

UNIT TRUSTS BILL

EXPLANATORY NOTE

This Bill makes provision in the public interest for regulating the operations of unit trusts. It is to apply to existing unit trusts; and its commencement is being delayed until 1 April 1961 so as to allow time to make any arrangements which may be necessary to enable existing unit trusts to conform with the legislation.

The object of the Bill is to give investors in unit trust schemes a measure of protection substantially similar to that enjoyed by shareholders of companies. In addition, because many investors in unit trust schemes are unlikely to have sufficient experience to watch adequately over their own interests, the Bill places certain supervisory functions in the hands of the trustee of the scheme.

The Bill contains three main groups of provisions designed to achieve this object:

- (a) Provisions requiring that the company managing the trust scheme shall make the fullest practicable disclosure concerning the scheme and its operations to the unit holders, the general public, and the trustee:
- (b) Provisions to ensure that there shall always be a reputable and competent trustee holding the property that is the subject of the trust:
- (c) Provisions giving the trustee power to intervene in the interests of unit holders should the situation require it, e.g., by calling on the manager company to retire or by summoning a meeting of unit holders with power to give directions to the trustee. It is not intended that the trustee should be required to supervise the ordinary operations of the manager or in any way guarantee its investments.

Clauses 1 and 2 relate to the Short Title, commencement, and interpretation of the Bill. Note especially the definition of the term "unit trust" which provides the key to the Bill.

Clause 3 declares that every unit trust shall have a manager and a trustee. The company that is the manager of any unit trust has the powers of management of the investments and other property that are subject to the trusts governing that unit trust; and has the function (whether as principal or by an agent) of issuing or offering interests in the unit trust to the public for subscription or purchase, or of inviting the public to subscribe for or purchase such interests. It is to be liable for its acts and omissions in the exercise of its powers and functions as if it were a trustee.

The corporation that is the trustee of a unit trust must have vested in it the investments and other property that are for the time being subject to the trusts governing the unit trust. The manager and the trustee must not both be under the control of the same persons.

Clause 4 provides that every manager of a unit trust shall be a public company; and that no company shall be appointed as manager of a unit trust unless it has a capital for the time being issued of not less than £20,000, of which not less than £15,000 has been paid up.

Clause 5 declares that no corporation or other person shall act as trustee of a unit trust, except a trustee corporation within the meaning of the Trustee Act 1956, or a bank or company approved by the Minister.

Clause 6 provides that, before any interest in a unit trust is issued or offered to the public, the manager of the unit trust shall, within the immediately preceding 13 months, have issued a statement in writing which shall set out the matters specified in the Schedule to the Bill. Forms of application for an interest in a unit trust are to be accompanied by a copy of the statement that has been issued within the immediately preceding 13 months. Certain of the provisions of the Companies Act 1955 are to apply to every statement so issued as if it were a prospectus, and certain provisions of that Act are to apply to interests in unit trusts as if they were shares.

Clause 7 prohibits the issue or offer to the public of any interest in a unit trust unless provision has been made in a deed for the appointment of a trustee and for other prescribed matters, and unless the Registrar has approved the provisions of the trust deed and an authenticated copy thereof has been lodged with the District Registrar.

Clause 8 requires the manager of each unit trust to lodge an authenticated copy of the trust deed in respect thereof with the District Registrar.

Clause 9 declares that the manager of a unit trust shall not have power to remove the trustee thereof, but may apply to the Court for an order providing for the removal of that trustee. The Minister is authorised to remove a trustee whose appointment he has approved, or to apply to the Court for the removal of any trustee. Except as aforesaid, a trustee of a unit trust cannot retire or be discharged from that trust until another trustee has been appointed.

Clause 10 requires the trustee to cause proper books of account to be kept, and to cause to be sent annually an audited statement to every unit holder.

Clause 11 sets out a number of provisions for the protection of unit holders that are to be implied in every trust deed relating to a unit trust. The provisions are enforceable by the trustee and any unit holder.

Clause 12 provides for the issue of a certificate in respect of each interest in a unit trust that is subscribed for or purchased.

