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## Trustee Companies Act 1967

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#### Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

**This Act is administered by the Ministry of Justice.**

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### An Act to make better provision for the operation of trustee companies

#### 1 Short Title

This Act may be cited as the Trustee Companies Act 1967.

#### 2 Interpretation

In this Act, unless the context otherwise requires,—

**administration** and **administrator** have the meanings specified in the Administration Act 1969

**assistant general manager**,—

- (a) in relation to a trustee company that also carries on business other than trust business as empowered by this Act, means the assistant general manager of the trust department of the company:
- (b) in relation to any other trustee company, means the assistant general manager of the company

**branch manager,—**

- (a) in relation to a trustee company that also carries on business other than trust business as empowered by this Act, means the manager of a branch of the trust department of the company:
- (b) in relation to any other trustee company, means the manager of a branch of the company

**court** means the High Court

**director**, in relation to any trustee company, means a director of the company; and includes a member of a local or special Board of Directors of the company

**general manager,—**

- (a) in relation to a trustee company that also carries on business other than trust business as empowered by this Act, means the general manager of the trust department of the company:
- (b) in relation to any other trustee company, means the general manager of the company

**Group Investment Fund** or **Fund** means a Group Investment Fund established under section 29

**interest** includes dividends from shares

**manager**, in relation to any trustee company, includes the general manager, the assistant general manager, the secretary, and any branch manager of the company

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**person** includes a corporation sole, and also a body of persons, whether corporate or unincorporate

**portfolio investment entity** means a portfolio investment entity within the meaning of the Income Tax Act 2004

**secretary,—**

- (a) in relation to a trustee company that also carries on business other than trust business as empowered by this Act, means the secretary of the trust department of the company:
- (b) in relation to any other trustee company, means the secretary of the company

**trustee** has the meaning given in section 9 of the Trusts Act 2019

**trustee company** means any of the following companies, namely, Trustees Executors Limited, AMP Perpetual Trustee Company N.Z. Limited, PGG Trust Limited, New Zealand Permanent Trustees Limited, and The New Zealand Guardian Trust Company Limited

**trustee company Act** means any of the following Acts, namely, the Trustees Executors Limited Act 2002, the Guardian, Trust, and Executors Company Act 1883, the AMP Perpetual Trustee Company Act 1988, the New Zealand Insurance Company Trust Act 1916, the PGG Trust Limited Act 1989, the New Zealand Permanent Trustees Limited Act 1991, and the New Zealand Guardian Trust Company Act 1982.

Section 2 **administration** and **administrator**: amended, on 1 January 1971, pursuant to section 84(1) of the Administration Act 1969 (1969 No 52).

Section 2 **court**: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 2 **Minister**: inserted, on 1 October 1995, by section 10(3) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Section 2 **portfolio investment entity**: inserted, on 1 October 2007, by section 243 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Section 2 **trust** and **trustee**: repealed, on 30 January 2021, by section 161 of the Trusts Act 2019 (2019 No 38).

Section 2 **trustee**: inserted, on 30 January 2021, by section 161 of the Trusts Act 2019 (2019 No 38).

Section 2 **trustee company**: amended, on 1 July 2006, by section 10(2) of the Trustees Executors Limited Amendment Act 2006 (2006 No 2 (P)).

Section 2 **trustee company**: amended, on 1 September 1991, by section 16(1) of the New Zealand Permanent Trustees Limited Act 1991 (1991 No 2 (P)).

Section 2 **trustee company**: amended, on 1 May 1989, by section 19(1) of the PGG Trust Limited Act 1989 (1989 No 1 (P)).

Section 2 **trustee company**: amended, on 1 April 1988, by section 15(1) of the AMP Perpetual Trustee Company Act 1988 (1988 No 1 (P)).

Section 2 **trustee company**: amended, on 1 April 1983, by section 20(1)(a) of the New Zealand Guardian Trust Company Act 1982 (1982 No 3 (P)).

Section 2 **trustee company**: amended, on 1 April 1983, by section 20(1)(b) of the New Zealand Guardian Trust Company Act 1982 (1982 No 3 (P)).

Section 2 **trustee company**: amended, on 1 April 1983, by section 20(1)(c) of the New Zealand Guardian Trust Company Act 1982 (1982 No 3 (P)).

Section 2 **trustee company Act**: inserted, on 13 October 1972, by section 2(2) of the Trustee Companies Amendment Act 1972 (1972 No 28).

Section 2 **trustee company Act**: amended, on 1 July 2006, by section 10(2) of the Trustees Executors Limited Amendment Act 2006 (2006 No 2 (P)).

Section 2 **trustee company Act**: amended, on 1 September 1991, by section 16(2) of the New Zealand Permanent Trustees Limited Act 1991 (1991 No 2 (P)).

Section 2 **trustee company Act**: amended, on 1 May 1989, by section 19(2) of the PGG Trust Limited Act 1989 (1989 No 1 (P)).

Section 2 **trustee company Act**: amended, on 1 April 1988, by section 15(2) of the AMP Perpetual Trustee Company Act 1988 (1988 No 1 (P)).

Section 2 **trustee company Act**: amended, on 1 April 1983, by section 20(2) of the New Zealand Guardian Trust Company Act 1982 (1982 No 3 (P)).

## Part 1

### Trustee companies

#### 3 Application of other Acts

Every trustee company shall be deemed to be—

(a) *[Repealed]*

(b) a statutory trustee for the purposes of the Trusts Act 2019.

Compare: 1962 No 5 (P) s 23

Section 3(a): repealed, on 1 January 1971, by section 84(1) of the Administration Act 1969 (1969 No 52).

Section 3(b): replaced, on 30 January 2021, by section 161 of the Trusts Act 2019 (2019 No 38).

#### 4 Grant of letters of administration to trustee company

- (1) Any trustee company may apply for and obtain administration in respect of a deceased person, either with or without the will annexed, and may perform and discharge all other acts and duties of an administrator as fully and effectually as a private individual may do when granted letters of administration.
- (2) Notwithstanding anything to the contrary in section 73 of the Court of Probate Act 1857 of the United Kingdom Parliament, it shall not be necessary, in the absence of evidence to the contrary, for any trustee company to prove in the case of any estate, whether insolvent or not, that there is any circumstance rendering it necessary or convenient to appoint it rather than any other person who would by law be entitled to a grant of administration of the estate.
- (3) Letters of administration shall not be granted to a syndic or nominee on behalf of a trustee company.
- (4) Where any interest in any estate which was vested in a syndic on behalf of a trustee company acting as administrator under letters of administration of a deceased person became, by virtue of section 3 of the Statutes Amendment Act 1945, vested in the trustee company, the syndic shall be kept indemnified by the company in respect of that interest.
- (5) All securities registered or subscribed in the name of a syndic on behalf of a trustee company or any estate or interest in land registered under the Deeds Registration Act 1908 or under the Land Transfer Act 2017 in the name of a syndic shall be transferred by the syndic to the trustee company or as it directs.
- (6) This section shall have effect whether the testator or the intestate died before or after the commencement of this Act, and no such vesting or transfer as aforesaid shall operate or be deemed to have operated as a breach of any covenant or condition against alienation or give or be deemed to have given rise to forfeiture.

Compare: 1952 No 56 s 42; 1958 No 55 s 2

Section 4(5): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

## **5 Court may act upon affidavit of director or manager**

In every case in which any trustee company is empowered to apply for administration in respect of any deceased person, it shall be lawful for the court in which, or the officer before whom, the application is made to receive and act upon an affidavit made by a director or manager of the company in place of any affidavit required by the said court to be made by persons making application for administration.

Compare: 1962 No 5 (P) s 5

## **6 Assets of company liable**

- (1) The capital, both paid and unpaid, and all other assets of every trustee company shall be charged with all liability of the company for any failure of the company to ensure—
  - (a) the proper administration of all estates entrusted to the charge of the company; and
  - (b) the proper discharge of the duties committed to the company in respect of any office or position mentioned in subsection (2) of section 7 that is accepted by the company.
- (2) The said liability of the capital and other assets of the company shall be sufficient security for the discharge of those duties in place of any bond required from other persons when appointed to any of the offices or positions mentioned in subsection (2) of section 7; and in any case where, to secure the discharge and performance of its duties, the trustee company has deposited with Public Trust a sum of money invested in securities approved by Public Trust or executed any bond as set out in Schedule 1, then, to the extent (if any) required from time to time by the provisions of any other Act, that deposit shall be maintained as part of the assets of the company liable for the discharge of those duties, and the bond shall in like manner be kept in full force and effect.

Section 6(2): amended, on 1 March 2002, pursuant to section 152(1) of the Public Trust Act 2001 (2001 No 100).

