

Rt. Hon. Geoffrey Palmer

PGG TRUST LIMITED

[PRIVATE]

ANALYSIS

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An Act to provide—

- (a) For the transfer to PGG Trust Limited of the whole of the undertaking of the trust department of Pyne, Gould, Guinness, Limited; and
- 5 (b) For the recognition and empowering of PGG Trust Limited as a trustee company under and within the meaning of the Trustee Companies Act 1967; and
- 10 (c) For other purposes incidental thereto and consequent thereon

WHEREAS Pyne, Gould, Guinness, Limited is authorised by its memorandum of association and by its enabling Act, namely,

No. 63—1

Price
incl. GST \$1.90

the Pyne, Gould, Guinness (Limited) Trust Act, 1934 to act as executor and trustee and in various other fiduciary capacities, and has from the date of its enabling Act carried on and now carries on trustee company, trust, and agency businesses: And whereas the said company is a trustee company under and within the meaning of the Trustee Companies Act 1967, and carries on the business of a trustee company: And whereas a private company has been incorporated under the Companies Act 1955 named PGG Trust Limited, all the shares in which have been subscribed for and issued to Pyne Gould Corporation Limited or a nominee on behalf of that company: And whereas Pyne Gould Corporation Limited or a nominee on behalf of Pyne Gould Corporation Limited is also the sole shareholder in Pyne, Gould, Guinness, Limited: And whereas Pyne, Gould, Guinness, Limited has agreed at the request of Pyne Gould Corporation Limited to the transfer to PGG Trust Limited of the said trustee company, trust, and agency businesses of Pyne, Gould, Guinness, Limited subject to the passing of this Act and in accordance with the terms thereof: And whereas it is expedient to authorise and facilitate the said transfer: And whereas legislation is the only means by which—

- (a) The vesting in PGG Trust Limited of all appointments of Pyne, Gould, Guinness, Limited and its rights and duties as executor, trustee, or fiduciary in any other capacity; and
- (b) The empowering of PGG Trust Limited to act as executor of the will and administrator of the estate of any deceased person; and
- (c) The inclusion of PGG Trust Limited as a trustee company under the Trustee Companies Act 1967; and
- (d) The transfer of the undertaking of the trust department of Pyne, Gould, Guinness, Limited—

can be effected or effected efficiently and economically and without interference with the conduct and continuity of the said trustee company, trust, and agency businesses in the interests of the said company, the trusts under administration, their clients, and other persons having business with them: And whereas the objects of this Act cannot be attained without the authority of Parliament:

BE IT THEREFORE ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the PGG Trust Limited Act 1988.

(2) Except as provided in **subsection (3)** of this section, this Act shall come into force on the day on which it receives the Royal assent.

5 (3) **Sections 4 to 12 and section 19** of this Act and the Schedule to this Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

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

10 “Appointed day” means the day appointed for the commencement of **sections 4 to 12 and section 19** of this Act and the Schedule to this Act:

“Existing trust company” means Pyne, Gould, Guinness, Limited:

15 “Fiduciary rights and obligations” includes all rights, capacities, authorities, discretions, duties, liabilities, and obligations as executor, administrator, trustee, receiver, committee, guardian, attorney, or agent, or as a fiduciary in any capacity:

20 “Instrument” includes—

(a) Any instrument (other than this Act) of any form or kind that creates, evidences, modifies, or extinguishes rights, interests, or liabilities or would do so if it or a copy thereof were lodged, filed, or registered under any enactment; and

25 (b) Any judgment, order, or process of a Court:

“Liabilities” means liabilities, debts, charges, duties, and obligations of every description (whether present or future, actual or contingent, and whether payable or to be observed or performed in New Zealand or elsewhere):

30 “New Company” means PGG Trust Limited:

“Parent Company” means Pyne Gould Corporation Limited:

35 “Property” means property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal, and, without limiting the generality of the foregoing, includes—

(a) Choses in action:

(b) Goodwill:

40 (c) Rights, interests and claims of every kind in or to property, whether arising from, accruing under, created or evidenced by, or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent, or prospective:

