



ANALYSIS

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 1972, No. 8—*Private*

An Act to facilitate the investment of trust funds held upon charitable and religious trusts in divers and sundry trusts throughout the Anglican Diocese of Auckland

[20 October 1972]

WHEREAS there are now divers and sundry trust funds throughout the Anglican Diocese of Auckland held by divers individual trustees and by the General Trust Board of the Diocese of Auckland upon sundry trusts for special purposes in connection with parishes and churches throughout the Auckland Diocese for religious, educational, or other charitable purposes: And whereas the various trustees thereof are restricted by the instruments creating such trusts or otherwise howsoever by law in investing the trust funds: And whereas it is considered expedient and desirable that the capital of such trust funds shall be invested in investments on a wider basis than heretofore: And whereas many of the separate trust funds aforesaid comprise small amounts of capital which if amalgamated with other trust funds of a like nature could be more readily invested: And whereas within the said Diocese an investment trust board has been set up with wider powers of investment than those conferred upon trustees under and by virtue of the Trustee Act 1956, for the sole purpose of being a trustee to hold and invest in its own name

trust funds transferred to it pursuant to the provisions of this Act, and to account for and pay the net income arising from such investments and on request to repay capital to the trustees of the respective funds for administration thereof by such trustees in accordance with the provisions of their respective trust instruments: And whereas the trustees of the various said trusts would be in breach of trust if they were to transfer their trust funds to the said investment trust board for investment unless authorised so to do by this Act:

BE IT THEREFORE 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 Anglican Trustees Investment (Auckland) Act 1972.

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

“Anglican” or “Anglican Church” means the Church of the Province of New Zealand commonly called the Church of England or the Anglican Church:

“Board” means the trustees for the time being of the trust deed:

“Trust deed” means the deed of trust bearing date the 25th day of July 1972, a copy of which is set forth in the Schedule to this Act:

“Trustee” means any person or persons, whether incorporated or not, now or hereafter holding trust funds upon trust for any Anglican religious, educational, or other charitable purpose of the Anglican Diocese of Auckland or any part thereof, and, without derogating from the generality of the foregoing, in particular means trustees of such trusts the objects of which are limited to a particular Anglican Parish or to a particular Anglican Church or the members of a particular Anglican congregation.

3. Transfer of trust funds—Subject to any direction to the contrary contained in the instrument creating the trust, any trustee may transfer the whole or any part or parts of any trust fund held by the trustee upon trust for any Anglican religious, educational, or other charitable purpose to the Board to be held by it as trustee thereof with the powers and subject to the terms and

conditions conferred and imposed upon the Board under and by virtue of the trust deed, notwithstanding that the powers of investment conferred upon the Board by the trust deed are wider than the powers conferred upon the trustee by the instrument creating such trust.

4. Advice on investments—Notwithstanding the provisions of the trust deed, the Board, before making any investment pursuant to paragraph (b) of clause III of the trust deed, shall first obtain and consider proper advice in writing as to the suitability of the proposed investment from a person—

- (a) Who is reasonably believed by the Board to be qualified by his ability in and practical experience of financial matters; and
- (b) Who is not a member of the Board, or an officer or employee of the Board or of the company in which it is proposed to make such investment.

5. Investments—Notwithstanding the provisions of the trust deed, the Board shall not invest any part of any trust fund in the manner set out in paragraph (a) of clause III of the trust deed.

6. Trustees to remain liable for proper application of funds—Any trustee so transferring the whole or any part or parts of a trust fund to the Board shall be and remain liable for the proper application of the capital and the income of such fund in accordance with the instrument creating such trust, but such trustee shall not be liable for any loss of capital occurring by reason of any fall in the capital value of any investment made or retained by the Board as trustee or for any reduction of income expended by the Board in administration in accordance with the provisions of the trust deed.

7. Private Act—This Act is hereby declared a private Act.

SCHEDULE

This deed is made the 25th day of July 1972 by Douglas Lenard Hazard, chartered accountant, Wilfred Allen Subritzky, solicitor, Michael Pierce Hay, sharebroker, and Anthony Owen Ferrers, company manager, all of Auckland (hereinafter together called "the Board" which expression shall mean and include the persons who from time to time shall be the trustees of this deed whether the same shall be incorporated or not)
WHEREAS:

SCHEDULE—*continued*

(1) There exist throughout the Diocese of Auckland divers trusts for Anglican religious, educational, or other charitable purposes wherein the trustees thereof have limited powers of investment of the trust funds and by reason thereof and of the continuous depreciation of the purchasing power of money the capital of such funds in terms of purchasing power has been and still is being seriously eroded.