## **7 Company may be appointed trustee and hold other fiduciary positions**

- (1) In all cases in which any court or any person, company, or corporation appoints any trustee company to any of the offices or positions mentioned in subsection (2), it shall, notwithstanding anything to the contrary in any other enactment, be lawful for but not obligatory on the company to accept appointment to and act in the office or position, and to perform and discharge all acts and duties pertaining to the office or position, either in its corporate capacity or (where the circumstances so require) by any director or officer of the company.
- (2) The offices and positions referred to in section 6 and in subsection (1) are:
  - (a) executor under any will or codicil:
  - (b) trustee under any deed, will, codicil, settlement, or other document:

- (bb) administrator with or without the will annexed:
- (c) guardian of any infant:
- (d) trustee of any money or damages to which section 66 of the Public Trust Office Act 1957 applies:
- (e) receiver:
- (f) manager:
- (g) committee of the estate under any law for the time being in force in New Zealand relating to mentally disordered persons:
- (h) liquidator of any limited liability company:
- (i) manager of any estate under the Protection of Personal and Property Rights Act 1988:
- (j) guardian *ad litem* for the purposes of proceedings in any court:
- (k) attorney under any power of attorney, or agent without power of attorney, for any trustee, person, company, or corporation:
- (l) agent for the purpose of resealing in New Zealand any probate or letters of administration (within the meaning of Part 2 of the Administration Act 1969) granted outside New Zealand:
- (m) statutory supervisor (as defined in the Retirement Villages Act 2003) in respect of a retirement village covered by the trustee company's licence under the Financial Markets Supervisors Act 2011:
- (n) arbitrator or umpire for the purposes of the Arbitration Act 1908 or pursuant to any submission to arbitration by parties to any dispute:
- (o) *[Repealed]*
- (p) supervisor (as defined in section 4(1) of the Financial Markets Supervisors Act 2011) in respect of a financial product or scheme the supervision of which is covered by the trustee company's licence under that Act:
- (q) custodian under section 67 of the Trusts Act 2019:
- (r) share or debenture or note registrar for any company carrying on business in New Zealand:
- (s) trustee or assignee for the benefit of creditors:
- (t) trustee under subpart 2 of Part 5 of the Insolvency Act 2006:
- (u) prudential supervisor under Part 10 of the Injury Prevention, Rehabilitation, and Compensation Act 2001.

Compare: 1962 No 5 (P) s 9

Section 7(2)(bb): inserted, on 13 December 1968, by section 2 of the Trustee Companies Amendment Act 1968 (1968 No 111).

Section 7(2)(g): amended, on 1 April 1970, pursuant to section 129(4) of the Mental Health Act 1969 (1969 No 16).



Section 7(2)(i): amended, on 1 October 1988, pursuant to section 113 of the Protection of Personal and Property Rights Act 1988 (1988 No 4).

Section 7(2)(l): amended, on 1 January 1971, pursuant to section 84(1) of the Administration Act 1969 (1969 No 52).

Section 7(2)(m): replaced, on 1 October 2011, by section 76(2) of the Securities Trustees and Statutory Supervisors Act 2011 (2011 No 10).

Section 7(2)(m): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 7(2)(o): repealed, on 1 July 2003, by section 266 of the Local Government Act 2002 (2002 No 84).

Section 7(2)(p): replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 7(2)(q): replaced, on 30 January 2021, by section 161 of the Trusts Act 2019 (2019 No 38).

Section 7(2)(t): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Section 7(2)(u): replaced, on 1 April 2002, by section 337(1) of the Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49).

## **8 Appointment of trustee company by executors, administrators, and trustees**

- (1) With the consent of the High Court, and subject to the approval of the appointee or appointees being obtained thereto,—
  - (a) executors, whether appointed before or after the commencement of this Act, may, unless expressly prohibited, before or after taking out probate, appoint any trustee company as sole executor or appoint as co-executors any trustee company and any other person or persons, whether or not the other person or persons include all or any of the executors making the appointment:
  - (b) other administrators under a grant of administration with or without a will annexed, whether appointed before or after the commencement of this Act, may, unless expressly prohibited, appoint any trustee company as sole administrator or appoint as co-administrators any trustee company and any other person or persons, whether or not the other person or persons include all or any of the administrators making the appointment.
- (2) Where, pursuant to subsection (1), any executor or administrator with a will annexed appoints any trustee company as executor or administrator, or appoints any trustee company and any other person or persons as co-executors or co-administrators, the appointee or appointees shall, by virtue of the appointment, be also the sole trustee or co-trustees (as the case may be) in all cases where the executor or administrator was trustee, or where there was no trustee appointed by the trust instrument or in existence at the date of the appointment under this section.
- (3) Where there are more trustees, or persons having power to appoint a trustee, or executors, or administrators, than 1, any one trustee, or any one of those persons having power to appoint a trustee, or any one executor (whether before or

after proving a will), or any one administrator, may, with the consent of the proposed appointee or appointees, apply to the High Court to have any trustee company appointed as sole trustee, executor, or administrator, or to have appointed as co-trustees, co-executors, or co-administrators any trustee company and any other person or persons, whether or not the other person or persons include all or any of the trustees, persons having power to appoint a trustee, executors, or administrators.

- (4) On any application to the High Court under this section, the court shall have power to make such order as it thinks fit.

Compare: 1957 No 36 s 44

Section 8(1): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 8(3): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 8(4): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

## **9 Appointment of trustee company where person whose consent is required refuses or is unable to consent**

Where the consent of any person is requisite to the appointment of an administrator or other trustee and the person refuses to consent to a specified trustee company being appointed, or where the person to consent is absent from New Zealand, or is not of full age or full mental capacity or is under any other disability, an appointment of the trustee company may be made without that consent if the High Court consents thereto.

Compare: 1957 No 36 s 47

Section 9: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

## **10 Authority of director or officer to attend on behalf of trustee company**

In every case in which the personal attendance of the holder of any office or position mentioned in subsection (2) of section 7 is required in a court or elsewhere, if a trustee company is the holder of the office or position, the company shall be entitled to make the attendance in the person of any director or officer of the company, and the personal duties of the company as holder of the office or position may be discharged on behalf of the company by any director or officer of the company.

Compare: 1962 No 5 (P) s 12

## **11 Company may act alone or jointly**

Subject to section 42A of the Administration Act 1952, as inserted by section 4 of the Administration Amendment Act 1960, the power of any trustee company to act as executor of the will, or administrator (with or without the will annexed) or trustee of the estate, of any deceased person, and the power of any trustee company to act in any of the offices or positions mentioned in subsec-

tion (2) of section 7 of this Act, may be exercised by the company either alone or jointly with another person, firm, company, or corporation.

## **12 Company may act under power of attorney by officers**

Where by any power of attorney any trustee company is appointed attorney by any person, company, or corporation, all powers conferred upon the company by the power of attorney may be exercised by any 2 directors of the company, or by a manager of the company acting in conjunction with any director of the company; but in all cases the company shall be liable to ensure the due execution of the powers so conferred on the company.

Compare: 1962 No 5 (P) s 10

## **13 Powers of attorney in favour of trustee company**

- (1) The provisions of sections 19 and 20 of the Property Law Act 2007 and section 343 of the Companies Act 1993 shall extend and apply, as the case may require, to every power of attorney by which any trustee company is appointed by any person, company, or corporation.
- (2) Where any trustee company executes any document as attorney, it shall not be obligatory for the company, nor shall any person require the company, to furnish evidence by way of statutory declaration that no notice or information of the revocation of the power of attorney by death or otherwise has been received by the company.
- (3) The execution by any trustee company of any document as attorney shall be accepted by all courts and persons as conclusive proof of the non-revocation of the power of attorney at the time when the document was executed.
- (4) Any trustee company, acting or paying money in good faith under or in pursuance of any power of attorney, shall not be liable for any such act or payment by reason of the fact that at the time of the payment or act the person who gave the power of attorney was dead or had done some act to avoid the power, if this fact was not known to the company at the time of its so acting or paying.

Compare: 1957 No 36 ss 116, 117; 1962 No 5 (P) s 11

Section 13(1): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

## **14 Payment of legacies of infants to trustee company**

- (1) With the consent of the company, any trustee may pay to any trustee company any money, being the whole amount, or the whole remaining amount, of any legacy or share in any estate to which an infant is entitled, whether indefeasibly or contingently, under a will, instrument, trust, or intestacy; and by writing in a form approved by the company direct the company to account for the legacy or share according to the provisions of the will, instrument, trust, or intestacy.
- (2) The writing shall declare that the amount therein stated is the whole amount or (as the case may be) the whole remaining amount to which the infant is so

entitled, and how much of the amount is capital and how much thereof is income and how much (if any) of the capital and income has been expended, whether for the maintenance, education, advancement, or benefit of the infant or otherwise, and (in the case of money to which the infant is contingently entitled) the person or persons who will become entitled to the money or so much as remains in the event of the infant failing to become indefeasibly entitled, and the shares and interests of those persons, and such other matters as the company may require. The writing shall be certified correct by the trustee; and the company shall not be under any obligation to inquire into the accuracy of the certificate nor shall the company incur any liability through acting upon any statement contained in the writing.

- (3) Upon the foregoing provisions of this section being complied with in any case, the writing shall vest in the company all the powers of the trustee in respect of the legacy or share, whether conferred by the will or trust instrument or by any enactment or in any other manner howsoever.
- (4) The trustee shall, at the time of completing the certificate and directions referred to in the foregoing provisions of this section, furnish to the company where applicable a true copy of the will or trust instrument affecting the legacy or share; and the company shall act in pursuance of the trusts therein contained.
- (5) The provisions of this section shall extend to all wills, trusts, trust instruments, intestacies, and transactions, whether they took effect before or after the commencement of this Act.