Clause 13 provides for the manager of a unit trust to pay to a separate bank account all amounts subscribed or paid in respect of interests in the unit trust. Except where investments have been lodged with the trustee in anticipation, the manager must pay to the trustee, within such period not exceeding seven days as is specified in the trust deed, all amounts which the manager and its agents receive from subscribers for and purchasers of interests in the unit trust, less proper deductions for commission, etc.

Clause 14 declares that all amounts subscribed, less proper deductions, become subject to the trusts declared in the deed governing the unit trust.

Clause 15 declares that the trust deed in respect of each unit trust shall state the conditions for buying back interests in the unit trust.

Clause 16 declares that every interest in a unit trust shall be transferable. An exception is made where the unit trust is exclusively or principally for the purpose of providing superannuation benefits for unit holders.

Clause 17 declares that the chairman of a meeting of unit holders of a unit trust shall be a nominee of the trustee; and that a three-quarters majority of the unit holders who are present at a meeting, and who own at least one-quarter of the total interests held by unit holders in the unit trust, may give directions to the trustee. The trustee is protected if it follows directions so given, but can apply to the Court for guidance.

Clause 18 makes provision for the removal of the manager of a unit trust by the trustee or the Court.

Clause 19 requires the manager of a unit trust to file an annual statement of accounts, etc., with the District Registrar. Notice must be given to the District Registrar of any change of trustee or manager.

Clause 20 provides for the appointment of inspectors of the affairs of any unit trust and its manager and confers on them certain powers of inspection under the Companies Act 1955.

Clause 21 enables the Court to confer on either the trustee or the manager of a unit trust any powers which it could confer on a trustee under section 64 (1) of the Trustee Act 1956.

Clause 22 authorises the trustee of a unit trust to appoint a temporary manager thereof if a vacancy occurs in the office of manager. If such a vacancy occurs the trustee is required to call a meeting of unit holders.

Clause 23 declares that the trustee and the manager of a unit trust shall each have the same duty to observe care and diligence as any other trustee. They cannot be exempt from this duty by the trust deed.

Clause 24 declares that certain contraventions of the legislation shall be offences. It is also made an offence for a person who has been convicted of a crime involving dishonesty to act, without the consent of the Minister of Justice, as a director, officer, or responsible employee of a company that is the manager of a unit trust.

Clause 25 declares that in the winding up of a company that is manager of a unit trust the Court may assess damages against a delinquent director of the company. Cf. section 321 of the Companies Act 1955.

Clause 26 provides for the making of regulations for the purposes of the Bill.

Clause 27 amends the Trustee Companies Protection Act 1934 so as to extend that Act to certain companies approved by the Minister that are acting as trustees within the meaning of this Bill.

Clause 28 provides for the alteration of the trust deeds of existing unit trusts so as to conform with this Bill.

Hon. Mr Mason

UNIT TRUSTS

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A BILL INTITULED

An Act to provide for regulating the operations of unit trusts

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

1. Short Title and commencement—(1) This Act may be cited as the Unit Trusts Act 1960.

(2) This Act shall come into force on the 1st day of April, nineteen hundred and sixty-one.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Bank” means a bank within the meaning of the Banking Act 1908:

“Company” means a company within the meaning of the Companies Act 1955: 5

“District Registrar”, in relation to any unit trust, means the District Registrar of Companies in the district where the company that is the manager of the unit trust is registered: 10

“Interest in a unit trust” means a beneficial interest in the money, investments, and other property that are subject to the trusts governing that unit trust:

“Manager”, in relation to a unit trust, means the company (howsoever it is described) in which is vested the powers and functions of the manager of a unit trust under this Act: 15

“Minister” means the Minister of Justice:

“Registrar” means the Registrar of Companies; and includes the Deputy Registrar of Companies: 20

“Trust” means a trust within the meaning of the Trustee Act 1956:

“Trust deed”, in relation to any unit trust, means the trust deed that sets out the trusts governing the unit trust; and includes every instrument that varies those trusts, or affects the powers, duties, or functions of the trustee or manager of the unit trust: 25

“Trustee”, in relation to any unit trust, means the trustee in which is vested the money, investments, and other property that are for the time being subject to the trusts governing the unit trust: 30

“Unit holder”, in relation to any unit trust, means any person (other than the manager) who is the lawful holder of a certificate evidencing that he has an interest in the unit trust; and includes a purchaser of or a subscriber for such an interest who is entitled to have a certificate issued to him in accordance with section 12 of this Act: 35