- “Rights” means all rights, powers, privileges, and immunities, whether actual, contingent, or prospective:
- “Subsidiary” and “related company” have the same meanings respectively as in the Companies Act 1955: 5
- “Transferred employee” means an employee of the trust department business of the existing trust company or any employee of the Parent Company who becomes an employee of the New Company in pursuance of this Act: 10
- “Trust department business”, in relation to Pyne, Gould, Guinness, Limited, means the trustee company, trust, and agency businesses of the existing trust company conducted and administered by the trust department thereof: 15
- “Trust department undertaking”, in relation to Pyne, Gould, Guinness, Limited, means—
- (a) The trust department of the existing trust company; and
 - (b) All the property relating to the trust department business of the existing trust company as disclosed by the accounting records and balance sheet of the said trust department as at the appointed day; and 20
 - (c) All rights and liabilities relating to the trust department business of the existing trust company including those disclosed by the accounting records and balance sheet of the said trust department as at the appointed day; and 25
 - (d) All the fiduciary rights and obligations of the existing trust company relating to and in respect of its trust department business; and 30
 - (e) All trust property held by the existing trust company relating to and in respect of its trust department business:
- “Trust property” means all property held as executor, trustee, administrator, receiver, committee, guardian, attorney, or agent, or as a fiduciary in any capacity: 35
- “Undertaking”, in relation to PGG Trust Limited, means—
- (a) The business of PGG Trust Limited; and 40
 - (b) All property of PGG Trust Limited; and
 - (c) All rights and liabilities of PGG Trust Limited; and
 - (d) All the fiduciary rights and obligations of PGG Trust Limited; and 45

(e) All the trust property of PGG Trust Limited:
 “Will” includes any codicil to a will.

5 **3. Act to bind Crown and other persons**—This Act shall bind the Crown and every person (including any body politic or corporate) whose rights are affected by any provision of this Act.

PART I

CREATION OF NEW TRUST COMPANY AND VESTING OF UNDERTAKING

10 **4. Vesting of trust department undertaking of Pyne, Gould, Guinness, Limited in PGG Trust Limited**—(1) On the appointed day the trust department undertaking of the existing trust company shall, by virtue of this Act, vest in the New Company.

15 (2) In respect of trust property vested in the New Company as aforesaid, the New Company shall hold and stand possessed of the same, whether alone or jointly with another or others, in the same manner and subject to the same trusts, directions, and duties, and in the same capacity, as the same was held by
 20 the existing trust company and as if the New Company were named in the will or other instrument governing the trust property in lieu of the existing trust company or any other trustee or fiduciary named therein whom the existing trust company may have succeeded in office.

25 (3) In respect of fiduciary rights and obligations vested in the New Company as aforesaid, the same shall be exercisable by and binding upon the New Company whether alone or jointly with another or others in the same manner and to the same extent as they were exercisable by and binding upon the
 30 existing trustee company.

(4) On and after the appointed day—

(a) Every appointment of the existing trust company (whether alone or jointly with another or others) as
 35 executor, trustee, administrator (with or without will annexed), agent, or attorney, or as a fiduciary in any capacity, whether by will or instrument of any kind or by any order whenever made and whether or not the existing trust company has assumed office thereunder and which has been undertaken by the existing trust
 40 company as part of its trust department business, or, but for this Act, would have been so undertaken, shall vest in and shall be deemed to be an appointment of the New Company, and the New Company shall and

shall be entitled to exercise and discharge all rights, powers, capacities, authorities, duties, liabilities, and obligations of the existing trust company in respect of and arising from every such appointment:

- (b) A reference (express or implied) to the holder for the time 5
being of a particular office (other than the office of a
director, secretary, or auditor) within the trust
department of the existing trust company in any
instrument made, given, passed, or executed before
the appointed day shall be read as a reference to the 10
person for the time being holding office as General
Manager or any Assistant General Manager or such
other officer of the New Company as is designated
from time to time by the General Manager of the
New Company or by any other officer acting under 15
delegation from the General Manager.

5. Appointments of the existing trust company as executor or administrator to be transferred to the New Company—

(1) Where any person has died or dies before or after the appointed day having by his or her will appointed the 20
existing trust company as an executor or trustee (whether alone
or jointly with another or others) of his or her will and probate
of the will has not been granted, the New Company shall have
the same right to a grant of probate of the will or to have the
trust estate transferred to or vested in it as the existing trust 25
company would have had if this Act had not been passed.

(2) Where any person named as executor who would be entitled to obtain probate of the will of any testator who has died before the appointed day, or where any person entitled to obtain administration of the estate of an intestate who has died 30
before the appointed day, authorises or has authorised the
existing trust company to apply to the High Court for
administration with or without the will annexed under the
provisions of the Trustee Companies Act 1967, the New
Company shall have the same right to apply for and obtain a 35
grant of administration with or without the will annexed as the
existing trust company would have had if this Act had not been
passed.