Compare: 1957 No 36 s 65

## **15 Administration by trustee company of benefit fund**

- (1) In any case where a fund is raised by public or private subscriptions for the benefit or relief of any person or class of persons, the following provisions shall apply:
  - (a) the fund may be placed with any trustee company to be administered by the company and to be invested in accordance with the Trusts Act 2019:
  - (b) the company may recognise as a committee any persons whom it believes to have organised the appeal for the subscriptions or to have been appointed or authorised or recognised as a committee by a substantial number of the subscribers:
  - (c) the company, after conferring with the committee, if any, may apply to the High Court for directions as to the administration of the fund, and for that purpose shall submit a scheme of administration:
  - (d) the court may approve the scheme, with or without modification, as the court thinks fit:
  - (e) the company shall administer the fund in accordance with the scheme as approved:

- (f) on the application of the Attorney-General, or of the company, or of any member of the committee, or of any person claiming an interest in the fund, the court at any time may vary the scheme so far as it relates to the powers of the company in respect of the fund and the mode of administering the fund, or give directions on any point or question relating to the scheme or the fund:
  - (g) the company shall obey all such directions:
  - (h) where the fund was raised for the benefit of 2 or more persons, any scheme under this section may provide that the income and capital of the fund or any specified part thereof may be applied by the company in its discretion for or towards the maintenance or education (including past maintenance or education) or advancement or benefit of those persons or of any 1 or more of them to the exclusion of the other or others of them in such shares and proportions and generally in such manner as the company from time to time thinks fit; and in pursuance of any such provision the company may so apply money notwithstanding that only one of those persons remains alive.
- (2) This section shall apply to funds raised as aforesaid either before or after the commencement of this Act.
- (3) Notwithstanding the foregoing provisions of this section, where the fund does not exceed \$40,000, or such higher amount as is prescribed by regulations,—
- (a) the company, instead of applying to the High Court for directions as to the administration of the fund, may, with the consent of the committee (if any) or the majority of the members thereof, and the further consent of the Attorney-General, settle a scheme of administration:
  - (b) the scheme so settled may be incorporated in a declaration of trust by the company, which, for the purpose of the trust instrument, shall be deemed to be the settlor of the trust:
  - (c) any statements or recitals in any such trust instrument shall be sufficient evidence of the truth thereof, and the provisions of the declaration of trust shall be final and binding on all persons, whether beneficially interested thereunder or otherwise:
- provided that the company may, if it thinks fit so to do, and with the consent of the surviving members of the committee (if any) in New Zealand or a majority of them, and the further consent of the Attorney-General, at any time modify the scheme so far as it relates to the powers of the company in respect of the fund and the mode of administering the fund, and the declaration of trust shall be amended accordingly.
- (4) Nothing in this section shall restrict section 67 of the Public Trust Office Act 1957.

Compare: 1957 No 36 s 67

Section 15(1)(a): replaced, on 1 October 1988, by section 14(1) of the Trustee Amendment Act 1988 (1988 No 119).

Section 15(1)(a): amended, on 30 January 2021, by section 161 of the Trusts Act 2019 (2019 No 38).

Section 15(1)(c): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 15(3): amended, on 27 November 2002, by section 3 of the Trustee Companies Amendment Act 2002 (2002 No 48).

Section 15(3)(a): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

## **16 Trustee company may be appointed to represent parties in legal proceedings**

- (1) Any trustee company (if it consents) may be appointed or directed by any court to represent any party in any proceedings or any person or class of persons interested therein.
- (2) The company shall be entitled to be represented in the proceedings, and the costs and expenses of any such representation as between solicitor and client, together with a reasonable fee for the company's services, shall be paid to the company out of any estate or funds or property the subject of the proceedings, or otherwise as the court thinks fit.

Compare: 1957 No 36 s 56

## **17 Restriction on registration of transfers of shares**

- (1) Notwithstanding anything to the contrary in the constitution of the company, no transfer of shares in any trustee company (whether the transfer has been executed before or is executed after the commencement of this Act) shall be registered unless and until the transfer has been approved by the directors of the company, and subject to the provisions of any trustee company Act the said directors shall have an absolute discretion to register or refuse to register any such transfer and shall not be bound to assign any reason for refusing to register any such transfer nor shall the exercise of any such discretion be called in question in any proceedings whatsoever.
- (2) If any trustee company is deemed, for the purposes of the Companies Act 1993, to be a subsidiary of another company incorporated in New Zealand, the provisions of subsection (1) shall, so far as they are applicable and with the necessary modifications, apply to transfers of shares in that other company.

Compare: 1934–35 No 52 s 5

Section 17(1): amended, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 17(1): amended, on 13 October 1972, by section 2(1) of the Trustee Companies Amendment Act 1972 (1972 No 28).

Section 17(2): amended, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

## 18 Remuneration

- (1) Subject to subsection (2), it shall be lawful for a trustee company to charge, demand, and receive for work done and services rendered by it such remuneration by way of commission or otherwise as may from time to time be fixed by the Board of Directors of the trustee company.
- (2) Remuneration charged, demanded, or received by a trustee company pursuant to subsection (1) for the administration or management of an estate or trust shall not exceed the greater of the following amounts:
  - (a) an amount equal to 5% of the total of the value of the assets of the estate or trust and the income received by the company in respect of the estate or trust:
  - (b) \$100 (or such greater amount as is from time to time prescribed by the Governor-General by Order in Council (*see* subsection (5))).
- (3) In addition to the remuneration authorised by subsections (1) and (2), it shall be lawful for a trustee company to charge, demand, and receive a reasonable fee or other remuneration for work done or services rendered by it in respect of any of the following matters that arise in the course of administration or management of an estate or trust:
  - (a) the preparation and lodging of returns for the purpose of, or in connection with, the assessment of any duties or taxes:
  - (b) the management of property, including the arranging of tenancies and leases and renewals and assignments thereof, and the arranging and supervising of repairs, maintenance, renovations, or extensions of or to the property:
  - (c) the tracing of missing beneficiaries:
  - (d) the attempted realisation of assets that are ultimately transferred or delivered in kind to the beneficiaries:
  - (e) the carrying on of a business pending realisation:
  - (f) any other matter of an unusual or special nature.
- (4) Any fee or other remuneration charged pursuant to subsection (3) shall be clearly identified in the account rendered in respect of the estate or trust.
- (5) An order under subsection (2)(b) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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### Legislation Act 2019 requirements for secondary legislation made under this section

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 18: replaced, on 30 November 1979, by section 2 of the Trustee Companies Amendment Act 1979 (1979 No 51).

Section 18(2)(b): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 18(3)(a): amended, on 24 May 1999, by section 15(1) of the Estate Duty Repeal Act 1999 (1999 No 64).

Section 18(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

## **19 Review of charges**

- (1) Notwithstanding anything to the contrary in this Act or any other enactment, if the High Court is of the opinion that any commission, fee, or remuneration charged by a trustee company is excessive, that court may reduce the amount of the commission, fee, or remuneration.
- (2) Application for any such reduction of any commission, fee, or remuneration of a trustee company may be made by or on behalf of any person who would receive a greater benefit from the capital or income of the estate out of which the commission, fee, or remuneration is payable in the event of the commission, fee, or remuneration being reduced.
- (3) No application to the court under the foregoing provisions of this section may be made by or on behalf of any person after the expiration of 6 months from the date of delivery to that person of accounts in which are shown the commission, fee, or remuneration to which the application relates.
- (4) When any trustee company, at or after the commencement of this Act, in connection with any estate under its administration or management, lawfully carries on or manages (whether alone or in partnership or through an agent) any business or undertaking, or (through a representative or otherwise) takes any active part in the management or direction of any company, or when any other circumstances have arisen which justify additional remuneration, the trustee company may apply to the High Court to fix, in addition to any commission, fee, or remuneration to which it is otherwise entitled, either an additional fee or an additional commission by way of percentage; and that court may allow to the trustee company such additional fee or additional commission by way of percentage as it thinks fit, having regard to the work, care, skill, and responsibility involved in administering the estate or carrying on or managing or directing the business, undertaking, or company, and the extent of the interest of the estate in the business, undertaking, or company, and the amount of its share in the profits or income therefrom.

Compare: Trustee Companies Act 1958 ss 17, 18 (Vict)

Section 19(1): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 19(4): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).



## **20 Local and special Boards of Directors of trustee companies**

- (1) Any trustee company may from time to time, by resolution of its Board of Directors,—
  - (a) appoint a local Board of Directors in any specified area in New Zealand:
  - (b) in the case of a trustee company that also carries on business other than trust business as empowered by this Act, appoint a special Board of Directors in respect of its trust department:
  - (c) appoint any suitable person as a member of any such local or special board, whether or not he is or has been a member of that board:
  - (d) terminate the appointment of all or any of the members of any such local or special Board of Directors.
- (2) While any such local or special Board of Directors remains in existence, it shall have a seal which shall have the same force and effect as the seal of the company and shall for all purposes be deemed to be the seal of the company.

Compare: 1957 No 36 s 10

Section 20(2): amended, on 13 December 1968, by section 3 of the Trustee Companies Amendment Act 1968 (1968 No 111).