(2) The Synod of the Anglican Diocese of Auckland is desirous of creating a common fund under the control of a board of trustees in which the capital of divers and sundry trust funds now existing in or which may be hereafter created in the said Diocese and held upon trust for religious, educational, or other charitable trusts may be invested; such board of trustees having power to invest such capital in accordance with the provisions hereinafter contained in these presents to the intent that the erosion hereinbefore mentioned in recital (1) hereof may be stopped or checked by selecting investments which have a potential capital growth.

(3) It is intended that the above-mentioned Board should make application to be incorporated under the provisions of the Charitable Trusts Act 1957.

(4) It is intended to promote an Act of the General Assembly of New Zealand in Parliament authorising trustees of any Anglican trust within the said Diocese holding funds upon trust for any religious, educational, or other charitable purpose to transfer such funds to the Board for the purposes hereinbefore set forth in recital (2).

(5) The above-named persons (herein called "the Board") have jointly and severally agreed to act as trustees of this deed.

NOW THIS DEED WITNESSETH as follows:

I. The Board shall forthwith after the passing of an Act of Parliament as hereinbefore mentioned in recital (4) hereof make application to be incorporated under the style and name of "The Anglican Investment Trust Board" pursuant to the provisions of the Charitable Trusts Act 1957.

II. (i) The Board is hereby authorised at its absolute discretion to receive from any persons who are trustees moneys or investments held by such persons upon trust for any Anglican religious, educational, or other charitable trust within the Diocese of Auckland.

(ii) All such moneys so paid and all investments so transferred to the Board and held by it from time to time shall comprise the Trust Fund.

(iii) The Board may at its discretion invest any moneys received from any trustees in any investment purchased or acquired by the Board being an investment authorised by these presents or by law for the investment of trust funds.

III. In addition to but not in substitution for the powers of investment from time to time for the time being conferred on trustees under and by virtue of the Trustee Act 1956 or any amendments thereof or any Act passed in substitution therefor or any other Acts now or hereafter passed conferring powers upon trustees the Board may in its absolute discretion invest the whole or any part or parts of the Trust Fund aforesaid whether at the time in a state of investment or not in manner following, that is to say:

(a) With any dealer in the short-term money market authorised by the Reserve Bank of New Zealand to receive money on deposit

SCHEDULE—*continued*

as a short-term money market dealer, and only so long as there are hypothecated to the Board by that dealer New Zealand Government securities that have, at the time of making of the deposit, a redemption value not less than the amount so deposited.

(b) Subject to the restrictions hereinafter set forth in the proviso to this paragraph—

(i) In the acquisition of the preference or ordinary stock or shares, or any convertible notes issued by any company, whether incorporated in New Zealand or elsewhere and in the exercise of any options and other rights which the Board as the holder of any such ordinary or preference stock or shares or convertible notes, may be entitled to exercise;

(ii) In debentures, including debenture stock and bonds and whether constituting a charge on assets or not, secured by a trust deed and issued by any company in which at the time of investment it would have been permissible to invest in the purchase of ordinary stock or shares;

(iii) In any Group Investment Fund within the meaning of Part II of the Trustee Companies Act 1967 if all the investments in which the Fund may be invested are authorised investments for the purpose of these presents.

Provided always that the stock, shares, convertible notes, and debentures above-mentioned in subparagraphs (i), (ii), and (iii) of this paragraph (b) do not include—

- (1) Any stock or shares, convertible notes, or any such debentures, not officially listed on Stock Exchange affiliated to the Stock Exchange Association of New Zealand; or
- (2) Any stock, shares, or convertible notes, or any such debentures, not fully paid up, except such as are, by the terms of issue, required to be fully paid up within 12 months of the date of issue; or
- (3) Any convertible notes, or any such debentures, under or in respect of which any liability to make further advances or payments will remain after the expiration of 12 months from the date of acquisition.