“Unit trust” means any scheme or arrangement, whether made before or after the commencement of this Act, that is made for the purpose or has the effect of providing facilities for the participation, as beneficiaries 40

under a trust, by subscribers or purchasers as members of the public, in income and gains (whether in the nature of capital or income) arising from the money, investments, and other property that are for the time being subject to the trust, and also providing for the bearing by them of losses so arising; but does not include—

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- (a) A trust for the benefit of debenture holders; or
(b) The Common Fund of the Public Trustee; or
10 (c) The Common Fund of the Maori Trustee; or
(d) Any Group Investment Fund established under the Trustee Companies Act 1960; or
(e) Any friendly society registered under the Friendly Societies Act 1909.
- 15 (2) Section 63 of the Companies Act shall apply to interests in a unit trust as if they were shares.

3. Unit trust to have manager and trustee—(1) There shall be a manager and a trustee of every unit trust.

(2) Subject to the provisions of this Act, the company that
20 is the manager of any unit trust—

- (a) Shall have vested in it the powers of management of the investments and other property that are subject to the trusts governing that unit trust; and
(b) Shall have the function (whether as principal or by an agent) of issuing or offering interests in the unit
25 trust to the public for subscription or purchase, or of inviting the public to subscribe for or purchase such interests, or both of those functions; and
(c) Shall have the same liability for its acts and omissions
30 in the exercise of its powers and functions as manager of the unit trust as it would if it exercised those powers and functions as a trustee.

(3) Subject to the provisions of this Act, the trustee of a unit trust shall have vested in it the investments and other
35 property that are for the time being subject to the trusts governing the unit trust.

(4) No trustee corporation or company or bank shall act as trustee of a unit trust, and no company shall act as manager of a unit trust if, under section 3 of the Land and Income Tax
40 Act 1954, the manager or proposed manager and the trustee corporation or company or bank acting or proposed as trustee are deemed to be under the control of substantially the same persons or to consist of substantially the same shareholders.

4. Restriction as to manager—(1) Every manager of a unit trust shall be a company other than a private company within the meaning of the Companies Act 1955.

(2) No company shall be appointed as manager of a unit trust unless it has a capital for the time being issued of not less than twenty thousand pounds, of which not less than fifteen thousand pounds has been paid up.

5. Restrictions as to trustee—Every trustee of a unit trust shall be—

- (a) A trustee corporation within the meaning of the Trustee Act 1956; or
- (b) A company or bank approved for that purpose by the Minister either generally or in respect of a particular unit trust.

6. Prospectus—(1) Before any interest in a unit trust is issued or offered to the public for subscription or purchase, or the public is invited to subscribe for or purchase such an interest, the manager of the unit trust shall, within the immediately preceding thirteen months, have issued a statement in writing setting out the matters specified in the Schedule to this Act.

(2) It shall not be lawful to issue any form of application for any interest in a unit trust unless the form is issued with a statement in respect of the unit trust that complies with the requirements of this section and the statement was issued within the immediately preceding thirteen months:

Provided that this subsection shall not apply if it is shown that the form of application was issued either—

- (a) In connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the interests in the unit trust; or
- (b) In relation to interests in the unit trust which were not offered to the public.

(3) Every statement that is issued pursuant to the foregoing provisions of this section, and every notice, circular, advertisement, or other invitation offering to the public for subscription or purchase any interest in a unit trust, shall be deemed to be a prospectus within the meaning of section 2 of the Companies Act 1955 and to have been issued by the manager; and section 55 of the Companies Act 1955, subsection (2) of section 457 of that Act, and all the provisions of that Act

and all other enactments and rules of law relating to prospectuses and to liability in respect of statements in and omissions from prospectuses shall, with the necessary modifications, apply accordingly as if the interests in the unit trust were 5 shares, and the required contents of any prospectus were those specified in the Schedule to this Act.

(4) This section shall not apply in connection with any interest in a unit trust at any time after that interest has first been subscribed for or purchased by a member of the 10 public.

