
- Struck out (unanimous)**
- 9 Consequential amendment**

(1) Section 2 of the Trustee Companies Act 1967 is amended by omitting from the definition of **Trustee company** the words “TOWER Trust Limited”, and substituting the words “Trustees Executors Limited”. 25

(2) Section 2 of the Trustee Companies Act 1967 is amended by omitting from the definition of **Trustee company Act** the words “TOWER Trust Limited Act 2002”, and substituting the words “Trustees Executors Limited Act 2002”.
- New (unanimous)**
- 9 Amendments to Trustee Companies Act 1967** 30

(1) This section amends the Trustee Companies Act 1967.

**New (unanimous)**

- (2) The definition of **trustee company** in section 2 is amended by omitting “TOWER Trust Limited” and substituting “Trustees Executors Limited”.
- (3) The definition of **trustee company Act** in section 2 is amended by omitting “TOWER Trust Limited Act 2002” and substituting “Trustees Executors Limited Act 2002”.

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**10 New Schedule added**

The Schedule set out in the Schedule of this Act is added to the principal Act.

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s 10

**Schedule**  
**New Schedule added**

s 4(2)

**Schedule**  
**Authorised parent companies of Company**

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***(Sheffield Investments Incorporated (NZ) Holdings Limited)***  
**Sterling Grace (NZ) Limited**

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**Legislative history**

3 February 2006  
22 February 2006

Introduction (Bill 16-1)  
First reading and referral to Commerce Committee

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