6. Continuity of legal proceedings—(1) Any action, suit, arbitration, or proceeding, and any cause of action, arbitration, 40
or proceeding which immediately before the appointed day is
pending or existing by, against, or in favour of, the existing
trust company in connection with or arising from its trust

department business, and any cause of action, arbitration, or proceeding by, against, or in favour of the existing trust company in connection with or arising from its trust department business arising on or after the appointed day but
 5 arising in respect of anything done or omitted to be done before the appointed day, shall not abate or be discontinued or be in any way prejudicially affected by reason of the provisions of this Act, but the same may be prosecuted and, without amendment of any writ, pleading, or other document,
 10 continued and enforced by, against, or in favour of the New Company in its own name as and when it might have been prosecuted, continued, and enforced by, against, or in favour of the existing trust company if this Act had not been passed.

(2) The Court or other person making or entering any
 15 judgment, order, or award for the payment of any sum of money, whether ascertained or to be ascertained against the New Company in any action, suit, arbitration, or proceeding to which this section applies shall, at the request of any party in whose favour such judgment, order, or award, is being made or
 20 entered, make or enter the same against both the existing trust company and the New Company, and the same may, when so made or entered, be enforced against both the existing trust company and the New Company.

7. Continuity of Group Investment Funds—All Group
 25 Investment Funds established by the existing trust company under and pursuant to Part II of the Trustee Companies Act 1967 shall, from and after the appointed day, be and become vested in, and shall thereafter be administered in accordance with the said Act by, the New Company as if the same were
 30 duly established by the New Company and the New Company had determined the class or classes of investments for which the same were established.

8. Savings—(1) All contracts, agreements, conveyances, deeds, leases, licences, and other instruments, undertakings,
 35 notices, instructions, orders, directions, mandates, indemnities, or authorities entered into or made with or addressed to the existing trust company in connection with or arising from its trust department business, whether alone or with any other person, before, and in force on, the appointed day shall, on and
 40 after that day, to the extent that they were previously binding upon and enforceable by, against, or in favour of the existing trust company, be binding upon, enforceable by and in full force and effect in every respect against, or in favour of, the

New Company as fully and effectually as if, instead of the existing trust company, the New Company had been the person by whom they were entered into, with whom they were made, or to or by whom they were given or addressed, as the case may be. 5

(2) A reference (express or implied) to the existing trust company in connection with or arising from its trust department business in any notice or other communication served, given, or sent on or after the appointed day in relation to any instrument or other document whatever subsisting immediately before the appointed day shall, unless the context otherwise requires, be read as a reference to the New Company. 10

(3) No Registrar of Deeds or District Land Registrar, share registrar, bank, savings bank, or any other person charged with the keeping of any books, registers, or accounts, shall be obliged solely by reason of the provisions of sections 4, 6, and 7 of this Act or subsection (1) of this section to change the name of the existing trust company to that of the New Company in his or her books, registers, or accounts, or in any document in his or her charge, but the presentation to any such Registrar, bank, or other person of any instrument— 15

- (a) Executed or purporting to be executed by the New Company; and
- (b) Relating to any property held immediately before the appointed day by or in the name of the existing trust company; and 25
- (c) Containing a recital that that property has become vested in the New Company or that the New Company is entitled to hold the same in its name by virtue of the provisions of this Act— 30

shall, in the absence of proof to the contrary, be sufficient evidence that the property is vested in the New Company or that the New Company is entitled to hold the same in its name.

(4) Except as provided in subsections (1) and (3) of this section, nothing in this Act derogates from the provisions of the Land Transfer Act 1952. 35

9. Officers and employees—Notwithstanding any other provisions of this Act—

- (a) On the appointed day each employee of the trust department business of the existing trust company shall cease to be an employee thereof and shall become an employee of the New Company but, for the purposes of every enactment, rule of law, award, 40

- determination, contract, or agreement relating to the employment of each such employee, his or her contract of employment shall be deemed to have been unbroken and the period of his or her service with the trust department business or with any other department of, or by, the existing trust company shall be deemed to have been a period of service with the New Company; and
- 5
- (b) The terms and conditions of the employment of each transferred employee with the New Company shall on the appointed day (and thereafter until varied) be identical with the terms and conditions of his or her employment with the trust department business of the existing trust company immediately before the appointed day and be capable of variation in the same manner; and
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- (c) A transferred employee shall not be entitled to receive any payment or other benefit by reason only of his or her ceasing by virtue of this Act to be an employee of the trust department business of the existing trust company; and
- 15
- (d) Nothing in this Act, other than **paragraph (c)** of this section, shall affect any rights or liabilities under any provident, benefit, superannuation, or retirement fund or scheme relating to employees of the existing trust company; and
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- (e) A director, secretary, or auditor of the trust department business of the existing trust company shall not by virtue of this Act become a director, secretary, or auditor of the New Company.
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10. Power to register New Company as holder of shares, etc.—Where any shares in, debentures of, or interests in or made available by any corporation are by virtue of this Act vested in the New Company, a certificate signed by the