## **21 Delegations to local or special Board of Directors, etc**

- (1) Any trustee company may from time to time, by resolution of its Board of Directors, delegate to any local or special Board of Directors of the company, or to such director or directors or officer or officers or employee or employees of the company, as it thinks fit, all or any of its functions, powers, authorities, discretions, rights, and duties, whether under this Act or any other Act or otherwise howsoever, including any functions, powers, authorities, discretions, rights, and duties delegated to it by or under any enactment or otherwise, and including this present power of delegation:

provided that nothing in this subsection shall authorise the delegation of—

  - (a) the use of the seal of the company otherwise than as authorised by or under any other enactment:
  - (b) the use of the seal of any local or special Board of Directors of the company to any person other than that local or special board or a member or members thereof.
- (2) Subject to any general or special directions given or conditions attached by the trustee company, by resolution of its Board of Directors, the local or special Board of Directors, director, officer, or employee to which or to whom any functions, powers, authorities, discretions, rights, or duties are delegated or subdelegated under this section may exercise, perform, or discharge them in the same manner and with the same effect as if they had been conferred or imposed upon it or him directly by this section and not by delegation or subdelegation:

provided that the local or special Board of Directors, director, officer, or employees shall, in respect of all matters delegated or subdelegated under this section, continue to be under the direction, control, and supervision of the Board of Directors of the company and of every local or special Board of Directors, director, officer, and employee by or through whom the matters were delegated or subdelegated.

- (3) Every local or special Board of Directors, director, officer, and employee of any trustee company purporting to act in the course of its or his duties pursuant to any delegation or subdelegation under this section shall be presumed to be acting in accordance with the terms of the delegation or subdelegation in the absence of proof to the contrary; and no person, court, or Judge shall be concerned to inquire whether or not the delegation or subdelegation has been made; and all things done or omitted by any local or special Board of Directors, director, officer, or employee in the course of its or his duties shall have the same consequences and effect as if they had been done or omitted by the company.
- (4) Any delegation or subdelegation under this section may be made to a specified director or officer or employee or to directors or officers or employees of a specified class, or may be made to the holder or holders for the time being of a specified office or class of offices.
- (5) Every delegation and subdelegation under this section may be revoked or suspended at will, and no such delegation or subdelegation shall prevent the exercise, performance, and discharge of any function, power, authority, discretion, right, or duty by the Board of Directors of the company, or by any local or special Board of Directors, director, officer, or employee by which or whom it was delegated or subdelegated.
- (6) Any such delegation or subdelegation shall, until revoked, continue in force according to its tenor, notwithstanding that all or any of the members of the Board of Directors or local or special Board of Directors, or the director, officer, or employee by which or whom it was made may have ceased to hold office, and shall continue to have effect as if made by the members of the Board of Directors or local or special Board of Directors for the time being in office, or the successor in office of the director, officer, or employee, as the case may be.

Compare: 1957 No 36 s 11

## **22 Appointment of deputies of certain officers**

- (1) In the event of the absence from his headquarters of the person for the time being holding any of the following offices in a trustee company, namely, general manager, assistant general manager, branch manager, or secretary, from whatever cause the absence arises, or on the occurrence from any cause of a vacancy in any such office (whether by reason of death, resignation, retirement, or otherwise), and from time to time while the absence or vacancy continues,

all or any of the functions, powers, authorities, discretions, rights, and duties of the holder of the office or pertaining to the position may be exercised and performed by any other officer or employee of the trustee company for the time being appointed by the company either generally or for any particular occasion to exercise and perform them as a deputy; and any such appointment may be made before the absence or vacancy occurs or while it continues.

- (2) No such appointment and no acts done by any person acting or purporting in good faith to act pursuant to any such appointment shall be questioned by any person, court, or Judge on the ground that the occasion for the deputy to act as such had not arisen or had ceased, or on the ground that the person had not been so appointed.

Compare: 1957 No 36 s 9

### **23 Judicial notice of certain seals, appointments, and signatures**

Notice shall be taken judicially without further proof of—

- (a) the seal of every trustee company and of every local or special Board of Directors of the company; and
- (b) the appointment and signature of every director and manager of any trustee company.

Compare: 1957 No 36 s 12

### **24 Trustee company may evidence and register dealings in land when acting in different capacities**

- (1) Notwithstanding anything in the Land Transfer Act 2017 or the Deeds Registration Act 1908 or any rule of law or other enactment to the contrary, it shall be lawful for any trustee company, in any case where it is registered as the proprietor of any estate or share or interest in land by virtue of its appointment or status as administrator or trustee under this Act or under any other Act or under any will or deed or order or instrument, or in any case where it is otherwise so registered as proprietor, to transfer, assign, convey, mortgage, or lease the estate, share, or interest or any part thereof, or to grant easements in respect of the same, to itself in any other capacity, and to enter into covenants and agreements in respect of any such transaction with itself in the one capacity so as to bind itself in the other capacity as fully and effectually in all respects as if it were a separate person in each capacity, and every such covenant and agreement shall be binding upon or (as the case may be) operative in favour of any assignee of the trustee company taking from it in any such capacity.
- (2) In this section the term **trustee** shall be deemed to include a trustee company in its own corporate capacity, whether as trustee of funds comprised in a Group Investment Fund and the various investments of any such Fund or otherwise howsoever.

- (3) For the purposes of section 153 of the Land Transfer Act 2017 no instrument shall constitute notice of a trust by reason only of its being made by a trustee company in favour of itself.
- (4) Upon any such transfer, assignment, conveyance, mortgage, lease, or grant being registered under the Land Transfer Act 2017 or the Deeds Registration Act 1908, no person thereafter having dealings in respect of the estate, share, or interest or in respect of the transfer, assignment, conveyance, mortgage, lease, or grant shall be affected by any notice of trust contained in or evidenced by the transfer, assignment, conveyance, mortgage, lease, or grant, nor shall any person be concerned to see or inquire whether the trustee company possessed lawful authority to enter into the transaction.

Compare: 1957 No 36 s 127

Section 24(1): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Section 24(1): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

Section 24(3): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Section 24(4): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

## **25 Charges created by trustee companies in a fiduciary capacity**

*[Repealed]*

Section 25: repealed, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

## **26 Registration of shares**

- (1) The entry of a trustee company by its name in the register of shareholders of a company shall not constitute notice of a trust.
- (2) A company shall not be entitled to object to enter the name of a trustee company in its register of shareholders by reason only that the trustee company is a trustee or is a corporation.
- (3) Notwithstanding anything to the contrary in the Companies Act 1993 or any other enactment or rule of law, a trustee company may enter its own name, or the name of any company of which it is a subsidiary, in its register of shareholders in respect of any shares to which the trustee company is entitled in a fiduciary capacity; and the trustee company may hold any such shares:  
provided that no regard shall be had to this subsection in determining whether any such shares are an authorised investment in any case.

Compare: 1957 No 36 s 126(1), (2)

Section 26(3): amended, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

## **27 Sale of goods by auction**

Where any trustee company is realising the goods, chattels, and effects of any estate administered by it, and those goods, chattels, and effects are not in the opinion of the company of greater value than \$5,000, or such higher amount as is prescribed by regulations, and are situated at a distance of more than 10 miles from the usual place of business of a registered auctioneer, those goods, chattels, and effects may be offered for sale by auction by some person to be appointed by the company; and that person, for the purpose of the sale, shall not be required to be a registered auctioneer.

Compare: 1957 No 36 s 102

Section 27: amended, on 18 December 2013, by section 28(3) of the Auctioneers Act 2013 (2013 No 148).

Section 27: amended, on 27 November 2002, by section 4 of the Trustee Companies Amendment Act 2002 (2002 No 48).

## **28 Conditions on which tenant for life may be allowed into possession**

- (1) Subject to any order of the court, where any person is equitable tenant for life of any land comprised in an estate being administered by a trustee company, that person shall not be entitled to the use, occupation, and enjoyment of, or to receipt of the income, rents, issues, and profits of the land, until he has given such undertaking, and (where necessary) such security, as the trustee company may require to comply with such terms and conditions as to keeping the trust property in repair and punctual payment of rates, taxes, insurance premiums, assessments, rents, impositions, and other outgoings, or otherwise, as the trustee company may think fit:

provided that nothing in this subsection shall enable the trustee company to impose any terms and conditions other than those which the court could impose if application were made to it in that behalf.

- (2) Should the person who is in occupation of the land fail to observe any of the duties or obligations attaching to him as such tenant for life or as imposed by the trustee company or the court, or should the trustee company for any other reason consider it necessary or expedient to enter into possession of the said land, the trustee company may, by notice in writing personally delivered to the person or forwarded by registered letter to him at his last known address, direct the person to give up possession of the land on or before a date to be specified in the notice not being less than 1 month from the date thereof.
- (3) Subject to any order of the court, on failure to give up possession of the land on the expiry of the date specified in the notice, the person shall be deemed to be a trespasser, and the trustee company may take the necessary legal proceedings to have the person ejected.
- (4) It shall be no defence to any such proceedings that the person sought to be ejected is an equitable life tenant of the land.

