

Version  
as at 28 October 2021



## Trustee Companies Management Act 1975

Public Act      1975 No 25  
Date of assent    15 August 1975  
Commencement    see section 1(2)

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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 Business, Innovation, and Employment.**

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**Provisions of Companies Act 1955 which do not apply to  
companies to which this Act applies**

*[Repealed]*

**An Act to make special provision for the protection of persons who have beneficial interests, or interests as depositors or contributors, in property or funds administered by trustee companies and their associated companies to which this Act is applied, and for matters incidental thereto**

**1 Short Title and commencement**

- (1) This Act may be cited as the Trustee Companies Management Act 1975.
- (2) This Act shall be deemed to have come into force at 7.30 pm on 14 August 1975.

**2 Interpretation**

- (1) In this Act, unless the context otherwise requires,—

**associated company**, in relation to any trustee company, means a company which under subsection (2) is deemed to be associated with that trustee company

**board of directors or board**, in relation to any trustee company or other company to which this Act applies, means the board of directors thereof appointed under section 5

**depositor** includes a person who invests in any group investment fund of a trustee company or an associated company or in any other scheme or arrangement for investment by a trustee company or an associated company on behalf of others, whether on a contributory or agency basis or otherwise

**estate** means any property administered or held, managed, or controlled in a fiduciary capacity by a trustee company or associated company, whether as administrator or other trustee or as guardian, committee, manager, liquidator,

receiver, agent, or attorney, or in any other capacity; and includes a group investment fund and any other scheme or arrangement for investment by a trustee company or associated company on behalf of others, whether on a contributory or agency basis or otherwise

**High Court** or **court** means the High Court of New Zealand

**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

**trustee** means a trustee within the meaning of section 9 of the Trusts Act 2019

**trustee company** means a trustee company within the meaning of section 2 of the Trustee Companies Act 1967.

- (2) For the purposes of section 3 a company is associated with another company if those companies would be associated with each other under subpart YB of the Income Tax Act 2007.

Compare: 1958 No 23 s 2(2)

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

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

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

Section 2(1) **trustee**: amended, on 30 January 2021, by section 161 of the Trusts Act 2019 (2019 No 38).

Section 2(2): replaced, on 1 April 2010, by section 861 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

### 3 Application of Act

- (1) This Act shall apply to—
- (a) the AMP Perpetual Trustee Company N.Z. Limited as from the commencement of this Act:
  - (b) any other trustee company to which this Act is applied by Order in Council made under subsection (3) from the date specified in that Order in Council:
  - (c) any other company (being a company that is associated with a trustee company to which this Act applies or is being applied) to which this Act is applied by Order in Council made under subsection (3) from the date specified in that Order in Council.
- (2) This Act may be applied to any trustee company or company that is associated with a trustee company notwithstanding that it has been dissolved or struck off the register; and no trustee company to which this Act applies shall be struck off the register after the commencement of this Act unless the prior consent in writing of the board of directors for the time being of the trustee company is given to the Registrar of Companies.

- (3) Where it is desirable for the protection of any beneficiary under any trust administered by any trustee company or by any company that is associated with a trustee company to which this Act applies or is being applied, or for the protection of any depositors, or creditors (whether secured or unsecured) of any such trustee company or associated company, or it is otherwise in the public interest, that the provisions of this Act should apply to the trustee company or associated company and the said beneficiaries, depositors, or creditors, or the public interest cannot be adequately protected under the Companies Act 1993 or under any other enactment or law, the Governor-General, on the advice of the Minister, may by Order in Council declare that from the date specified therein the provisions of this Act shall apply to that trustee company or associated company, whether it is incorporated in New Zealand or elsewhere; and in this subsection the terms **trustee company** and **company** include, as the case requires, any trustee company or company that has been dissolved or struck off the register.
- (4) An order under this section 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 3(1): amended, on 1 April 1988, pursuant to section 4(1) of the AMP Perpetual Trustee Company Act 1988 (1988 No 1 (P)).