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General Manager or any Assistant General Manager of the New Company or by an officer acting under delegation from any such person certifying as to such vesting shall, notwithstanding any other enactment or rule of law or the provisions of any instrument, be registered by that corporation in the same

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manner in all respects as if it were a proper instrument of transfer duly stamped of those shares, debentures, or interests.

11. Books and documents to remain evidence—(1) Any document, matter, or thing, which if this Act had not been

passed would have been admissible in evidence in respect of any matter for or against the existing trust company, shall, on and after the appointed day, be admissible in evidence in respect of the same matter for or against the New Company.

(2) In this section “document” has the same meaning as in section 2 (1) of the Evidence Amendment Act (No. 2) 1980. 5

12. Service of documents—Service of a document (as defined in section 2 (1) of the Companies Act 1955)—

- (a) On the New Company, in respect of any matter relating to the trust department business of the existing trust company, shall be deemed to be service on the existing trust company; or 10
- (b) On the existing trust company in respect of any matter relating to the trust department business of the existing trust company, shall be deemed to be service on the New Company. 15

PART II

EMPOWERING PROVISIONS AFFECTING THE NEW COMPANY

13. New Company may act as executor and obtain probate—In addition to the powers conferred on the New Company by section 5 of this Act, whenever the New Company is named as executor (whether alone or jointly with any other person) in the will of any testator, it shall be lawful for the New Company to be and act as executor (alone or jointly as aforesaid); and the New Company shall be entitled to apply for and obtain probate of the will and to perform and discharge all other the acts and duties of an executor as fully and effectually as a private individual may do when appointed executor. 20 25

14. New Company’s liability to be the same as private individual—In all cases in which the New Company is executor, administrator, trustee, receiver, committee, guardian, or attorney under power, the New Company shall, in addition to the liabilities and restrictions imposed by this Act, be subject in all respects to the same control and liability to removal as private individuals who may be appointed executors, administrators, trustees, receivers, committees, guardians, or attorneys. 30 35

15. High Court or Judge may order account—If any trustee, executor or legatee, administrator or next-of-kin, or creditor entitled to or interested in any estate which has come or hereafter comes into the possession or under the control of 40

the New Company is unable, upon application to the New Company, to obtain a sufficient account of the property and assets of which such estate shall consist and of the disposal and expenditure thereof or thereout, the trustee, executor or legatee, administrator or next-of-kin, or creditor shall be entitled to apply to the High Court or to any Judge thereof upon motion, after notice to the New Company, but without suit or petition, for an account; and if the Court or Judge is of opinion that no sufficient account has been rendered by the New Company, the Court or Judge shall order such account to be rendered by the New Company as to the Court or Judge seems just; or if the Court or Judge shall think that no sufficient case has been established to require the New Company to furnish an account, it shall be lawful for the Court or Judge to dismiss the application; and the Court or Judge shall have power in all cases to make such order as to costs either against the New Company or against the applicant, or as to payment of costs out of the estate, as to the Court or Judge seems just.

16. High Court or Judge may order audit—It shall be lawful for the High Court or for any Judge thereof, on application under **section 15** of this Act, to order, in addition to or in substitution for any account to be rendered by the New Company, that a person to be named in the order shall examine the books and accounts of the New Company in reference to the estate in respect of which the order is made; and in that case the New Company shall deliver to the person named in such order a list of all books kept by the New Company, and shall produce to such person at all reasonable times when required the said books and all accounts, vouchers, papers, and other documents of the New Company, and shall afford to that person all necessary information and all other necessary facilities to enable that person to make the said examination; and the Court or any Judge thereof shall have the same power as to the costs of such examination as is given by **section 15** of this Act in reference to the costs of or occasioned by an application under that section.

