

PUBLIC TRUST OFFICE AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Public Trust Office Act 1957.

Clause 1 relates to the Short Title to the Bill.

Clause 2 inserts in section 2 of the principal Act a definition of the term "Group Investment Fund". The definition is necessary for the purposes of the new Part IIA of the principal Act which is inserted by *clause 4* of the Bill.

Clause 3 inserts in the principal Act a new section 30A authorising the Public Trustee to invest trust funds in his hands in equities of the class authorised by section 3 of the Trustee Amendment Act 1974, subject to the same restrictions as are imposed by the new subsections (1B) to (1D) of section 4 of the Trustee Act 1956 (as amended by section 3 of the Trustee Amendment Act 1974). The clause also authorises the Public Trustee to invest in a Group Investment Fund established under *clause 4* of the Bill and comprising investments of that class. The power is to apply notwithstanding section 30 of the principal Act and unless the trust instrument expressly directs some other mode of investment or expressly forbids such investment. The power is also to be subject to the Public Trustee taking the same advice of a qualified expert as is required under section 4 (1E) of the Trustee Act 1956 (as amended by section 3 of the Trustee Amendment Act 1974). While money is so invested it will be outside the Common Fund of the Public Trust Office.

Clause 4 inserts in the principal Act a new Part IIA comprising new sections 42A to 42H. The new Part authorises the Public Trustee to establish and keep Group Investment Funds. It follows very closely the provisions of Part II of the Trustee Companies Act 1967.

The new section 42A authorises the Public Trustee to establish and keep one or more Group Investment Funds which shall be invested in authorised trustee investments. The Public Trustee is authorised to invest estate money in his possession and available for investment but not invested in the Common Fund in either a separate account in respect of the estate to which the money belongs or in a Group Investment Fund that is so established.

The new section 42B directs the Public Trustee to pay and allocate the income from each such Group Investment Fund to or among the estates entitled to the amount invested in the Fund according to the amounts of their several interests and the period for which they are invested in the Fund. The

capital is to be held proportionately for the estates entitled to the amounts invested in the Fund according to the amounts of their several interests in the Fund.

The new section 42c makes provision for the valuation on prescribed days of the investments and funds comprising each Group Investment Fund established by the Public Trustee. Investment in or withdrawal from any such Fund is to be on a prescribed day or within 2 business days thereafter, and is to be on the basis of the valuation made as at that prescribed day.

The new section 42d provides that the Public Trustee shall not charge any separate commission for the management of a Group Investment Fund. He is authorised to reimburse himself out of the Fund for all reasonable expenses incurred by him in the administration of the Fund.

The new section 42e provides that, subject to the new Part IIA, the Public Trustee may exercise, in respect of the investments and money comprising a Group Investment Fund, all the powers which he could exercise if the investments and money were not part of such a Fund, and such further powers as may be conferred upon the Public Trustee by the Court (being powers which could be so conferred if the investments and money were not part of such a Fund).

The new section 42f makes provision for the examination of Group Investment Funds by a solicitor or accountant under section 83A of the Trustee Act 1956.

The new section 42g provides that, except as expressly provided in the new Part IIA, nothing in that Part shall affect the rights, powers, and duties of the Public Trustee.

The new section 42h declares that a Group Investment Fund is not a partnership, unit trust, or syndicate.

Clause 5 amends section 4 of the Trustee Act 1956 (as amended by section 3 of the Trustee Amendment Act 1974) so as to provide that investment in a Group Investment Fund established under the new Part IIA shall be an authorised trustee investment.

Hon. Mr McGuigan

PUBLIC TRUST OFFICE AMENDMENT

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A BILL INTITULED

An Act to amend the Public Trust Office Act 1957

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

1. Short Title—This Act may be cited as the Public Trust Office Amendment Act 1975, and shall be read together with and deemed part of the Public Trust Office Act 1957* (hereinafter referred to as the principal Act).

*1957 Reprint, Vol. 12, p. 387

Amendments: 1967, No. 25; 1968, No. 43; 1971, No. 14; 1972, No. 95

2. Interpretation—Section 2 of the principal Act is hereby amended by inserting, after the definition of the term “estate”, the following definition:

“‘Group Investment Fund’ means a Group Investment Fund established under section 42A of this Act, as inserted by section 4 of the Public Trust Office Amendment Act 1975:”.

3. Investment in company stocks, shares, debentures, etc.—The principal Act is hereby amended by inserting, after section 30, the following section:

“30A. (1) Notwithstanding section 30 of this Act but subject to the provisions of this section, the Public Trustee may invest any money forming part of an estate in—

“(a) Any investment authorised under any of the provisions of paragraphs (a) and (b) of subsection (1A), and subsections (1B) to (1D), of section 4 of the Trustee Act 1955 (as amended by section 3 of the Trustee Amendment Act 1974):

“(b) A Group Investment Fund established under Part IIA of this Act and comprising investments authorised under paragraph (a) of this subsection.