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

Section 3(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

#### 4 Moratorium

- (1) The provisions of this section shall apply in relation to any trustee company or associated company during the period of 12 months after the commencement of the application of this Act to that trustee company or associated company or until such date (whether before or after expiry of that period) as the Minister may for the time being specify by notice in the *Gazette*.
- (2) No person who has deposited or entrusted any money with any trustee company or associated company to which this Act applies for investment, whether in a group investment fund, or on a separate account, or in separate securities, or on a contributory or agency basis, or otherwise, shall, while this section applies to that trustee company or associated company,—
- (a) bring or continue any action or proceeding, or exercise any other power, right, or remedy against that trustee company or associated company for

recovery or repayment thereof notwithstanding that he may have made or be entitled to make demand therefor, or that the time for repayment (whether fixed by contract or otherwise) may have arrived; or

- (b) issue any execution, attach any debt, or otherwise enforce or seek to enforce any security or any judgment or order obtained against that trustee company or associated company; or
- (c) petition for the winding up of that trustee company or associated company; or
- (d) enter into possession, sell, appoint a receiver, or exercise or continue the exercise of any power or right under or in pursuance of any mortgage, charge, debenture, instrument, or other security relating to his investment:

provided that, with the consent of the board, an action or proceeding may be brought against the trustee company or associated company for the purpose of determining whether any right or liability exists.

- (3) No person having power to appoint a new trustee in place of that trustee company or associated company shall while this section applies to that trustee company or associated company exercise that power without the consent of the court or the board of directors of that trustee company or associated company.
- (4) While this section applies to any trustee company or associated company to which this Act applies, the court shall not give that consent, or make an order appointing a new trustee (whether under any Act or otherwise) in place of that trustee company or associated company, or removing that trustee company or associated company as trustee of any estate, unless either—
  - (a) the board of directors consents; or
  - (b) the court is satisfied that there are extraordinary reasons which justify the making of that appointment or order and that the need to account to the new trustee for the assets of the estate will not strain unduly the liquidity of the trustee company or associated company.

Section 4(1): amended, on 9 December 1976, by section 2 of the Trustee Companies Management Amendment Act 1976 (1976 No 127).

Section 4(2)(d): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

## **5 Directors of company to which Act applies**

- (1) Upon the commencement of the application of this Act to any trustee company or associated company, the directors thereof holding office immediately prior thereto, including the directors of any local board, shall go out of office.
- (2) During the period while this Act continues to apply to any trustee company or associated company no directors thereof may be appointed to act during that period otherwise than in accordance with this section or section 11.

- (3) Notwithstanding anything to the contrary in any other Act or instrument, while this Act applies to any trustee company the directors thereof shall be a board of directors comprising—
- (a) in the case of the AMP Perpetual Trustee Company N.Z. Limited—
- (i) 2 persons appointed by the Minister, of whom one shall be a chartered accountant and the other shall be a barrister or solicitor:
- (ii) the Secretary to the Treasury:
- (iii) *[Repealed]*
- (iv) 2 or more other persons appointed by the Minister:
- (b) in any other case not fewer than 5 persons appointed by the Minister.
- (4) The Minister shall appoint one of the appointed members to be chairman of the board of directors.
- (5) Every appointed member shall hold office at the pleasure of the Minister.
- (6) The powers of the board shall not be affected by any vacancy in its membership.
- (7) An appointed member may at any time resign his office by notice in writing to the Minister.
- (8) Any vacancy in the board may be filled in the same manner as the appointment of the member vacating office.

Section 5(3)(a): amended, on 1 April 1988, pursuant to section 4(1) of the AMP Perpetual Trustee Company Act 1988 (1988 No 1 (P)).

Section 5(3)(a)(iii): repealed, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

## **6 Meetings of board**

- (1) Meetings of the board shall be held at such times and places as the chairman or the board appoints.
- (2) At every meeting of the board 3 members shall be a quorum.
- (3) The chairman shall preside at every meeting at which he is present, and in his absence the members present shall elect one of their number to preside at that meeting.
- (4) On every question before a meeting of the board the chairman or other person presiding shall have a deliberative vote, and in the case of an equality of votes he shall also have a casting vote.