Compare: 1957 No 36 s 108

## Part 2

### Group Investment Funds

#### 29 Group Investment Funds

- (1) A trustee company may from time to time establish and keep in its books 1 or more Funds, each of which shall be called a Group Investment Fund. Where more than 1 Group Investment Fund is so established, each such Fund shall be given an appropriate distinguishing number.
- (2) All funds forming part of any Group Investment Fund shall be invested, as the company which establishes the Group Investment Fund determines at the time when the Fund is established,—
  - (a) in any class or classes of investments authorised by the instrument (if any) creating the trust under which the funds are held; or
  - (b) in accordance with the Trusts Act 2019.
- (3) Subject to the provisions of this section, a trustee company may invest any trust funds in its possession, whether at the time in a state of investment or not, whether they came into its possession before or after the commencement of this Act, whether the trust estate to which they belong is under administration by the trustee company or by any other trustee or trustees, and whether they comprise the whole or part of that trust estate, either—
  - (a) on a separate account in respect of the trust estate to which the funds belong; or
  - (b) if the funds are 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) governing the funds, as part of any Group Investment Fund established and kept in the books of the company.
- (4) Where a trustee company is a co-trustee of any trust funds, those trust funds may be invested as aforesaid in a Group Investment Fund with the consent of every other co-trustee of those trust funds.
- (5) Where so authorised by the power of attorney or other written authority by which it is appointed as agent by any person, and subject to the provisions of this section, a trustee company may invest any funds held by it for that person in, or transfer any investments held by it for that person to, a Group Investment Fund as if they were trust funds.
- (6) Subject to subsection (5), where any funds of a trust estate or person are in the possession or control of a trustee company and are lawfully invested in an investment in which a Group Investment Fund established by the company may be invested, the company may transfer that investment to the Group Investment Fund and give credit in the Fund to the trust estate or person for the fair market value of the investment at the time of the transfer. Upon any invest-

ment being so transferred, it shall cease to belong to the trust estate which, or person who, formerly owned it.

- (7) Investments made from funds forming part of a Group Investment Fund shall not be made on account of or belong to any particular trust estate or person, but the trustee company which established the Fund shall cause to be kept in the books of the company an account showing at all times the entitlement of each trust estate or person in the Fund.
- (8) A trustee company may in its discretion withdraw any amount for the time being to the credit of a trust estate or person in a Group Investment Fund—
- (a) for the purpose of investing the amount on the separate account of the trust estate or person or in another Group Investment Fund; or
  - (b) for any other purpose relating to the exercise and discharge of its duties, powers, authorities, and functions:

provided that the withdrawal of any amount to the credit of a trust estate of which the trustee company is a co-trustee shall be conditional on the consent of every other co-trustee.

- (9) Where amounts are so withdrawn from a Group Investment Fund—
- (a) they may, in the discretion of the trustee company, be paid or provided in cash or rateably in investments, or partly in cash and partly rateably in investments;
  - (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.

Compare: 1960 No 98 s 3

Section 29(2): replaced, on 1 October 1988, by section 14(1) of the Trustee Amendment Act 1988 (1988 No 119).

Section 29(2)(b): amended, on 30 January 2021, by section 161 of the Trusts Act 2019 (2019 No 38).

Section 29(3)(b): amended, on 1 October 1988, by section 14(1) of the Trustee Amendment Act 1988 (1988 No 119).

### **30 Income and capital of Group Investment Fund**

The trustee company which establishes a Group Investment Fund shall—

- (a) pay or allocate the income from that Fund proportionately to or among the trust estates and persons 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:

- (b) hold the capital of the Fund proportionately for the trust estates and persons entitled to the amounts invested in the Fund according to the amounts of their several interests in the Fund.

Compare: 1960 No 98 s 4

### **31 Capital valuation of investments of Fund**

- (1) Each trustee company shall determine the capital value as at at least 1 day in every month of the investments and funds comprising each Group Investment Fund established by it. For the purpose of any such determination, in respect of any security listed on a stock exchange,—
  - (a) a quotation published in respect of similar securities by a stock exchange on the day as at which the determination is made, or (if there is no such quotation on that day) at any time within 7 days before that day, shall be conclusive evidence of the value of the security, including accrued interest (if any), as on the date of the determination; and the capital value of the security shall be determined accordingly by making such adjustment (if any) as the company thinks proper in respect of accrued interest;
  - (b) if there is no such quotation, a valuation by a person authorised to undertake trading activities on the stock exchange shall be conclusive evidence of that value.
- (2) No investment in or withdrawal from a Group Investment Fund shall be made, except—
  - (a) on a day of the month as at which a determination is made or within 2 business days after it; and
  - (b) on the basis of the valuation as at that date.
- (3) On a withdrawal from a Group Investment Fund, interest shall be allowed, in accordance with paragraph (a) of section 30, to the day of the month as at which a determination is made nearest to the date of the withdrawal.
- (4) In this section, **stock exchange** has the same meaning as in section 2(1) of the Companies Act 1993.

Section 31: replaced, on 19 March 1990, by section 2 of the Trustee Companies Amendment Act 1990 (1990 No 16).

Section 31(1)(b): amended, on 1 December 2002, by section 30 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 31(4): inserted, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

### **31A Capital valuation of Fund comprising investments in real estate**

- (1) Where the investments comprising a Group Investment Fund consist principally of investments in real property the trustee company which established the Fund shall determine as at a date not later than 6 months after the preceding determination the capital value of the investments and funds of that Fund.



- (2) Where reasonable grounds exist for believing that the capital value of any investment in the Fund has, or may have, altered significantly, the trustee company shall forthwith determine the capital value of that investment and shall redetermine the capital value of the Fund accordingly.
- (3) No investment in or withdrawal from such a Fund shall be made except—
  - (a) on the day of the month as at which the determination is made or within 2 business days after it; and
  - (b) on the basis of the valuation as at that date.
- (4) On a withdrawal from the Fund, income shall be allowed in accordance with paragraph (a) of section 30, to the day as at which the determination is made.

Section 31A: inserted, on 19 March 1990, by section 2 of the Trustee Companies Amendment Act 1990 (1990 No 16).

### **32 Reimbursement of expenses**

- (1) A trustee company may reimburse itself out of a Group Investment Fund for all reasonable expenses incurred by it in the management or administration of the Fund.
- (2) A trustee company must make such initial disclosure and ongoing disclosure of any reimbursement of expenses as is prescribed by regulations made under this Act.

Section 32: replaced, on 1 July 2003, by section 5(1) of the Trustee Companies Amendment Act 2002 (2002 No 48).

### **32A Management fees**

- (1) Subject to subsection (2), a trustee company may charge, demand, receive, or retain a reasonable fee or other remuneration for services rendered by it in the management or administration of a Group Investment Fund (a **management fee**).
- (2) A trustee company may charge, demand, receive, or retain a management fee in respect of any estate money invested in a Group Investment Fund only if—
  - (a) it makes initial disclosure to persons with a present interest in that money in accordance with regulations made under this Act; or
  - (b) regulations made under this Act dispense with the requirement for initial disclosure; or
  - (ba) a product disclosure statement in relation to the investment of that money in the fund has been lodged in accordance with the requirements of Part 3 of the Financial Markets Conduct Act 2013 and regulations made under that Act; or
  - (c) an investment statement in relation to the investment of that money in the Fund has been issued in accordance with the requirements of sections 33 and 37A of the Securities Act 1978 and regulations made under that Act.

- (3) A trustee company must make ongoing disclosure of any management fee charged or retained in accordance with regulations made under this Act.
- (4) The ongoing disclosure must be made at the time of the issue by the trustee company of the financial statements of the estate in question, or at such other time as may be prescribed by the regulations.
- (5) In this section, **estate money** means money that is part of any property administered or held, managed, or controlled by the trustee company, whether as administrator or other trustee or as guardian, committee, manager, liquidator, receiver, agent, or attorney, or in any other capacity.

Section 32A: inserted, on 1 July 2003, by section 5(1) of the Trustee Companies Amendment Act 2002 (2002 No 48).

Section 32A(2)(ba): inserted, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

### **33 Powers of trustee company in respect of Funds**

Subject to the provisions of this Part, a trustee company may exercise in respect of the investments and funds comprising a Group Investment Fund—

- (a) all the powers which it could exercise under the Trusts Act 2019 if the investments and funds were trust property not forming part of a Group Investment Fund:
- (b) such further powers as may be conferred on the company by the court, being powers which could be conferred on the company by the court if the investments and funds were trust property not forming part of a Group Investment Fund.

Compare: 1960 No 98 s 7

Section 33(a): amended, on 30 January 2021, by section 161 of the Trusts Act 2019 (2019 No 38).

### **33B Powers of trustee company or manager to adjust interest in trust property of Fund that is portfolio investment entity**

Where any investments and funds comprising a Group Investment Fund are employed in an activity that the trustee company is empowered or authorised to carry on as a portfolio investment entity, the trustee company or the manager of the Fund may adjust the interests of the beneficiaries in the property in the way required by section HL 7 of the Income Tax Act 2004 despite any other provision in this Act or in any instrument creating the trust under which the investments and funds are held.

Section 33B: inserted, on 1 October 2007, by section 244 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

### **33C Trustee company may not make regulated offer of managed investment products in certain group investment funds**

- (1) A trustee company may not make a regulated offer of managed investment products in a group investment fund established by it under this Part if the fund was established after the date on which this section comes into force.

- (2) Nothing in subsection (1) affects the rights, powers, and duties of a trustee company under sections 29 to 33B.
- (3) In this section, **regulated offer** and **managed investment products** have the same meanings as in section 6(1) of the Financial Markets Conduct Act 2013.

Section 33C: inserted, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

### **34 Examination of Group Investment Funds**

- (1) A solicitor or an accountant authorised in writing by an interested person is entitled to examine at any reasonable time the accounts, books, and vouchers of the Group Investment Fund that relate to—
  - (a) the investments and funds comprising the Group Investment Fund; and
  - (b) the income of the fund; and
  - (c) the expenses and management fees payable out of the fund; and
  - (d) the proportion to which the person who required the examination, or the estate in which the person is a beneficiary, is entitled.

