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Trustee Companies Management Amendment Act 1978

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Note

Changes authorised by subpart 2 of Part 3 of the Legislation Act 2019 have been made in this consolidation. See the notes at the end of this consolidation for further details.

This Act is administered by the Ministry of Business, Innovation, and Employment.

Part III
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An Act to amend the Trustee Companies Management Act 1975

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

1 Short Title

This Act may be cited as the Trustee Companies Management Amendment Act 1978, and shall be read together with and deemed part of the Trustee Companies Management Act 1975 (hereinafter referred to as the principal Act).

Part I
Procedure for Transferring Liabilities of Trustee Company to Substitute Company

2 Interpretation

In this Part of this Act, unless the context otherwise requires, the terms "original company", "original shareholder", and "substitute company" have the meanings assigned to them by section 4 of this Act.

3 Application of this Part

(1) This Part of this Act shall apply to any company to which it is applied by Order in Council made under subsection (2) of this section, from the time specified in that Order in Council.

(2) The Governor-General, on the advice of the Minister given on the recommendation of the Board of the company, may by Order in Council declare that from the time specified therein the provisions of this Part of this Act shall apply to a specified company, being a company to which the principal Act applies.

(3) A Board shall not recommend that this Part of this Act be applied to a company unless the company is insolvent or the Board considers on reasonable grounds that it is likely that the company will become insolvent or (where the company is a trustee company) that the company may not be able to continue to carry out properly its functions as a trustee company.

(4) This Part of this Act shall cease to apply to a company if the Governor-General, on the advice of the Minister given on the recommendation of the Board of the company, by Order in Council so declares.

4 Effect of application of this Part to a company

(1) Upon the commencement of an Order in Council that applies this Part of this Act to a company (in this Part of this Act called "the original company") and from that time on, whether or not this Part of this Act subsequently ceases to apply to the original company,—

(a) There shall be deemed to be incorporated under the Companies Act 1955 a company (in this Part of this Act called "the substitute company") having the name specified in the Order in Council; and

(b) All the allotted shares in the share capital of the original company shall be deemed to have been transferred to the substitute company by those persons who were shareholders of the original company immediately before the commencement of the Order in Council (in this Part of this Act called "the original shareholders"), and—

(i) All such shares shall be deemed to have been transferred free of all encumbrances; and

(ii) All such transfers shall be deemed to be in consideration of the allotment and issue of the shares specified in paragraph (d) of this subsection, and without further consideration; and

(iii) All such transfers shall be deemed to have been properly registered in the register of members of the original company; and

(c) Any shares deemed to have been transferred to the substitute company pursuant to paragraph (b) of this subsection and that are not fully paid up shall be deemed to have been fully paid up; and

(d) There shall be deemed to have been allotted and issued by the substitute company to each of the original shareholders shares in the share capital of the substitute company of the same number and kind, and paid up to the same extent, as the shares transferred by that shareholder to the substitute company, and all such shares shall be deemed to have been duly subscribed for; and

(e) Where the shares transferred from an original shareholder to the substitute company by virtue of paragraph (b) of this subsection were subject to an encumbrance immediately before the commencement of the Order in Council, the shares allotted and issued to the original shareholder pursuant to paragraph (d) of this subsection shall be deemed to have become subject to the same encumbrance to the same extent as the transferred shares were immediately before being so transferred; and

(f) All share certificates issued by the original company before the commencement of the Order in Council shall be deemed to have been

lawfully cancelled; and every person holding such a certificate shall surrender it to the Board of the original company, if required to do so by the Board; and

(g) All the debts, liabilities, charges, and other obligations of the original company existing immediately before the commencement of the Order in Council (other than those incurred by a trust or estate of which the original company is trustee or by a person for whom the original company acts as attorney or agent) shall be deemed to be the debts, liabilities, charges, and obligations of the substitute company and not those of the original company; and, without limiting section 5 of this Act, where immediately before the commencement of the Order in Council any such obligation is secured by a charge over assets of the original company, the assets shall be deemed to have been released from the charge; and

(h) Subject to section 7 of this Act, all actions and other proceedings that are pending against the original company immediately before the commencement of the Order in Council or that (but for this paragraph) may be taken against the original company in respect of any matter that arose before the commencement of the Order in Council, shall be deemed to be pending, or may be taken, as the case may be, against the substitute company as if it were the original company, and no such proceedings shall be continued, or may be taken, against the original company; and

(i) All actions and other proceedings that are being taken, or could be taken, by the original company against any director or other person in respect of any matter that arose before the commencement of the Order in Council shall be deemed to be being taken, or may be taken, as the case may be, by the substitute company as if it were the original company, and no such proceedings shall be continued or commenced by the original company; and

(j) All refunds due to the original company in respect of income tax paid by it in respect of income years completed before the commencement of the Order in Council shall be deemed to be payable to the substitute company and not to the original company; and

(k) Any shareholder or other person who would be liable (whether by virtue of section 211 of the Companies Act 1955 or any provision of any enactment relating solely to the original company or any other enactment or rule of law) to contribute to the assets of the original company if the company were wound up immediately before the commencement of the Order in Council, shall be liable to the substitute company to the same extent in any winding up of the substitute company, and shall not be so liable to the original company:

Provided that this paragraph shall not apply in any case where the liability created by this paragraph is also created by paragraph (d) of this subsection or any other provision of this Act.