## **7 Conduct of business while Act applies to company**

- (1) While this Act applies to any trustee company or associated company it shall not be lawful or competent for any manager or other person to be engaged in the management or conduct of that trustee company or associated company or its property, or to act as its agent or servant, save with the permission of the board and so far as that permission extends.

- (2) In the case of any company not incorporated in New Zealand, being a company to which this Act applies, the provisions of this section shall not apply to its property outside New Zealand.

## **8 Termination of contract of agency or service**

The board of any trustee company or associated company to which this Act applies may at any time terminate any contract of service or agency between the trustee company or associated company and any person who is a servant or agent thereof, notwithstanding that by law apart from this Act the trustee company or associated company could not have so terminated the contract until some future date; and where a contract is so terminated under this section the trustee company or associated company shall thereupon be discharged from the further performance of the contract, and from all liability for subsequent non-performance of the contract:

provided that after the termination of his contract the person may, within 6 months of receiving notice of the termination, apply to the High Court for compensation in respect of the contract; and that court may award such compensation in respect of the contract as it considers just and reasonable having regard to the value of the consideration provided by the person, and to all amounts and benefits which the person has received under the contract, and to the conduct of the parties.

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

## **9 Duties and functions of board**

- (1) In the exercise in relation to any trustee company or associated company to which this Act applies of the powers and functions conferred upon the board of that trustee company or associated company by this Act, it shall be the duty of the board to take possession of and protect the property of that trustee company or associated company, and to manage and carry on its business, having due regard to the rights and interests of all beneficiaries, depositors, creditors, and shareholders.
- (2) Nothing in this section shall limit the powers expressly conferred upon the board by section 10.

## **10 Powers of board**

Notwithstanding anything to the contrary in any Act or instrument, the board of any trustee company or associated company to which this Act applies shall have—

- (a) all such powers, authorities, rights, privileges, and immunities as the directors of that trustee company or associated company would have if this Act did not apply thereto:

- (b) power to sell the business of that trustee company or associated company as a going concern, or to sell all or any part of the property of that trustee company or associated company that is used for the purposes of its business;
- (c) all such powers as are conferred upon it by regulations made under section 25.

## **11 Local boards of directors**

The board of directors appointed under section 5 in respect of any trustee company to which this Act applies may appoint local boards of directors of that trustee company in accordance with the provisions of section 20 of the Trustee Companies Act 1967:

provided that any such appointment may make provision for withholding a seal from the local board to which the appointment relates, or may specify the circumstances in which the seal of the local board may be used, or may impose conditions or restrictions on its use including a requirement that prior confirmation or supervision be obtained.

## **12 Delegations**

Without restricting the generality of the powers, whether derived under this Act or any other enactment or instrument or in any other way, of the board appointed under section 5 of any trustee company to which this Act applies, any such board may revoke any delegation previously made under section 21 of the Trustee Companies Act 1967, and make such delegation as it thinks fit under that section.

## **13 Duty to deliver books and property to board**

- (1) It shall be the duty of all persons having possession and control of,—
  - (a) any books or records or documents or other property, whatsoever and wheresoever situated, of any trustee company or associated company incorporated in New Zealand to which this Act applies; or
  - (b) any books or records or documents, whatsoever and wheresoever situated, relating to the property in New Zealand of any trustee company or associated company not incorporated in New Zealand to which this Act applies; or
  - (c) any property in New Zealand of any trustee company or associated company not incorporated in New Zealand to which this Act applies,—

forthwith after the passing of this Act in the case of the trustee company specified in section 3(1)(a), or forthwith after the first board of directors is appointed under section 5 in respect of any other trustee company or associated company to which this Act applies, to deliver or yield up possession of all such books, records, documents, or other property as aforesaid to the board or its authorised agent.