- (2) In this section, **interested person** means a person who has—

- (a) an entitlement in the Group Investment Fund; or
- (b) an interest in an estate that has an entitlement in the fund.

Compare: 1956 No 61 s 83A; 1967 No 35 s 34

Section 34: replaced, on 30 January 2021, by section 161 of the Trusts Act 2019 (2019 No 38).

### **35 Duties, etc, of trustee companies not affected by this Part of Act**

Except as otherwise expressly provided in this Part, nothing in this Part shall affect the rights, powers, and duties of trustee companies.

Compare: 1960 No 98 s 9

## **Part 3**

### **Elections to administer and certificates of administration**

#### **36 Power of trustee companies to elect to administer small estates without grant of administration**

- (1) Where any person has died intestate or testate, whether in or out of New Zealand and whether before or after the commencement of this Act, leaving property situated in New Zealand to be administered, the gross value of which as estimated by any trustee company does not at the time of the election hereinafter mentioned exceed \$120,000, or such higher amount as is prescribed by regulations, and no person has obtained a grant of administration in New Zealand, the trustee company, in any case where it would be entitled to obtain such a grant, may, in accordance with this section, instead of obtaining such a grant, file in the High Court an election in writing, under the seal of the company or

of a local or special Board of Directors of the company, to administer the estate of the deceased person.

- (2) On any such election being filed, the trustee company shall be deemed to be the executor of the will or the administrator of the estate, as the case may be, in like manner and to the same extent in all respects as if administration had been duly granted to it.
- (3) Every such election shall set forth the name, residence, and occupation of the deceased so far as they are then known to the trustee company, and the date of the death of the deceased and the property situated in New Zealand of the deceased as then known.
- (4) The election shall contain in every case where the deceased died intestate a statement to that effect, and in every case where the deceased died testate a statement that after due inquiries the trustee company believes that the document annexed to the election is the testator's last will (or an exemplification thereof where administration has been granted out of New Zealand) and that the will has been validly executed according to the law governing the execution of wills.
- (5) No such election may be filed under this section unless there is endorsed thereon a certificate by a solicitor (whether in the employment of the company or not) that (as the case may require) he is satisfied that the court would, on application duly made, grant to the trustee company—
  - (a) probate of the will to which the election relates; or
  - (b) letters of administration with the will to which the election relates annexed; or
  - (c) letters of administration of the estate of the deceased person without a will annexed.
- (6) Any such election to administer shall be filed in the registry of the High Court in which an application for a grant of administration of the will or estate of the deceased person is required to be filed.
- (7) If after filing any such election as aforesaid the gross value of the property situated in New Zealand to be administered is found to exceed the sum of \$150,000, or such higher amount as is prescribed by regulations, the trustee company shall as soon as practicable thereafter file in the registry of the High Court in which the election to administer was filed a memorandum under the seal of the company or of a local or special Board of Directors of the company stating the fact; and shall thereupon proceed in the ordinary manner to obtain a grant of administration in New Zealand; and for that purpose may uplift from the court any will or exemplification filed with the election.
- (8) An election may be filed under this section relating to a written informal will to which subpart 3 of Part 2 of the Wills Act 2007 or the Wills Amendment Act 1955 applies. This section does not apply to any other informal will.

Compare: 1957 No 36 s 72

Section 36(1): amended, on 27 November 2002, by section 6(1) of the Trustee Companies Amendment Act 2002 (2002 No 48).

Section 36(1): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 36(1): amended, on 13 October 1972, by section 3(a) of the Trustee Companies Amendment Act 1972 (1972 No 28).

Section 36(6): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 36(7): amended, on 27 November 2002, by section 6(2) of the Trustee Companies Amendment Act 2002 (2002 No 48).

Section 36(7): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 36(8): replaced, on 1 November 2007, by section 41 of the Wills Act 2007 (2007 No 36).

### **37 Elections in respect of unadministered balance of an estate**

- (1) Where a grant of administration (in this section referred to as **the original grant**) has been made in New Zealand in respect of the estate of any deceased person (in this section referred to as **the original estate**) and the persons to whom the original grant or any substituted grant of administration was made have died, whether before or after the commencement of this Act, leaving part of the original estate unadministered, and the gross value of the property situated in New Zealand so left unadministered, as estimated by the trustee company at the time of the election hereinafter mentioned, does not exceed the sum of \$120,000, or such higher amount as is prescribed by regulations, and no person has since the death of the last administrator taken out letters of administration *de bonis non* in New Zealand in respect of the original estate, the trustee company may, in accordance with this section, instead of applying for an order to administer *de bonis non* in New Zealand, file in the registry of the High Court out of which the original grant was issued an election in writing under the seal of the company or of a local or special Board of Directors of the company setting forth the fact of the original grant, the death of the executors or other administrators, and the particulars of the property situated in New Zealand so left unadministered, and electing to administer the part of the original estate so left unadministered.
- (2) On the election being filed, the trustee company shall be deemed to be administrator of the original estate left unadministered in like manner and to the same extent in all respects as if an order to administer *de bonis non* had been duly granted to it.
- (3) No such election may be filed under this section unless there is endorsed thereon a certificate by a solicitor (whether in the employment of the company or not) that he is satisfied that the court would, on application duly made, grant to the trustee company an order to administer *de bonis non* in respect of the part of the original estate so left unadministered.
- (4) If after the filing of any such election the gross value of the property situated in New Zealand to be administered by the trustee company is found to exceed the

sum of \$150,000, or such higher amount as is prescribed by regulations, the trustee company shall, as soon as practicable thereafter, file in the said registry of the High Court a memorandum under the seal of the company or of a local or special Board of Directors of the company stating the fact, and shall thereupon proceed in the ordinary manner to obtain in New Zealand an order to administer *de bonis non* (either with or without the will annexed, as the case may be) in respect of the said estate, and for that purpose may uplift from the court any will or exemplification filed with the election.

Compare: 1957 No 36 s 73

Section 37(1): amended, on 27 November 2002, by section 7(1) of the Trustee Companies Amendment Act 2002 (2002 No 48).

Section 37(1): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 37(4): amended, on 27 November 2002, by section 7(2) of the Trustee Companies Amendment Act 2002 (2002 No 48).

Section 37(4): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

### **38 Commissioner of Inland Revenue to be notified of filing of election**

Every trustee company shall notify the Commissioner of Inland Revenue in the form required by the Commissioner in all cases where it files an election under section 36 or section 37.

### **39 Operation of election to administer as regards property overseas**

In determining the value of the property of any person that is situated in New Zealand for the purposes of the foregoing provisions of this Part, that property shall not include or be deemed to include property situated out of New Zealand at the time of the filing of any election to administer, whether or not the property may afterwards be transferred to New Zealand (whether to the trustee company or to any other person) in due course of administration, whether for the purposes of distribution to the persons beneficially entitled thereto or otherwise howsoever; but in all other respects every election referred to in the foregoing provisions of this Part shall extend and apply to and include the property situated out of New Zealand in the same manner and to the same extent in all respects as a grant of administration obtained by the trustee company would in the circumstances of each particular case extend or apply to or include that property.

Compare: 1957 No 36 s 74

### **40 Revocation of elections filed in error**

- (1) Where any trustee company has, pursuant to any of the provisions of this Part, filed an election to administer the estate of a deceased person, and the trustee company subsequently discovers that the election is invalid or ineffective by reason of the discovery of a will or a later will, or of the revocation or invalidity of a will, or for any other reason, then and in any such case the company

may file in the registry of the High Court in which the election to administer was filed a memorandum under the seal of the company or of a local or special Board of Directors of the company setting out the facts and certifying that the election already filed is invalid or ineffective.

- (2) Upon any such memorandum being filed, the election to administer previously filed shall cease to be of any effect whatsoever, and thereafter an application for administration may be made or a fresh election may be filed in all respects as if the election to administer previously filed had not been filed.

Compare: 1957 No 36 s 76

Section 40(1): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

#### 41 Court fees payable on elections, etc

- (1) The fee payable to the Registrar of the High Court for the filing of any election under this Part shall be such amount as may from time to time be prescribed by the Governor-General by Order in Council.
- (2) A copy of any such election certified as a correct copy under the seal of the High Court or a Registrar thereof shall be equivalent to an exemplification of that election for all purposes, and the only fee payable in respect thereof shall be a sealing fee of such amount as may be so prescribed.
- (3) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1957 No 36 s 77

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#### Legislation Act 2019 requirements for secondary legislation made under this section

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 41(1): amended, on 7 October 1983, by section 3(1) of the Trustee Companies Amendment Act 1983 (1983 No 25).

Section 41(1): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 41(2): amended, on 7 October 1983, by section 3(2) of the Trustee Companies Amendment Act 1983 (1983 No 25).

Section 41(2): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 41(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7)

#### 42 Certificate by trustee company as to its legal status in any matter

- (1) Where the trustee company is executor or other administrator or is by law authorised to administer the estate of any deceased person, or where it is acting

as trustee, guardian, manager, agent, attorney, liquidator, committee, or receiver, or in any other capacity, a certificate by the company under the seal of the company or of a local or special Board of Directors of the company stating, in the case of a deceased person, the name, residence, and occupation of the deceased person at the time of his death, and the date of his death, and certifying that the trustee company has obtained a grant of probate or an order to administer or is otherwise authorised to administer the estate and stating the date when the probate or order to administer was granted or the manner in which and the time at which the trustee company became authorised to administer and, in any case where the trustee company is acting as trustee, guardian, manager, agent, attorney, liquidator, committee, receiver, or in any other capacity, certifying that the trustee company is authorised to act as such trustee, guardian, manager, agent, attorney, liquidator, committee, or receiver or in any other capacity, and stating the manner in which and the time at which it became so authorised to act shall, notwithstanding any law or statutory provision to the contrary, be accepted by all courts, officers, and persons, whether acting under any Act or not, as sufficient evidence in the case of a deceased person of the death of that person, and of the appointment of the trustee company as executor or other administrator, and of its right to administer, and in any of the other cases mentioned of the trustee company's right to act, without any other proof whatsoever.