Provided further that an investment under any of the provisions of subparagraphs (i) and (ii) of this paragraph (b) shall not be made in any company—

- (1A) Unless the company has a paid up share capital of \$1 million or more; and
- (2B) If the company has not paid a dividend of at least 5 percent, in each complete financial year of the company the last day of which occurred 5 years before the date of the investment, on all ordinary stock and shares issued by the company, excluding (in respect of the financial year of issue) any stock or shares issued in that financial year after the dividend was declared and any stock or shares on which (in terms of their issue) no dividend or dividends of less than 5 percent are payable in that financial year; and for the purposes of this paragraph a company formed

SCHEDULE—*continued*

to take over the whole of the business of another company or other companies shall be deemed to have paid the requisite dividend in any financial year, if such a dividend was paid by each such other company in each financial year of that company any part of which fell within the relevant financial year of the company taking over the business.

- (c) (i) In the purchase of any interest in freehold or leasehold property and for the purpose of completing such purchase or for the cost of improvement or development of any property so purchased the Board may borrow money secured by a mortgage over such property so purchased or so improved or developed not exceeding 50 percent of the value thereof as determined by an independent valuer provided always that any money so borrowed shall be secured by a mortgage only on the particular property purchased or improved or developed;
- (ii) The Board may at any time sell any freehold or leasehold property or any interest therein for the time being owned by the Board upon such terms and conditions as the Board in its absolute discretion thinks fit and without derogating from the generality of the foregoing the Board may permit such part of the purchase price as it thinks fit to remain owing to it secured by a first mortgage over such property or interest sold notwithstanding that except for the provisions of this sub-clause such mortgage would not be a trustee investment.
- (d) The Board may invest in a first mortgage of the interest of any lessee in land where all the following terms and conditions are satisfied—
- (a) That no advance shall be made except in respect of a lease which—
- (i) Is granted under any of the provisions of paragraphs (e), (f), and (g) of section 7 or paragraph (b) of section 11 of the Public Bodies Leases Act 1969; or is granted for a term of not less than 15 years and wherein the lessee has an option to purchase the freehold interest therein for a sum defined in the said lease; or the freehold of the demised premises is owned by the Board; and
 - (ii) Is registered under the Land Transfer Act 1952; and
 - (iii) Contains no right of forfeiture in the event of the lessee becoming bankrupt or (in the case of a corporation) being wound up; and
 - (iv) Does not require periodic reviews of rental at intervals of less than 7 years; and
 - (v) In the case of a lease granted under the Public Bodies Leases Act 1969 as aforesaid confers upon the outgoing lessee the right to payment under section 10 of the Public Bodies Leases Act 1969 in respect of the value of all buildings and fixtures and other improvements (if any) on the land which are the property of the lessee.
- (b) That in making an advance under this clause the Board shall obtain a report from an independent valuer of the value

SCHEDULE—*continued*

of the lessee's interest and shall not advance to the lessee more than 50 percent of such value.

IV. The Board may at any time and from time to time sell investments for the time being held by it and reinvest the proceeds of sale thereof.

V. The Board may borrow or arrange credit by way of bank overdraft at any bank (whether secured or unsecured) for any purpose which is in the opinion of the Board of a temporary nature only provided that the amount of such borrowing or credit shall not exceed one-twentieth of the value of the total assets of the Trust Fund at the time of such borrowing or arrangement of credit and save and except as aforesaid or pursuant to the provisions of clause III (c) (i) the Board shall not borrow any moneys or give any mortgage or charge over the Trust Fund or any part or parts thereof.

VI. (1) For the purposes of this clause VI the following phrases shall have the following meaning:

“Annual balance date” shall mean the date upon which the Board shall in its absolute discretion determine as the day of the year as at which the assets comprising the long-term fund shall be valued, provided always the Board may from time to time resolve that the annual balance date shall be changed upon giving not less than 12 months' notice in writing of the new annual balance date to each and every trustee who has funds invested in the long-term fund at the date of the passing of such resolution.

“Long-term fund” shall mean the investment fund in which money invested therein on behalf of any trustee shall be invested for a period of not less than 2 years and which may be withdrawn therefrom at any time after the expiration of the said period of 2 years provided that the trustees concerned shall have given to the Board not less than 12 months' notice in writing prior to the date of withdrawal.

“Short-term fund” shall mean the investment fund in which moneys invested therein on behalf of any trustee may be withdrawn at any time by the trustee concerned giving to the Board not less than 2 months' notice in writing prior to the date of withdrawal.