- (2) If any person fails for 14 days to comply with the requirements of subsection (1), he commits an offence, and is liable on conviction to a fine not exceeding \$500 and to a further fine not exceeding \$10 for every day after the expiration of those 14 days during which the offence has continued.
- (3) If any person fails to comply with the requirements of subsection (1), the board concerned may at any time certify the failure to the court (whether or not an offence has been committed under subsection (2)), and the court may thereupon inquire into the matter of the failure and, after hearing any witnesses who may be produced against or by or on behalf of the alleged offender, and after hearing any statement which may be offered in defence, may punish the offender in like manner as if he were liable to punishment under subpart 4 of Part 2 of the Contempt of Court Act 2019 for breach of a court order.
- (4) It shall be no defence to any proceedings under this section that the person in possession or control of any property as aforesaid is or was a trustee of the property for any trustee company or associated company incorporated in New Zealand to which this Act applies or entitled to a lien or other charge over the property, or was a receiver appointed in accordance with the Receiverships Act 1993.
- (5) The rights of any person who, in accordance with this section, delivers any property to the board in respect of any trustee company or associated company incorporated in New Zealand to which this Act applies or its authorised agent shall continue while this Act continues to apply to the trustee company or associated company as if the person had not so delivered the property; and when this Act ceases to apply to the trustee company or associated company, subject to the provisions of this Act and unless the court otherwise orders, the property shall be returned to the person who delivered it or to someone who derives a right to possession of the property from that person. The provisions of this subsection shall apply whether the person who delivers the property is a receiver appointed in accordance with the Receiverships Act 1993, or a person entitled to a lien or charge in respect of the property, or any other person having any rights whatsoever in respect thereof.

Section 13(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 13(3): amended, on 26 August 2020, by section 29 of the Contempt of Court Act 2019 (2019 No 44).

Section 13(4): amended, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 13(5): amended, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

#### **14 Protection of board, etc**

- (1) For the purposes of this Act the board in respect of any trustee company or associated company to which this Act applies, in the exercise of its powers and functions under this Act, shall have all the privileges and be entitled to the

same protection as a director has under any rule of law or under any Act or pursuant to the articles of the trustee company or associated company.

- (2) No such board nor any member thereof shall be liable for any acts done by it when in good faith in the exercise of its or his powers and functions as the board or a member thereof, and every such board and member shall be indemnified out of the property of the trustee company or associated company in respect of all liabilities properly incurred.
- (3) No action or proceeding shall be brought or commenced against any such board or member except by leave of the court and subject to such terms as the court may impose.

## 15 Expenses of administration

All costs, charges, and expenses properly incurred by a board appointed under section 5 or any local board appointed under section 11 in the exercise, in relation to any trustee company or associated company to which this Act applies, of its powers and functions (including such fees, commission, or other remuneration as may be approved by the Minister in respect of the services of the board) shall be payable out of the assets of that trustee company or associated company in priority to all other claims.

## 16 Determination of management

- (1) Every trustee company and associated company to which this Act applies shall remain subject to this Act from the time when this Act first applies thereto until the Governor-General, by Order in Council, declares that this Act shall cease to apply thereto, whether or not there is for the time being a board in office in respect thereof.
- (2) An order under this section 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 16(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

## 17 Report to Minister

- (1) As soon as practicable after its establishment, the first board of directors appointed under section 5 in respect of any trustee company or associated company to which this Act applies shall report to the Minister on the affairs of that trustee company or associated company showing, as at the date of its appointment, the particulars of the assets, debts, and liabilities of the trustee company

or associated company, and such further or other information as the board thinks fit or the Minister requires.

- (2) The statement of affairs shall be accompanied by any comments that the board sees fit to make thereon.
- (3) At the end of each 6-monthly period after its appointment the board shall report to the Minister on the financial affairs of the trustee company or associated company and its management thereof.
- (4) In each period of 12 months and within 1 month after the determination of its appointment, the board shall submit a statement of accounts, duly audited, showing in detail its receipts and payments in respect of that company.
- (5) A copy of every report and financial statement presented to the Minister pursuant to this section shall be lodged by the board with the Registrar of Companies.