“(2) Subsection (1) of this section shall not authorise any such investment, if the instrument creating the trust or the authority of the Public Trustee to administer, hold, or control the estate—

“(a) Expressly directs some other mode of investment; or

“(b) Expressly forbids the making of an investment of that class.

“(3) If the Public Trustee proposes to invest in the manner authorised by this section he shall first obtain and consider proper advice in writing as to the suitability, in view of the terms of the trust or other authority of the Public Trustee, of the class of investment proposed and of the investment or Group Investment Fund proposed as an investment of that class; and for the purposes of this subsection proper advice is the advice of a person (whether or not he is an officer or employee of the Public Trust Office) who is reasonably believed by the Public Trustee to be qualified to give it by reason of his profession or occupation and his personal expertise and experience in

financial and investment matters, and who is instructed independently of the company in which it is proposed to invest and is neither an officer nor servant nor a director of the company:

5 “Provided that, where the advice is given by an officer or employee of the Public Trust Office who is so qualified, the advice need not be in writing.

10 “(4) Where any part of an estate is invested in accordance with this section, the part so invested shall not be part of the Common Fund and subsections (2) and (4) of section 31 of this Act shall apply to the money so invested; but nothing in this section shall prevent the re-investment of that part of the estate in the Common Fund at any later time or times.

15 “(5) Subject to the provisions of this section, the Public Trustee may invest any part of an estate in the manner authorised by this section in his discretion, but subject, where he is acting as a co-trustee, to the consent of every other co-trustee of that estate who, at the time the investment is made, is acting in the trusts of that estate and is not a mentally disordered person within the meaning of the Mental Health Act 1969.

20 “(6) This section shall apply whether, at the time of investment in the manner authorised by this section, the estate was in a state of investment or not, and whether the estate came into the possession of the Public Trustee before or after the commencement of this section.”

30 **4. Group Investment Funds**—The principal Act is hereby amended by inserting, after section 42, the following new Part:

“PART IIA

“GROUP INVESTMENT FUNDS

35 “42A. **Group Investment Funds**—(1) The Public Trustee may from time to time establish and keep, in addition to and separately from the Common Fund, 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 name or number.

“(2) All money forming part of any Group Investment Fund shall be invested in such class or classes of investments as the Public Trustee determines at the time when the Fund is established, being investments authorised by the instrument or other authority under which the money is held or otherwise authorised by the Trustee Act 1956 or by this Act or any other Act for the investment of that money. 5

“(3) Subject to the provisions of this section, where money of an estate is in his possession and is available for investment but is not invested in the Common Fund, the Public Trustee may invest that money, whether at the time in a state of investment or not, whether it came into his possession before or after the commencement of this Part of this Act, whether any estate to which it belongs is under administration by the Public Trustee or by any other trustee or trustees, and whether it comprises the whole or part of any estate, either— 10 15

“(a) On a separate account in respect of the estate to which the money belongs; or 20

“(b) If the money is 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) or other authority governing the money, as part of any Group Investment Fund established and kept by the Public Trustee, being a Fund the investment of which is limited to the class or classes of investments in which the money might lawfully be invested on the separate account of the estate. 25 30

“(4) Where the Public Trustee is a co-trustee of any estate, money of that estate may be invested as aforesaid in a Group Investment Fund in the Public Trustee’s discretion but subject nevertheless to the consent of every other co-trustee who, at the time the investment is made, is acting in the trusts of that estate and is not a mentally disordered person within the meaning of the Mental Health Act 1969. 35

“(5) Where so authorised by the power of attorney or other written authority by which he is appointed as agent by any person, and subject to the provisions of this section, the Public Trustee may invest any money held by him for that person in, or transfer any investments held by him for that person to, a Group Investment Fund. 40

“(6) Subject to subsection (5) of this section, where any money in an estate is in the possession or control of the Public Trustee and is lawfully invested in an investment in which a Group Investment Fund established
5 by the Public Trustee may be invested, the Public Trustee may transfer that investment to the Group Investment Fund and give credit in the Fund to the estate for the fair market value of the investment at
10 the time of the transfer. Upon any investment being so transferred, it shall cease to belong to the estate which formerly owned it.

“(7) Investments made from money forming part of a Group Investment Fund shall not be made on account of or belong to any particular estate, but the Public Trustee
15 shall cause to be kept an account showing at all times the entitlement of each estate in the Fund.

“(8) The Public Trustee may in his discretion withdraw any amount for the time being to the credit of an estate in a Group Investment Fund—

20 “(a) For the purpose of investing the amount on the separate account of the estate, or in another Group Investment Fund, or in the Common Fund; or

25 “(b) For any other purpose relating to the exercise and discharge of his duties, powers, authorities, and functions:

“Provided that the withdrawal of any amount to the credit of an estate of which the Public Trustee is a co-trustee shall be conditional on the consent of every other
30 co-trustee who, at the time of the withdrawal, is acting in the trusts of that estate and is not a mentally disordered person within the meaning of the Mental Health Act 1969.