(2) Any trustee depositing money or transferring assets to the Board pursuant to these presents shall nominate how much (if any) thereof shall be invested in the long-term fund and how much (if any) thereof shall be invested in the short-term fund.

(3) (a) The costs of acquiring and of disposing and of valuing any asset forming part of the long-term fund shall be paid out of the capital thereof and any costs of administration of the long-term fund shall be paid out of the income arising from the long-term fund.

(b) The assets comprising the long-term fund (other than investments in any fee simple or leasehold interest in real property) shall be valued as at the annual balance date in each year and any investments in any fee simple or leasehold interest as at the annual balance date not less than once in every 3 years by an independent valuer appointed by the Board, provided always in any year in which any such asset is not valued by an independent valuer the value for the purposes of the next succeeding paragraph (c) of this subclause (3) shall be the

SCHEDULE—*continued*

purchase price thereof (excluding any costs incurred in the acquisition thereof) if no value thereof has been made by an independent valuer or the latest value thereof made by an independent valuer.

(c) As at the annual balance date in each year the aggregate costs of acquiring and disposing and valuing of any asset forming part of the long-term fund incurred during the preceding year shall be deducted from the aggregate value of all the assets comprised in the long-term fund as at the annual balance date and the balance thereof is hereinafter referred to as the capital value of the long-term fund, provided always that for the purposes of calculating the capital value of the long-term fund any costs incurred in valuing any asset as at an annual balance date shall be deemed to have been incurred immediately prior to such annual balance date.

(d) The Board shall in each year calculate the percentage of gain or loss in the capital value of the long-term fund during the year preceding the annual balance date and shall credit or debit the capital account of each and every trustee having funds invested in the long-term fund on the annual balance date with such percentage as at the annual balance date.

(e) In the event of any trustee withdrawing any capital from the long-term fund the value of the investment of such trustee shall be the value thereof as determined at the last annual balance date prior to the date of withdrawal after such percentage has been credited or debited in accordance with the provisions of the preceding paragraph (d) of this subclause (3).

(f) All income arising from the long-term fund shall be first applied in or towards any administration costs charged against the long-term fund pursuant to the provisions of subclause (5) of this clause VI the balance of such income shall be divisible amongst and paid to the trustees having investments therein in due proportion according to the same ratio as the capital value of the investments of each trustee bears to the capital value of the long-term fund. The Board in its absolute discretion may from time to time declare and pay income at any date between one annual balance date and the next succeeding balance date, provided always in the event of any trustee withdrawing capital from the long-term fund save and except when the withdrawal date coincides with the annual balance date the Board shall not be bound to pay any income in respect of such capital so withdrawn which has accrued since the date upon which the Board has last calculated the income of the long-term fund for the purpose of paying income to trustees having investments therein.

- (4) All the income (including any capital gain) arising from the short-term fund shall first be applied in or towards the costs incurred by the Board in the acquisition or disposition or valuation of any investment forming part of the short-term fund and any administration costs charged against the short-term fund pursuant to the provisions of subclause (5) of this clause

SCHEDULE—*continued*

VI and in or towards the recoupment of any capital loss suffered in the short-term fund. The balance of such income shall be divisible amongst and paid to the trustees having funds therein in due proportion in accordance with the same ratio as the capital invested of each trust therein bears to the total capital therein at the date at which the Board shall cause such balance of income to be calculated, provided always in respect of any capital withdrawn from the fund the trustee shall not be entitled to participate in the division of any income which has accrued to the short-term fund since the date upon which the balance of income was last calculated, provided further the Board shall cause the balance of the income of the short-term fund to be calculated on not less than 4 days in each calendar year at approximately equal intervals upon such dates as the Board in its absolute discretion shall from time to time determine.

- (5) For the purposes of paragraph (f) of subclause (3) and subclause (4) of this clause VI the Board in its absolute discretion shall apportion as it thinks fit between the long-term fund and the short-term fund any costs incurred by it in administering the funds which in the opinion of the Board are not specifically attributable either to the long-term fund or the short-term fund and such costs so apportioned shall be charged against the funds respectively.

VII. (i) The Board shall not be responsible for seeing to the application by any trustee of any moneys paid by the Board to such trustees and the receipt of such trustee for such payments shall be a full and sufficient discharge to the Board for such moneys so paid.