#### **18 Claims by beneficiaries against company**

- (1) Except with the consent of the High Court, no person who has or had a beneficial interest in property or funds at any time administered by any trustee company or associated company to which this Act applies (any such person being hereafter in this section referred to as a **beneficiary**) shall bring or maintain any action or other legal proceedings against the trustee company or associated company in respect of any breach or alleged breach of trust arising before the commencement of the application of this Act to that trustee company or associated company.
- (2) Subject to any directions that may be given by the High Court, it shall be the duty of the board to investigate the affairs of any trustee company or associated company to which this Act applies to ensure that its business has been conducted in a lawful manner.
- (3) If the board is satisfied that any such trustee company or associated company has been in breach of its fiduciary duties and it is satisfied that there is a common question of law or of fact affecting the several rights of all or any of the beneficiaries and a common relief is sought, it may bring an action or other legal proceedings in the name of the company against the company on behalf of all such beneficiaries and it shall not be necessary to make those beneficiaries parties to or join them in the action.
- (4) Any proceedings brought under this section may claim relief in respect of 1 or more causes of action.
- (5) In the conduct of proceedings to which this section applies, the High Court may make such orders as are appropriate for all or any of the following purposes:
  - (a) the separate representation of any class or classes of beneficiaries:
  - (b) determining the course of proceedings:

- (c) prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument:
  - (d) requiring, for the protection of the beneficiaries or otherwise for the fair conduct of the action, that notice be given to any person of the action, and the proposed extent or effect of the judgment:
  - (e) consenting to other persons intervening and presenting claims or defences or otherwise coming into the action on such conditions as the court thinks just:
  - (f) dealing with other procedural matters.
- (5A) Where the court is satisfied that the amount that could be recovered under a judgment given against a company under this section would be more than the net worth of the company, the court may at any time (whether at the time the judgment is given or thereafter) make an order determining that the maximum amount that can be recovered under the judgment is the amount that the court considers is the net worth of the company as a going concern (including any unpaid capital and any other amount liable to be contributed by the shareholders to the company in the event of the winding up thereof).
- (6) Every judgment given in an action brought under this section shall be final and binding on every beneficiary as if he had brought the action in his own name.
- (7) Where any judgment has been given under this section (whether before or after the commencement of the Trustee Companies Management Amendment Act 1987), the board shall so far as practicable settle a list of beneficiaries entitled to participate to the extent of \$100 or more in the amount recovered under the judgment and their respective amounts.
- (7A) For the purpose of settling a list of beneficiaries so entitled, the board may, if it thinks fit, advertise for claims by beneficiaries; and in any such case the board shall not be required to include in the list any beneficiary who has not lodged a claim with the board within such period after the date of the last publication of the advertisement as shall be fixed by the court unless the board has funds recovered under the judgment that are available for distribution to beneficiaries and is satisfied that there is reasonable excuse for the failure to lodge a claim within that period.
- (7B) If the amounts of the entitlements of beneficiaries exceed the amount recovered under the judgment, those amounts shall reduce rateably.
- (7C) The board shall not advertise for claims under subsection (7A) unless the court has approved the form and content of the advertisements, the manner of advertising, and the dates of publication.
- (7D) The board shall not be required to calculate the exact amount of the entitlement of a beneficiary under this section but may calculate the amount of the entitlement as near to the exact amount as the board considers reasonable having regard to the amount of the claim and the costs involved in its calculation.

- (8) If any balance of the amount payable under the judgment remains undistributed, that balance shall be paid or applied for charitable purposes in accordance with a scheme prepared by the board and approved by the court.
- (9) Any such scheme prepared by the board shall be submitted to the High Court for approval with notice to such persons as that court directs.
- (10) The High Court may, after hearing the board and such other persons to whom notice has been given, approve such scheme as in its opinion is fair and just having regard to all the circumstances.

Section 18(1): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 18(2): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 18(5): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 18(5A): inserted, on 5 October 1978, by section 11 of the Trustee Companies Management Amendment Act 1978 (1978 No 39).

Section 18(7): replaced, on 10 July 1987, by section 2(1) of the Trustee Companies Management Amendment Act 1987 (1987 No 157).

Section 18(7A): inserted, on 10 July 1987, by section 2(1) of the Trustee Companies Management Amendment Act 1987 (1987 No 157).

Section 18(7B): inserted, on 10 July 1987, by section 2(1) of the Trustee Companies Management Amendment Act 1987 (1987 No 157).