7. Appointment of trustee—No manager of a unit trust, and no person as agent of such a manager, shall issue or offer to the public for subscription or purchase any interest in a unit trust, or invite the public to subscribe for or purchase 15 such an interest, unless—

- (a) Provision has been made in a deed for the appointment of a trustee of the unit trust and for such other matters as are prescribed by this Act and by any regulations made thereunder; and
- 20 (b) A trustee eligible in accordance with section 5 of this Act has accepted appointment as trustee of the unit trust and has executed the trust deed; and
- (c) The trust deed has been approved for the purposes of this Act by the Registrar and an authenticated copy thereof has been lodged with the District Registrar 25 as required by section 8 of this Act.

8. Copy of deed to be lodged with District Registrar—

(1) Notwithstanding anything to the contrary in section 125 of the Companies Act 1955, the manager of each unit trust shall 30 lodge an authenticated copy of the trust deed in respect thereof and of every amendment of that deed with the District Registrar.

(2) Every such copy shall be authenticated by a director or responsible officer of the company that is trustee of the 35 unit trust.

(3) Where an authenticated copy of any amendment of the trust deed in respect of any unit trust has to be lodged with the District Registrar as aforesaid, it shall be so lodged within fourteen days after the date of the execution of the amendment 40 or (if the trust deed has not been so lodged at that date) within fourteen days after the date on which the trust deed is so lodged.

9. Removal of trustee—(1) Notwithstanding any rule of law or anything to the contrary in the trust deed governing any unit trust, the manager of the unit trust shall not have power to remove the trustee thereof; but may apply to the Court for an order providing for the removal of that trustee. 5

(2) The Minister shall have power—

(a) To remove the trustee of any unit trust in any case where the trustee was approved by the Minister under paragraph (b) of section 5 of this Act; or

(b) To apply to the Court for the removal of the trustee 10 of any unit trust.

(3) Notwithstanding anything to the contrary in the trust deed governing the unit trust, no trustee of a unit trust shall, except as provided in subsection (2) of this section, be discharged or retire from that trust until another trustee has 15 been appointed to and assumed that office.

10. Trustee to keep accounts—Every trustee of a unit trust shall cause proper books of account to be kept in respect of the unit trust, and shall cause to be sent annually, to every person who is a unit holder at the date of the statement, an 20 audited statement of accounts in respect of the unit trust, together with a summary of any amendments of the trust deed that have been made since the date of the last statement.

11. Implied provisions in trust deed—(1) The following provisions shall be implied in every trust deed relating to a 25 unit trust, notwithstanding anything to the contrary in the deed:

(a) That the manager of the unit trust shall use its best endeavours to ensure that the unit trust is carried 30 on in a proper and efficient manner:

(b) That the manager of the unit trust shall—

(i) Make available upon demand to the trustee thereof for inspection the whole of the manager's books and papers:

(ii) Give to the trustee of the unit trust such infor- 35 mation as that trustee requires with respect to all matters relating to the unit trust or to any business of the manager, or to any property of the manager (whether acquired before or after the date of the trust deed), or otherwise relating to the affairs of 40 the manager:

- (c) That the trustee of the unit trust shall not act on any direction of the manager to acquire any property for the unit trust or dispose of any property of the unit trust if, in the trustee's opinion conveyed in writing to the manager, the proposed acquisition or disposal is manifestly not in the interests of the unit holders:
- (d) That the manager of a unit trust shall,—
- (i) On request in writing of the trustee, or of either one-tenth in number of the unit holders, or of a unit holder or unit holders holding (at the date of the receipt by the manager of the request) not less than one-tenth of the value of the interests in the unit trust then held by unit holders, summon a meeting of unit holders to be held in accordance with section 17 of this Act, by sending by post a notice specifying the time and place of the meeting to every unit holder at his last known address not later than fourteen days before the date of the proposed meeting:
- (ii) Lay before the meeting, copies of the last statements and summaries filed with the District Registrar in accordance with paragraph (b) of subsection (1) of section 19 of this Act and subsection (2) of that section.
- (2) Every provision implied in the trust deed relating to any unit trust in accordance with this section shall be enforceable by the trustee or any unit holder of the unit trust.

