



ANALYSIS

Title
1. Short Title

2. Powers of Court in respect of capital
dividends

1986, No. 112

An Act to amend the Trustee Act 1956

[6 November 1986

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 Amendment Act 1986, and shall be read together with and deemed part of the Trustee Act 1956 (hereinafter referred to as the principal Act).

2. Powers of Court in respect of capital dividends—The principal Act is hereby amended by inserting, after section 64A (as inserted by section 9 (1) of the Trustee Amendment Act 1960), the following section:

“64B. (1) In this section—

“‘Capital profit’, in relation to a company, means a profit calculated on the basis of a sale or revaluation of the capital assets of the company or any of them:

“‘Capital reserve’, in relation to a company, means a sum derived from a capital profit made by the company and set aside in the books of the company as a capital reserve:

“‘Capital dividend’, in relation to a company, means a sum distributed by the company by way of dividend to its shareholders out of a capital profit or a capital reserve.

“(2) Where any sum is paid to the trustee by a company by way of a capital dividend, the Court may if it thinks fit, by

order, empower or direct the trustee to treat the whole or any part of that sum as capital for the purposes of the trust.

“(3) In considering any application for an order under this section, the Court shall not be limited to a determination of the intentions of the testator or settlor in regard to the matter, but may be guided by what is fair and just as between those persons who are entitled to the income and those who are entitled to the capital of the trust, having particular regard to the present and likely future needs of those persons, the history of the administration of the trust to date, and all such other circumstances of the case as the Court considers relevant.

“(4) No action shall lie against the trustee for having distributed as income the whole or any part of the amount received by the trustee by way of capital dividend if the distribution was properly made by the trustee before service on the trustee of any application under this section that could affect that amount and without notice in writing of any such application or intention to make such an application; but nothing in this subsection shall prevent the Court from making an order pursuant to subsection (6) of this section disturbing the distribution made by the trustee.

“(5) For the purposes of subsection (4) of this section, section 48 of the Administration Act 1969 shall apply with all necessary modifications.

“(6) Where the Court makes an order under subsection (2) of this section after the trustee has distributed as income the whole or any part of the amount received by the trustee by way of capital dividend, the Court may also make any order of a kind authorised by subsection (1) of section 49 of the Administration Act 1969 (which relates to the following of assets); and the provisions of that section and sections 50 and 51 of that Act shall apply with any necessary modifications.”