17. New Company not to wind up without sanction of Court—So long as any estate in respect of which the New Company is executor, administrator, or trustee remains in whole or in part unadministered, it shall not be lawful to proceed to wind up the New Company voluntarily or for the Parent Company to dispose of any shares it holds in the New Company which are not fully paid up, unless with the sanction

of the High Court or of a Judge thereof; and it shall be lawful for any person interested in such estate or who may have any claim in respect thereof to apply to that Court or to a Judge thereof as is provided by the Rules of Court made pursuant to the Judicature Act 1908 to restrain the voluntary winding-up of the New Company or to restrain the Parent Company from disposing of such shares; and the Court or Judge shall in any and every such case have power to make such order in the matter as the circumstances of each case shall appear to the Court or Judge to require. 5 10

18. Unclaimed money—Every sum of money held by the New Company as trustee, executor, guardian, or otherwise under this Act which remains unclaimed, and of which no lawful owner is known for a period of 6 years after its receipt by the New Company, shall at the end of each financial year be paid over by the New Company to the Commissioner of Inland Revenue under and in accordance with the Unclaimed Money Act 1971, and every such payment shall, to the extent of the money paid, discharge the New Company from the trust in respect of such money. 15 20

19. New Company to be a trustee company—(1) Section 2 of the Trustee Companies Act 1967 is hereby amended by omitting from the definition of the term “Trustee company” the words “Pyne, Gould, Guinness, Limited”, and substituting the words “PGG Trust Limited”. 25

(2) Section 2 of the Trustee Companies Act 1967 is hereby further amended by omitting from the definition of the term “Trustee Company Act” (as added by section 2 (2) of the Trustee Companies Amendment Act 1972) the words “the Pyne Gould Guinness (Limited) Trust Act 1934”, and substituting the words “the PGG Trust Limited Act 1988”. 30

(3) The First Schedule to the Trustee Companies Act 1967 is hereby amended by omitting the reference to Pyne, Gould, Guinness (Limited).

(4) On request by the New Company the Public Trustee shall surrender to the New Company all securities deposited with the Public Trustee by the existing trust company in regard to its trust department business or its trust department undertaking under and for the purposes of section 6 (2) of the Trustee Companies Act 1967 and held by the Public Trustee immediately before the commencement of this section; and the receipt of the secretary of the New Company shall be a full and sufficient discharge to the Public Trustee for all such securities 35 40

so surrendered by the Public Trustee and the Public Trustee shall not be concerned to see to the application thereof.

20. New Company authorised to transact business with Parent Company or subsidiaries or holding or associated companies—(1) Notwithstanding the fiduciary rights, obligations, and liabilities of the New Company whether pursuant to this Act or otherwise, the New Company is hereby authorised to transact with the Parent Company or any subsidiary of the Parent Company or any company associated with the Parent Company or any company from time to time holding shares in the New Company any business in connection with any estate or trust property that it may administer from time to time where, after considering all the circumstances of the case (including appropriate business arrangements offered by other companies), the New Company is satisfied on reasonable grounds that it is in the best interests of the estate or trust property to do so; and, notwithstanding any enactment or rule of law to the contrary, the Parent Company or any subsidiary of the Parent Company or any company associated with the Parent Company or any company from time to time holding shares in the New Company shall be entitled to receive all fees, premiums, commissions, and other payments properly chargeable in respect of such business in the same manner as it or they would have been entitled to do if the New Company had not been a trustee of such estate or the New Company were not, in respect of the Parent Company, a subsidiary, or, in respect of any other subsidiary of the Parent Company or any company associated with the Parent Company from time to time holding shares in the New Company, a related company.

(2) Any payment to which subsection (1) of this section applies shall be clearly identified in the account rendered in respect of the estate or trust property.

21. Incorporation and powers of New Company to remain—Nothing in this Act shall affect the constitution or incorporation of the New Company, but the New Company shall continue under its original incorporation with the powers and privileges by this Act conferred and subject to the additional duties and liabilities by this Act imposed.

22. Jurisdiction and powers of High Court not to be affected—(1) Nothing in this Act shall operate to annul or abridge any powers or jurisdiction now possessed by the High Court in respect of trustees, and all such powers and

jurisdiction shall apply to the New Company in respect of all trusts undertaken by it.

(2) Without limiting **subsection (1)** of this section, nothing in this Act shall annul or abridge the power of the High Court to remove the New Company from any office notwithstanding 5 that it has come to that office by virtue of any provisions of this Act.

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

24. Private Act—This Act is hereby declared to be a private 10 Act.

Section 23

SCHEDULE

ENACTMENTS REPEALED

1934, No. 3—(Private) The Pyne, Gould, Guinness (Limited) Trust Act, 1934.

1979, No. 51—The Trustee Companies Amendment Act 1979: Section 3 (3). (R.S. Vol. 18, p. 939).