(2) Where, by virtue of subsection (1) of this section, proceedings taken against the original company pursuant to section 18 of the principal Act are deemed to have been taken against the substitute company, or proceedings are taken against the substitute company pursuant to that section, or the liability of the original company under a judgment given pursuant to that section is deemed to be the liability of the substitute company, that section shall, as far as it is applicable and with the necessary modifications, apply in respect of the substitute company as if the substitute company were the original company and the directors of the substitute company were the Board of the original company.

5 Protection of secured creditors

(1) Forthwith after the application of this Part of this Act to an original company, the Board of the company shall prepare, and forward to the directors of the substitute company, a statement of all debts, liabilities, charges, and other obligations of the original company, including details of any property of the original company against which any such obligation is secured.

(2) Where immediately before the application of this Part of this Act to an original company the company had assets that were subject to a specific charge or charges,—

(a) The directors of the substitute company shall ensure that when the shares in the original company are sold by the substitute company pursuant to section 8 of this Act the agreement or agreements of sale specify what part of the sale price of the shares can fairly be considered as relating to those assets; and

(b) That part of the sale price shall be deemed to be received by the substitute company in respect of those assets and shall, in a winding up of the substitute company, be applied first in full payment of the obligations that were secured by that charge or those charges, as the case may be, in order of priority.

6 Provisions relating to substitute companies

(1) The memorandum and articles of association of a substitute company shall, except in respect of the subscribers thereto and the name of the company and the directors thereof, be the same as those of the original company.

(2) A substitute company shall have the same capital as the original company.

(3) The directors of a substitute company shall be from time to time appointed by the Minister.

(4) Forthwith after the application of this Part of this Act to an original company, the directors of the substitute company shall forward to the Registrar of Companies all documents and information that he requires for the purposes of records required to be kept by him in respect of the substitute company under the Companies Act 1955.

(5) Where a register or other record relates to property affected by section 4 of this Act, the person whose duty it is to keep that register or record shall, on the request in writing of a director of the substitute company reciting the property or right to be affected, without fee, make such entries in the register or record and generally do all such things as may be necessary to give full effect to the provisions of section 4 of this Act.

(6) Section 268 of the Companies Act 1955 shall not apply to a substitute company. A substitute company may be wound up voluntarily only if the directors of the company so resolve. In the Companies Act 1955 the expression "a resolution for voluntary winding up", in relation to a substitute company, means a resolution of the directors of the company to that effect; and all the provisions of that Act shall be construed accordingly.

(7) Subsections (4) to (8) of section 5 and sections 6, 14, 15, 17, 22, 23(1), 24(2), 24(3), and 25 of the principal Act shall, as far as they are applicable and with the necessary modifications, apply in respect of a substitute company as if—

(a) Every reference therein to an appointed member or a member were a reference to a director of the substitute company;

(b) Every reference therein to a trustee company or an associated company, or to a trustee company or associated company to which the principal Act applies, were a reference to the substitute company;

(c) Every reference therein to the principal Act were a reference to this Part of this Act;

(d) Every reference therein to a Board appointed under section 5 of the principal Act or a local board appointed under section 11 of the principal Act were a reference to the directors of the substitute company; and

(e) The words "and Part VII" were omitted from the Schedule to the principal Act.

7 Moratorium

Until such date as the Minister may for the time being specify in respect of that substitute company by notice in the *Gazette*, no person shall—

(a) Bring or continue any action or other proceedings against a substitute company (other than pursuant to section 18 of the principal Act):

(b) Issue any execution, attach any debt, or otherwise enforce or seek to enforce any judgment or order obtained in respect of a substitute company or any property thereof:

(c) Petition for the winding up of a substitute company:

(d) enter into possession, sell, appoint a receiver, or take or continue any power or rights whatsoever under or in pursuance of any mortgage,

charge, debenture, instrument, or other security over any property of a substitute company:

Provided that, with the consent of the directors of the substitute company, an action or proceeding may be brought against the company for the purpose of determining whether any right or liability exists or the extent thereof.

Section 7(d): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

8 Sale by substitute company of shares in original company

(1) Subject to subsection (2) of this section, the directors of a substitute company may sell shares in the original company to any person or persons approved by the Minister for this purpose.