- (1A) In any case where a trustee company is acting jointly with another person in any of the capacities mentioned in subsection (1), a certificate issued in accordance with the provisions of that subsection by the company under the seal of the company or of a local or special Board of Directors of the company shall, notwithstanding any enactment or law to the contrary, be accepted by all courts, officers, and persons, whether acting under any Act or not, as sufficient evidence of the facts set out and authorised to be set out therein, and of the appointment of the trustee company and that other person, and of their right to administer or act, without any other proof whatsoever. It shall not be necessary for the certificate to be executed by any person with whom the trustee company is acting. References in subsection (2) to a trustee company shall be deemed to include references to a trustee company and any person or persons with whom the trustee company is acting.
- (2) In every case where a trustee company acquires title by operation of law in respect of any estate or interest in any land under the Land Transfer Act 2017, or of any mining privilege under the Mining Act 1926, or of any shares, stock, or property in any bank, company, body, or association, an appropriate certificate under this section shall be sufficient evidence that the company has so acquired the title; and no Registrar-General of Land, or Mining Registrar, or bank, or company, or body, or association to which any such certificate is produced shall be concerned to inquire concerning the trusts on which the trustee company holds any such land or mining privilege or shares or stock or property or as to its authority to transfer or deal with it. In the case of land under the



Deeds Registration Act 1908, the certificate shall be equivalent for registration purposes to the probate, order to administer, election to administer, trust instrument, order, power of attorney, or other document or authority under which the trustee company is acting, and it shall not be necessary to register the probate, order to administer, trust instrument, order, power of attorney, or other document or authority.

- (3) A statement of the purport of any trust instrument, order, power of attorney, or other document or authority in any assurance, certificate, or instrument by a trustee company under the seal of the company or of a local or special Board of Directors of the company shall be sufficient evidence thereof, and no one shall be concerned to inquire beyond that statement.

Compare: 1957 No 36 s 78

Section 42(1): amended, on 13 December 1968, by section 4(1) of the Trustee Companies Amendment Act 1968 (1968 No 111).

Section 42(1A): inserted, on 13 December 1968, by section 4(2) of the Trustee Companies Amendment Act 1968 (1968 No 111).

Section 42(2): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

#### **43 Consequential amendment**

*[Repealed]*

Section 43: repealed, on 1 January 1971, by section 84(1) of the Administration Act 1969 (1969 No 52).

## **Part 4 Trustee companies protection**

#### **44 Application of this Part**

- (1) The Minister may from time to time, by notice in the *Gazette*, apply this Part to any trustee company or trustee companies specified in the notice, and this Part shall apply only to those trustee companies to which it is for the time being so applied by the Minister.
- (2) Any notice given under subsection (1) may be at any time revoked by the Minister by notice in the *Gazette*.
- (3) No notice applying this Part to any trustee company shall be given except pursuant to a resolution passed by the Board of Directors of that trustee company, and transmitted to the Minister.
- (4) Every notice given under this section shall have effect according to its tenor, and shall come into force on a date to be specified therein in that behalf (being not earlier than the date of the notice).
- (5) For the purposes of this section the interests of the persons beneficially interested in the property held in trust or administered by a trustee company shall be the paramount consideration in determining whether this Part should be applied

to that company. Where, having regard to those interests in relation to any trustee company,—

- (a) the Board of Directors of the company has reason to believe that it is desirable that this Part should be applied to that company, that board shall forthwith make a request to the Minister to that effect:
- (b) the Minister is satisfied that such a request should be granted, he shall forthwith apply this Part to that company.

Compare: 1934–35 No 52 s 3

Section 44(1): amended, on 1 October 1995, by section 10(3) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Section 44(2): amended, on 1 October 1995, by section 10(3) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Section 44(3): amended, on 1 October 1995, by section 10(3) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Section 44(5): inserted, on 13 October 1972, by section 5 of the Trustee Companies Amendment Act 1972 (1972 No 28).

Section 44(5)(a): amended, on 1 October 1995, by section 10(3) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Section 44(5)(b): amended, on 1 October 1995, by section 10(3) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

#### **45 Certificate to accompany applications for and transfers of shares**

Every application for shares in a trustee company to which this Part applies, and every transfer of shares in any such trustee company that is lodged with the trustee company for registration, shall be accompanied by a certificate by the applicant or transferee (as the case may be) in form 1 of Schedule 2 or to the effect thereof, and no shares in any such trustee company shall be allotted, nor shall any transfer of shares in any such trustee company be registered, unless the application or transfer, as the case may be, is accompanied by such a certificate.

Compare: 1934–35 No 52 s 4

#### **46 Voting at general meetings of shareholders**

- (1) At any general meeting of shareholders in a trustee company to which this Part applies, the chairman of the meeting may, before calling for a show of hands or taking a poll, require each shareholder or any shareholder or shareholders present in person to sign and lodge with him a certificate in writing in form 2 of Schedule 2. No shareholder who, upon being required by the chairman of the meeting to sign and lodge such a certificate, refuses or neglects so to do, or refrains from so doing, shall be entitled to vote either upon a show of hands or upon a poll on any resolution submitted to that meeting.
- (2) No vote by any person acting on behalf of any shareholder at any general meeting of shareholders in a trustee company to which this Part applies shall be valid unless the vote is given under the authority of a proxy in writing under

the hand of that shareholder complying with the constitution of the trustee company, accompanied by a certificate by that shareholder in form 3 of Schedule 2.

- (3) In the case of shares in a trustee company to which this Part applies belonging to the estate of any deceased person, or to any estate which is being administered under the Mental Health Act 1969, or the Protection of Personal and Property Rights Act 1988, the registered holder or other persons entitled to vote in respect of the shares shall not be deemed, for the purposes of any certificate to be signed by him under this section, to have given any undertaking or to be under any obligation to the beneficiary or beneficiaries of the estate as to the exercise of his voting or other rights or powers in respect of the shares.
- (4) Any person who signs for the purposes of this Part a false certificate commits an offence, and is liable on conviction to a fine of \$200.

Compare: 1934–35 No 52 s 6

Section 46(2): amended, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 46(3): amended, on 1 October 1988, pursuant to section 113 of the Protection of Personal and Property Rights Act 1988 (1988 No 4).

Section 46(3): amended, on 1 April 1970, pursuant to section 129(1) of the Mental Health Act 1969 (1969 No 16).

Section 46(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **47 Certificates for purposes of this Part not to constitute notice of any trust**

No trustee company to which this Part applies or to which this Part or the Trustee Companies Protection Act 1934–35 has at any time applied, nor any person dealing with the shares of any such company, nor the Registrar of Companies, shall be affected by notice of any trust, whether express, implied, or constructive, by reason of any information which may have been contained in any certificate made under any of the provisions of this Part or any declaration made under the corresponding provisions of the Trustee Companies Protection Act 1934–35.

Compare: 1934–35 No 52 s 7

## **Part 5 Miscellaneous provisions**

### **47A Regulations**

- (1) The Governor-General may by Order in Council make regulations prescribing—
- (a) amounts for the purposes of sections 15(3), 27, 36(1), 36(7), 37(1), and 37(4):

- (b) for the purposes of any initial disclosure or ongoing disclosure of expenses and management fees in relation to a Group Investment Fund required by sections 32 and 32A,—
- (i) the persons to whom the disclosures must be made; and
  - (ii) when they must be made; and
  - (iii) the information to be disclosed:
- (c) such other matters as may be contemplated by or necessary or desirable for the purposes of this Act.
- (2) Regulations made under subsection (1)(b) may—
- (a) prescribe different disclosure requirements for different classes of investment or fund or investor;
  - (b) dispense with disclosure requirements in appropriate cases, whether because of the temporary nature of an investment or for other good reason, and specify conditions to which any dispensation from disclosure requirements may be subject;
  - (c) specify the consequences of any failure to disclose or late disclosure (which may include a prohibition on the charging or reimbursing of any fees or expenses until disclosure is made);
  - (d) prescribe acceptable manners of notification, and prescribe when notification will be treated as having been received;
  - (e) make special provision in relation to existing funds within the meaning of section 5(2) of the Trustee Companies Amendment Act 2002.
- (3) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 47A: inserted, on 27 November 2002, by section 8 of the Trustee Companies Amendment Act 2002 (2002 No 48).

Section 47A(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

## 48 Repeals

The enactments specified in Schedule 3 are hereby repealed.

## Schedule 1

### Deposits by trustee companies

s 6(2)

**Name of company**

**Nature and amount of deposit**

Schedule 1: amended, on 1 May 2002, by section 16(1) of the Trustees Executors Limited Act 2002 (2002 No 2 (P)).

Schedule 1: amended, on 1 September 1991, by section 14(1) of the New Zealand Permanent Trustees Limited Act 1991 (1991 No 2 (P)).