Section 18(7C): inserted, on 10 July 1987, by section 2(1) of the Trustee Companies Management Amendment Act 1987 (1987 No 157).

Section 18(7D): inserted, on 10 July 1987, by section 2(1) of the Trustee Companies Management Amendment Act 1987 (1987 No 157).

Section 18(8): replaced, on 10 July 1987, by section 2(2) of the Trustee Companies Management Amendment Act 1987 (1987 No 157).

Section 18(9): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 18(10): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

### **18A Provisions apply to Perpetual Trustees Substitute Company Limited**

Notwithstanding anything contained in section 18, unless the board in its absolute discretion otherwise decides, no person shall be entitled to participate in the amount recovered under any judgment against Perpetual Trustees Substitute Company Limited under that section in respect of any breach of trust by the Perpetual Trustees Estate and Agency Company of New Zealand (Limited) that occurred before 14 August 1960.

Section 18A: inserted, on 10 July 1987, by section 3 of the Trustee Companies Management Amendment Act 1987 (1987 No 157).

### **19 Prohibition on certain claims against other trustee companies**

- (1) This section shall apply to any money deposited with or entrusted to a trustee company (not being a trustee company to which this Act applies) for invest-

ment in a group investment fund, or on separate account, or in separate securities, or on a contributory or agency basis.

- (2) No money to which this section applies shall be demanded by any person, and no action shall be commenced or continued to enforce the payment of any such money, while this section is operative.
- (3) This section shall be operative—
  - (a) during 4 months from the commencement of this Act; and
  - (b) during 4 months from the commencement of the application of this Act to any trustee company by any Order in Council made under section 3(3).

## **20 Offence to destroy or alter records**

- (1) If any former director, or any director, or any officer, servant, or agent of any trustee company or associated company to which this Act applies or any other person,—
  - (a) with intent to defeat the purposes of this Act, destroys or alters any book, document, or record of or relating to the trustee company or associated company, or sends or attempts to send or conspires with any other person to send out of New Zealand any such book, document, or record, or any property of any description belonging to or in the disposition or under the control of the said trustee company or associated company; or
  - (b) fails or refuses to answer to the best of his knowledge and ability any question which he may be asked by the board in relation to any such book or document or record or property, or wilfully gives a false answer to any such question,—

he commits an offence and is liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$5,000 or both.

- (2) If in any prosecution for an offence alleged to have been committed against this section it is proved that the person charged with the offence has destroyed or altered any book, document, or record as aforesaid, or has sent or attempted to send or conspired to send out of New Zealand any such book, document, or record, or any other thing, the onus of proving that in so doing he had not acted in contravention of this section shall lie on him.
- (3) *Amendment(s) incorporated in the Act(s).*
- (4) Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, a charging document may be filed at any time in respect of an offence against this section.

Section 20(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 20(4): inserted, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## **21 Duty to report offences, etc**

If it appears to the board of any trustee company or associated company to which this Act applies that any person has been guilty of any offence against this Act, or of a breach of trust or any other offence in relation to that trustee company or associated company, it shall report the matter to the Solicitor-General.

## **22 Advances of fees of boards, etc**

- (1) With the consent of the Minister of Finance, there may be advanced, out of public money appropriated by Parliament for the purpose, to any members of a board appointed under section 5 or section 11 in respect of any trustee company or associated company to which this Act applies, such amounts as the Minister may approve in respect of remuneration or allowances due to that member or expenses incurred by that member as such.
- (2) All money so advanced to any such person shall be refunded to the Crown out of money payable to that board in respect of the trustee company or associated company, and the Crown shall have all the rights of the board to which the advance was made to receive and recover such money.
- (3) The Minister of Finance may, on behalf of the Crown, guarantee pursuant to the Public Finance Act 1989 the repayment of any money borrowed by the board for the payment of any general expenses (including salaries) payable in the exercise of its functions by the board while it has insufficient revenue for the payment thereof and the payment of interest on any money so borrowed.

Section 22(1): amended, on 1 July 1989, by section 86(1) of the Public Finance Act 1989 (1989 No 44).