(2) The directors of a substitute company shall not sell shares in the original company unless—

(a) A notice to the effect that they intend to sell shares in that company has been published in the *Gazette* not less than one month before the date of the sale; and

(b) The directors have advised the Minister of the names of all persons who have, within 2 weeks of the publication of the notice in the *Gazette*, expressed interest in purchasing the shares, and the Minister has advised the directors which of those persons are approved by him for the purposes of subsection (1) of this section; and

(c) The directors have considered the history, financial position, and head office location of the purchaser and any restrictions on sale of the shares contained in the memorandum of association or articles of association of the original company or in any enactment relating solely thereto.

9 Effect of this Part on other enactments

(1) The provisions of this Part of this Act shall have effect notwithstanding anything to the contrary in any other enactment or rule of law or in any memorandum of association, articles of association, deed, or agreement.

(2) Without limiting the generality of subsection (1) of this section, an original company or a substitute company may carry on business notwithstanding—

(a) That the number of members of the company is less than 7 (in the case of a public company) or 2 (in the case of a private company):

(b) That the company is or may be insolvent:

(c) The provisions of any other enactment or rule of law:

Provided that this subsection shall not apply in the case of an original company at any time after 30 days from the date of transfer by the substitute company of any of the shares in the share capital of the original company.

10 Amendment to Stamp and Cheque Duties Act 1971

Section 11 of the Stamp and Cheque Duties Act 1971 is hereby amended by adding to subsection (2) the following paragraph:

"(p) Part I of the Trustee Companies Management Amendment Act 1978."

Part II
Amendments to Principal Act

11 Claims by beneficiaries against company

Section 18 of the principal Act is hereby amended by inserting, after subsection (5), the following subsection:

"(5A) Where the Court is satisfied that the amount that could be recovered under a judgment given against a company under this section would be more than the net worth of the company, the Court may at any time (whether at the time the judgment is given or thereafter) make an order determining that the maximum amount that can be recovered under the judgment is the amount that the Court considers is the net worth of the company as a going concern (including any unpaid capital and any other amount liable to be contributed by the shareholders to the company in the event of the winding up thereof)."

Part III
Provisions Relating to Perpetual Trustees, Estate, and Agency Company of New Zealand Limited

12 Restrictions on shareholding not to apply in certain cases

Nothing in the Perpetual Trustees, Estate, and Agency Company Amendment Act 1971 shall apply in respect of shares in the share capital of the Perpetual Trustees, Estate, and Agency Company of New Zealand Limited that were purchased by a person—

(a) From a substitute company pursuant to section 8 of this Act; or

(b) Pursuant to an offer made by an offeror with the consent of the Board of Directors thereof appointed pursuant to section 5 of the principal Act.

13 Loan by Bank of New Zealand to take priority in winding up

(1) In this section the term "the loan" means the loan of $5,021,924 or thereabouts made by the Bank of New Zealand to the Perpetual Trustees, Estate, and Agency Company of New Zealand Limited on or about the 29th day of August 1975, together with such interest as is payable in respect thereof.

(2) In the event of the winding up of the Perpetual Trustees, Estate, and Agency Company of New Zealand Limited or, if Part I of this Act is applied thereto

its substitute company, the loan shall be repaid in priority to all other debts, liabilities, charges, and other obligations of the company:

Provided that nothing in this section shall derogate from—

(a) Section 308 of the Companies Act 1955; or

(b) Any rights of a secured creditor that were in existence when the loan was made.

14 Amendment to deed relating to Nuhaka Farm Forestry Fund

(1) In this section the term "the Deed" means the Deed dated the 21st day of December 1973 and executed by the Perpetual Trustees, Estate, and Agency Company of New Zealand Limited and constituting a Group Investment Fund under the Trustee Companies Act 1967 known as "Group Investment Fund No. 21 (Farm Forestry)" and otherwise known as the "Nuhaka Farm Forestry Fund".

(2) Notwithstanding clause 5.01 of the Deed, failure to pay the initial capital of the Group Investment Fund constituted by the Deed to the Trustee within 6 months of the date of the Deed shall not in any way affect the validity, force, or effect of the Deed or any trust created thereby and the Trustee shall not be obliged by virtue of that clause to refund any amount received by it on account of the Fund.

(3) Every reference (whether in writing or not) to the amount of the initial capital of the Group Investment Fund constituted by the Deed, made before the commencement of this Act in respect of the sale or purchase or proposed sale or purchase of units in the Fund, shall be deemed to have been a reference to the amount of the initial capital that was in fact subscribed.

Consolidation notes

1 General

This is a consolidation of the Trustee Companies Management Amendment Act 1978 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 About this consolidation

This consolidation is not an official version of the legislation under section 78 of the Legislation Act 2019.

3 Amendments incorporated in this consolidation

Property Law Act 2007 (2007 No 91): section 364(1)

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