(ii) The Board shall not be liable for any loss arising from or out of or in connection with or in relation to any fall in the capital value of any investment lawfully made or acquired or retained by the Board forming part of the Trust Fund.

VIII. (i) (a) The Board shall consist of not less than 4 members, all of whom shall be communicant lay members of the Anglican Church.

(b) Two of the above-named first members of the Board shall retire at the end of a period of 2 years which said period shall be deemed to expire at the date of commencement of the meeting of the Auckland Diocesan Synod to be held in the year 1974. The 2 members who shall then retire shall be selected by ballot and shall be eligible for re-election.

(c) Save as provided in the preceding paragraph (b) hereof a member shall hold office for a period of 4 years from the date of his election and on retirement shall be eligible for re-election until such time as he shall have attained the age of seventy (70) years. Provided always a member holding office and attaining the age of seventy (70) years shall not be bound to retire until the expiry of a period 4 years from the date of his last election to office.

(d) Members shall be elected in respect of retirement by rotation or to increase the number of the Board by the Standing

SCHEDULE—*continued*

Committee of the Auckland Diocese every 2 years; the first of such elections shall be in the year 1974.

(e) The Board may appoint any communicant lay member of the Anglican Church to fill a casual vacancy in their number and such person so appointed shall hold office until such time as the member whom he replaced would have been due to retire.

(f) For the purpose of this subclause (i) the dates of retirement and of election shall in each case be the date of the commencement of the second meeting of the Standing Committee held after the Annual Session of the Auckland Diocesan Synod held in the year in question.

(ii) Any member of the Board shall cease to hold office if he—

(a) Resigns his office by notice in writing to the Chairman of the Board, or

(b) Becomes of unsound mind, or becomes a protected person under the Aged and Infirm Persons Act 1912, or

(c) Has for more than 6 consecutive months been absent without permission of the Board from meetings of the Board held during that period.

IX. The Board may employ a secretary and such other persons upon such terms and conditions and at such remuneration as it thinks fit for the purposes of administering the trust and without derogating from the generality of the foregoing in particular it may employ either full-time or part-time or from time to time any person whom the Board considers competent to advise it on investments at such fee or other emolument as it thinks fit.

X. (a) The Board shall meet as and when it considers fit, provided always that a meeting may be convened at any time by the Chairman and shall be convened on the requisition of 2 members in writing addressed to the Chairman.

(b) The Board shall appoint one of its members to be Chairman at the next meeting after each election of members by the Standing Committee of the Auckland Diocese. No member may hold the office of Chairman for more than 4 years in succession but shall be eligible for reappointment as Chairman at the expiration of a period of 2 years commencing from the date when he ceased to be Chairman.

(c) Until otherwise resolved by the Board 2 members shall form a quorum.

(d) The exercise by the Board of any discretion or power or the doing of any act or thing or the expression of any opinion pursuant to this deed may be validly exercised or done or expressed pursuant to a resolution passed by a majority of the members and in the event of the voting being equal the Chairman shall not have a casting vote.

(e) A resolution of the Board may be validly passed without a meeting by means of an entry in the minute book signed by all the members other than any member who has for the time being been given at his request leave of absence by the Board from attending meetings.

XI. (a) The Board shall cause proper books of account to be kept in which shall be kept full true and complete accounts of the affairs and transactions of the Board.

SCHEDULE—*continued*

(b) The books of account shall be subject to audit by a chartered accountant in public practice appointed annually by the Standing Committee of the Auckland Diocese.

(c) The Board shall cause true and accurate records to be kept and maintained showing: the names of each and every trustee who has transferred trust funds to the Board, the amount of moneys and the value at the time of transfer of any investments so transferred, and whether the same is invested in the long-term fund or the short-term fund and in the case of investment in both funds, the amount invested in each fund, and the dates of transfers to and withdrawal from each fund and any credits or debits to each trustee's capital account pursuant to the provisions of clause VI of these presents.

IN WITNESS WHEREOF these presents have been executed the day and year first above written.

Signed by Douglas Lenard Hazard in the presence of:

H. Anderson, chartered accountant, Auckland.

Signed by Wilfred Allen Subritzky in the presence of:

K. Slaney, legal executive, Auckland.

Signed by Michael Pierce Hay in the presence of:

H. Anderson, chartered accountant, Auckland.

Signed by Anthony Owen Ferrers in the presence of:

Angela K. Hamilton, secretary, Anglican Church Office.