“(9) Where amounts are so withdrawn from a Group Investment Fund,—

35 “(a) They may, in the discretion of the Public Trustee, be paid or provided in cash or rateably in investments, or partly in cash and partly rateably in investments:

40 “(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. 1967, No. 35, s. 29

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“42b. **Income and capital of Group Investment Fund**—
The Public Trustee shall, in respect of every Group Investment Fund,—

“(a) Pay or allocate the income from that Fund proportionately to or among the estates 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: 10

“(b) Hold the capital of the Fund proportionately for the estates entitled to the amounts invested in the Fund according to the amounts of their several interests in the Fund. 15

Cf. 1967, No. 35, s. 30

“42c. **Periodic capital valuation of investments of Fund**— 20
(1) The Public Trustee shall determine the capital value as at the prescribed day of the investments and funds comprising each Group Investment Fund established by him. For the purposes of any such determination, in respect of any security listed on a Stock Exchange,— 25

“(a) The last sale price on the prescribed day on the Stock Exchange at Wellington or (if there is no such sale price on the prescribed day) on some other Stock Exchange in New Zealand (as that sale price is published by or with the consent or authority of the Stock Exchange), or (if no such sale price on that date is so published) the last sale price on any such Stock Exchange at any time within 7 days before that day, may be accepted by the Public Trustee as being: 30

“(i) In respect of stock, shares, and convertible notes, conclusive evidence of the value of identical stock, shares, or convertible notes: 35

- 5 “(ii) In respect of securities with a fixed or optional maturity date and a fixed annual interest or dividend payment, as conclusive evidence of the value of identical or similar securities including interest (if any) as on the prescribed day; and the capital value of the security shall be determined accordingly by making such adjustment (if any) as the Public Trustee thinks proper in respect of accrued interest:
- 10 “(b) The Public Trustee may accept as conclusive evidence of its value the market value at the prescribed day as determined by a registered member of the Stock Exchange.
- 15 “(2) No investment in or withdrawal from a Group Investment Fund shall be made, except—
- “(a) On a prescribed day or within 2 business days thereafter; and
- “(b) On the basis of the valuation made as at that prescribed day.
- 20 “(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 42B of this Act, to the prescribed day by reference to which the withdrawal is authorised.
- 25 “(4) The prescribed day shall be the 15th day of every month or such other day or days as may from time to time be determined by the Governor-General, by Order in Council, either generally or for any particular Group Investment Fund or class of Group Investment Funds.
- 30 Cf. 1967, No. 35, s. 31

 “42D. **No separate commission on Fund**—A Group Investment Fund shall be deemed not to be a separate estate on which commission or other recompense or remuneration is payable; and the Public Trustee shall not make any charge

35 against it for the management thereof nor pay any commission or other recompense or remuneration out of the Fund for management:

- “Provided that—
- 40 “(a) The Public Trustee may, out of a Group Investment Fund which he establishes, reimburse himself for all reasonable expenses incurred by him in the administration of the Fund; and

“(b) The Public Trustee shall be entitled to receive from any estate whose money is invested in a Group Investment Fund the same commission or other recompense or remuneration as he would be entitled to receive if the money was not so invested in the Group Investment Fund or in the Common Fund, whether the estate is under administration by the Public Trustee or by any other trustee or trustees and whether or not the Public Trustee is the trustee of the estate. 5 10

Cf. 1967, No. 35, s. 32

“42E. **Powers of the Public Trustee in respect of Funds**—Subject to the provisions of this Part of this Act, the Public Trustee may exercise, in respect of the investments and money comprising a Group Investment Fund,— 15

“(a) All the powers which he could exercise if the investments and money were not part of a Group Investment Fund:

“(b) Such further powers as may be conferred on the Public Trustee by the Court, being powers which could be conferred on the Public Trustee by the Court if the investments and money were not part of a Group Investment Fund. 20

Cf. 1967, No. 35, s. 33

“42F. **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 an estate: 25 30

Provided that any examination made under that section shall be restricted to an examination of the investments and money 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 Public Trustee’s accounts, books, and vouchers shall be restricted accordingly. 35

Cf. 1967, No. 35, s. 34

“42G. Duties, etc., of the Public Trustee 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 the Public Trustee.

5 Cf. 1967, No. 35, s. 35

“42H. Group Investment Fund not a partnership, unit trust, or syndicate—A Group Investment Fund shall not—

- 10 “(a) Create a partnership between persons entitled to interests in a Group Investment Fund; or
“(b) Be a unit trust within the meaning of the Unit Trusts Act 1960; or
“(c) Be a syndicate within the meaning of the Syndicates Act 1973.”

15 **5. Group Investment Fund to be authorised trustee investment—**Section 4 of the Trustee Act 1956 (as amended by section 3 of the Trustee Amendment Act 1974) is hereby further amended by inserting in paragraph (c) of subsection (1A), after the words “meaning of”, the words “the Public Trust Office Act 1957 or of”.