Section 22(2): amended, on 1 July 1989, by section 86(1) of the Public Finance Act 1989 (1989 No 44).

Section 22(3): amended, on 1 July 1989, by section 86(1) of the Public Finance Act 1989 (1989 No 44).

Section 22(3): amended, on 1 April 1978, by section 160(1) of the Public Finance Act 1977 (1977 No 65).

## **23 Special advances to companies**

- (1) The Minister of Finance may advance money, or guarantee pursuant to the Public Finance Act 1989 the advance of money with or without securities, to the board of any trustee company or associated company to which this Act applies.
- (2) The Minister of Finance may advance money, or guarantee pursuant to the Public Finance Act 1989 the advance of money with or without securities, to the board for the repayment of the money borrowed by way of overdraft from the National Bank of New Zealand Limited by the AMP Perpetual Trustee Company N.Z. Limited in respect of its group investment funds.
- (3) On the repayment of the last mentioned money the National Bank of New Zealand Limited shall surrender to the board the securities deposited with the bank by the company as part of the transaction between them.

- (4) The National Bank of New Zealand Limited shall be indemnified by the Crown for any loss suffered or occasioned by the said bank by reason of the repayment of money under subsection (1).

Section 23(1): amended, on 1 July 1989, by section 86(1) of the Public Finance Act 1989 (1989 No 44).

Section 23(1): amended, on 1 April 1978, by section 160(1) of the Public Finance Act 1977 (1977 No 65).

Section 23(2): amended, on 1 July 1989, by section 86(1) of the Public Finance Act 1989 (1989 No 44).

Section 23(2): amended, on 1 April 1988, pursuant to section 4(1) of the AMP Perpetual Trustee Company Act 1988 (1988 No 1 (P)).

Section 23(2): amended, on 1 April 1978, by section 160(1) of the Public Finance Act 1977 (1977 No 65).

## 24 Application of Companies Act 1993

- (1) The board in respect of any trustee company or associated company to which this Act applies shall notify the Registrar of Companies of the commencement and termination of the application of this Act to the trustee company or associated company.
- (2) Nothing in sections 120, 196 to 209B, and 214 of the Companies Act 1993 applies to a trustee company or an associated company to which this Act applies.
- (3) Nothing in the Receiverships Act 1993 applies to a trustee company or an associated company to which this Act applies.
- (4) Nothing in the Companies Act 1993 requires the board of a trustee company or an associated company to which this Act applies to file any annual or other return under that Act in respect of that company.

Section 24 heading: amended, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 24(2): replaced, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 24(3): replaced, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 24(4): inserted, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

## 24A Application of Financial Reporting Act 1993

*[Repealed]*

Section 24A: repealed, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

## 25 Regulations

- (1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:



- (a) conferring on the board of directors of any trustee company or associated company to which this Act applies such powers as are necessary for the due administration of any property belonging to or administered by that trustee company or associated company:
  - (b) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.
- (2) Regulations made under paragraph (a) of subsection (1) may be so made as to apply generally to the boards of all trustee companies and associated companies to which this Act applies or to 1 or more of them.
- (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 25(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

**Schedule**  
**Provisions of Companies Act 1955 which do not apply to companies  
to which this Act applies**

*[Repealed]*

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

## Notes

### **1** *General*

This is a consolidation of the Trustee Companies Management Act 1975 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

Contempt of Court Act 2019 (2019 No 44): section 29

Trusts Act 2019 (2019 No 38): section 161

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

Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102): section 126

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

Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34): section 861

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

Public Trust Act 2001 (2001 No 100): section 170(1)

Department of Justice (Restructuring) Act 1995 (1995 No 39): section 10(3)

Public Finance Act 1989 (1989 No 44): section 86(1)

AMP Perpetual Trustee Company Act 1988 (1988 No 1 (P)): section 4(1)

Trustee Companies Management Amendment Act 1987 (1987 No 157)

Judicature Amendment Act 1979 (1979 No 124): section 12

Trustee Companies Management Amendment Act 1978 (1978 No 39)

Public Finance Act 1977 (1977 No 65): section 160(1)

Trustee Companies Management Amendment Act 1976 (1976 No 127)