Schedule 1: amended, on 1 May 1989, by section 19(3) of the PGG Trust Limited Act 1989 (1989 No 1 (P)).

Schedule 1: amended, on 1 April 1988, by section 14(1) of the AMP Perpetual Trustee Company Act 1988 (1988 No 1 (P)).

Schedule 1: amended, on 1 April 1983, by section 20(3) of the New Zealand Guardian Trust Company Act 1982 (1982 No 3 (P)).

**Schedule 2****Forms**

## Form 1

Certificate to accompany every application for or transfer of shares

s 45

I, [name], of [specify], [specify], do hereby certify, with reference to the shares in the [name of company] mentioned in the accompanying application (or transfer)—

- \* (a) that the shares have been or are being purchased or otherwise acquired (or are applied for) by me in my own right and on my own behalf absolutely, and that the consideration (if any) for the transfer of, or the money payable to the company for, the said shares has been or is to be provided exclusively out of my own property or money, and that no other person or persons, or corporation or corporations, has or have or is or are intended to have any right, title, or interest in or control over the said shares or any of them, and that I have not given or agreed to give to any other person or persons, or corporation or corporations, any undertaking (whether legally binding or not), and that I am not now nor is it contemplated that I shall be under any obligation, as to the exercise of any voting or other rights or powers to which the holder of the said shares or any of them may at any time be or become entitled; or
- \* (b) that I am applying for or acquiring the said shares as trustee or nominee for [name, address, and occupation, in full], and that to the best of my knowledge, information, and belief the said [specify] will be (or is) beneficially entitled to the said shares; or
- \* (c) that the money or other consideration paid or to be paid by me in respect of the said shares applied for or acquired by me has been provided or lent, or agreed to be provided or lent, by [name, address, and occupation, in full].

\*The person signing the certificate must strike out and initial any provisions that are not applicable. If the person signing the certificate is applying for or acquiring shares in different rights, a separate form should be used for each group.

Date:

[Signature of shareholder]

Witness:

Form 2

Certificate which a shareholder may be called upon to sign before voting

s 46

I, *[name]*, of *[specify]*, *[specify]*, do hereby certify that I have not sold or charged or otherwise parted with or agreed to sell or charge or otherwise part with my *[specify]* shares numbered *[specify]* to *[specify]* in the *[name of company]* or any of them, or given or agreed to give to any other person or persons, or corporation or corporations, any undertaking (whether legally binding or not) as to the exercise of any voting or other rights or powers to which the holder of the said shares or any of them may at any time be or become entitled, nor am I under any obligation of any kind whatsoever in respect of the exercise of any such rights or powers.

Date:

*[Signature of shareholder]*

Witness:

Form 3  
Certificate to accompany proxy

s 46

I, *[name]*, of *[specify]*, *[specify]*, do hereby certify that up to the time of signing the accompanying proxy on *[date]*, in favour of *[specify]* to vote on my behalf in respect of my *[specify]* shares numbered *[specify]* to *[specify]* in the *[name of company]*, I had not nor have I since sold, or charged, or otherwise parted with or agreed to sell, or charge, or otherwise part with, the said shares or any of them or given or agreed to give to any other person or persons, or corporation or corporations, any undertaking (whether legally binding or not) as to the exercise or delegation of any voting or other rights or powers to which the holder of the said shares or any of them may at any time be or become entitled, nor am I under any obligation of any kind whatsoever in respect of the exercise of any such rights or powers.

Date:

*[Signature of shareholder]*

Witness:



### Schedule 3 Enactments repealed

s 48

**Administration Act 1952 (1952 No 56) (1957 Reprint, Vol 1, p 56)**

*Amendment(s) incorporated in the Act(s).*

**Administration Amendment Act 1958 (1958 No 55)**

**East Coast Permanent Trustees Limited Act 1962 (1962 No 5 (P))**

*Amendment(s) incorporated in the Act(s).*

**Guardian, Trust, and Executors Company Act 1883 (1883 No 2 (P))**

*Amendment(s) incorporated in the Act(s).*

**Guardian, Trust, and Executors Company Amendment Act 1911  
(1911 No 17 (L))**

*Amendment(s) incorporated in the Act(s).*

**New Zealand Insurance Company Trust Act 1916 (1916 No 1 (P))**

*Amendment(s) incorporated in the Act(s).*

**Perpetual Trustees, Estate, and Agency Company Act 1884 (1884 No 1 (P))**

*Amendment(s) incorporated in the Act(s).*

**Pyne, Gould, Guinness (Limited) Trust Act 1934 (1934 No 3 (P))**

*Amendment(s) incorporated in the Act(s).*

**Trustee Companies Act 1960 (1960 No 98)**

**Trustee Companies Protection Act 1934–35 (1934–35 No 52)  
(1957 Reprint, Vol 16, p 233)**

**Trustees, Executors, and Agency Company Act 1882 (1882 No 4 (P))**

*Amendment(s) incorporated in the Act(s).*

**Trustees, Executors, and Agency Company Act 1882 Amendment Act 1884  
(1884 No 2 (P))**

*Amendment(s) incorporated in the Act(s).*

**Unit Trusts Act 1960 (1960 No 99)**

*Amendment(s) incorporated in the Act(s).*

## Trustee Companies Amendment Act 2002

Public Act	2002 No 48
Date of assent	26 November 2002
Commencement	see section 2

### 1 Title

- (1) This Act is the Trustee Companies Amendment Act 2002.
- (2) In this Act, the Trustee Companies Act 1967 is called “the principal Act”.

### 2 Commencement

- (1) This Act comes into force on the day after the date on which it receives the Royal assent, except for section 5.
- (2) Section 5 comes into force on a day to be fixed by the Governor-General by Order in Council.

Section 2(2): section 5 brought into force, on 1 July 2003, by clause 2 of the Trustee Companies Amendment Act Commencement Order 2003 (SR 2003/120).

### 5 New sections 32 and 32A substituted

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Subsections (3) to (5) apply in respect of funds (**existing funds**) invested in a Group Investment Fund before the date on which regulations prescribing initial disclosure requirements for funds invested in a Group Investment Fund (the **disclosure regulations**) come into force.
- (3) Nothing in section 32 of the principal Act prevents any reimbursement of expenses in respect of existing funds before initial disclosure has been made, except to the extent otherwise provided in the disclosure regulations.
- (4) A trustee company may not, however, charge, demand, receive, or retain any management fees under section 32A of the principal Act in respect of any existing funds until it has made initial disclosure of the fees in accordance with the disclosure regulations, except in circumstances where—
  - (a) section 32A(2)(c) applies (investment statement under the Securities Act 1978); or
  - (b) the disclosure regulations dispense with the requirement for initial disclosure of management fees.
- (5) The making of initial disclosure in respect of any existing funds does not authorise the charging of a management fee in relation to services rendered in respect of those existing funds during any period prior to the date of the initial disclosure, except as otherwise provided in the disclosure regulations.

## Notes

### **1** *General*

This is a consolidation of the Trustee Companies Act 1967 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

### **2** *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

### **3** *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

### **4** *Amendments incorporated in this consolidation*

Secondary Legislation Act 2021 (2021 No 7): section 3

Trusts Act 2019 (2019 No 38): section 161

Land Transfer Act 2017 (2017 No 30): section 250

Auctioneers Act 2013 (2013 No 148): section 28(3)

Companies Amendment Act 2013 (2013 No 111): section 14

Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): section 150

Criminal Procedure Act 2011 (2011 No 81): section 413

Securities Trustees and Statutory Supervisors Act 2011 (2011 No 10): section 76

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

Wills Act 2007 (2007 No 36): section 41

Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81): sections 243, 244

Insolvency Act 2006 (2006 No 55): section 445

Trustees Executors Limited Amendment Act 2006 (2006 No 2 (P)): section 10

Local Government Act 2002 (2002 No 84): section 266

Trustee Companies Amendment Act 2002 (2002 No 48)

Securities Markets Amendment Act 2002 (2002 No 44): section 30

Trustees Executors Limited Act 2002 (2002 No 2 (P)): sections 16(1)

Public Trust Act 2001 (2001 No 100): section 152(1)

Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49): section 337(1)

Estate Duty Repeal Act 1999 (1999 No 64): section 15(1)  
Department of Justice (Restructuring) Act 1995 (1995 No 39): section 10(3)  
New Zealand Permanent Trustees Limited Act 1991 (1991 No 2 (P)): sections 14, 16  
Trustee Companies Amendment Act 1990 (1990 No 16)  
PGG Trust Limited Act 1989 (1989 No 1 (P)): section 19  
Trustee Amendment Act 1988 (1988 No 119): section 14(1)  
Protection of Personal and Property Rights Act 1988 (1988 No 4): section 113  
AMP Perpetual Trustee Company Act 1988 (1988 No 1 (P)): sections 14, 15  
Trust Companies Amendment Act 1983 (1983 No 25)  
New Zealand Guardian Trust Company Act 1982 (1982 No 3 (P)): section 20  
Judicature Amendment Act 1979 (1979 No 124): section 12  
Trustee Companies Amendment Act 1979 (1979 No 51)  
Trustee Companies Amendment Act 1972 (1972 No 28)  
Administration Act 1969 (1969 No 52): section 84(1)  
Mental Health Act 1969 (1969 No 16): section 129(4)  
Trustee Companies Amendment Act 1968 (1968 No 111)