12. Certificate of interest to be issued—Upon the purchase of an interest in any unit trust from the manager, or upon a subscription for an interest in the unit trust, the manager of the unit trust shall as soon as practicable issue or cause to be issued to the purchaser or subscriber a certificate as evidence of that interest, which certificate shall be signed by the trustee of the unit trust or by someone other than the manager authorised in writing by that trustee.

13. Duty of manager with respect to subscriptions—

(1) The manager of any unit trust shall pay into a separate bank account all money received by that manager or any agent of that manager in respect of purchases of or subscriptions for interests in that unit trust.

(2) The manager of any unit trust shall, within such period not exceeding seven days as the trust deed provides, pay to the trustee all money received by that manager or any agent of that manager in respect of purchases of or subscriptions for interests in that unit trust, except so much thereof as the manager is entitled to deduct or retain in accordance with the trust deed. 5

14. Subscriptions, etc., to become subject to trusts—All money required to be paid to the trustee in accordance with subsection (2) of section 13 of this Act shall, upon receipt by the manager or any agent of the manager, become subject to the trusts declared in the trust deed governing the unit trust. 10

15. Trust deed to state conditions for buying back interests—(1) The trust deed in respect of each unit trust shall state whether the manager has an obligation to buy back interests in the unit trust if requested to do so. 15

(2) Where the manager has such an obligation, the trust deed shall also state the manner in which and the conditions on which such interests are to be bought back, including the method of calculating the minimum price at which interests are to be bought back. 20

16. Interests in unit trust to be transferable—(1) Every interest in a unit trust shall be transferable:

Provided that nothing in this subsection shall cause an interest in a unit trust to be transferable where the unit trust is exclusively or principally for the purpose of providing superannuation benefits for the unit holders. 25

(2) Where interests in a unit trust are transferable as aforesaid, the trust deed in respect of the unit trust shall state the manner in which transfers of interests in the unit trust shall be made and recorded. 30

17. Meeting of unit holders—(1) Where a meeting of the unit holders of any unit trust is held in accordance with subparagraph (i) of paragraph (d) of subsection (1) of section 11 of this Act, the meeting shall be under the chairmanship of a nominee of the trustee, and shall be conducted in accordance with any provisions in that connection in the trust deed and otherwise as directed by the Chairman of the meeting. 35
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(2) A unit holder or unit holders holding not less than three-quarters of the value of the interests in the unit trust held by the unit holders who are present in person or by proxy at any such meeting and vote, and who hold not less than one-quarter of the value of all the interests in the unit trust held by unit holders, shall have the power by resolution to give such directions to the trustee of the unit trust as they think proper concerning the unit trust.

(3) Where any direction is so given to the trustee of a unit trust, the trustee may comply with the direction, and shall not be liable for anything done or omitted by it by reason of its following that advice or direction.

(4) In any case where the trustee of a unit trust is of opinion that any direction so given conflicts with the trusts or any rule of law or is otherwise objectionable, the trustee may apply to the Supreme Court for directions in the matter, and the decision and order therein shall be final:

Provided that nothing in this subsection shall make it necessary to apply to the Court for directions.

(5) Where a unit holder is a company or other corporation its properly appointed representative may be its proxy.

18. Removal of Manager—(1) The Court may, on the application of the trustee of a unit trust, or any unit holder, or of the Minister, order that the manager be removed from that office.

(2) The manager of any unit trust shall cease to hold that office if—

- (a) The trustee certifies that it is in the interest of the unit holders that the manager should do so; or
- (b) The unit holders, at a meeting held pursuant to section 17 of this Act, so direct.

(3) If the Court orders the removal of the manager of any unit trust, or if any manager of a unit trust ceases to hold office under subsection (2) of this section, that manager shall immediately desist from all activities related to the unit trust.

19. Accounts, etc., to be filed—(1) The manager of each unit trust shall, before the thirty-first day of May in every year, file or cause to be filed with the District Registrar—

- (a) A list of the names and addresses of all persons who on the thirty-first day of March of that year were unit holders of the unit trust, which list shall show the extent of the interests held by every such unit holder:

- (b) A statement setting out the number and dates of distributions to unit holders in respect of each unit of interest in the unit trust during the immediately preceding five years, the amount of each such distribution, and the extent to which each such distribution consisted of anything other than dividends, interest, or bonuses, with particulars of the nature and amount of the other components. 5
- (2) The manager of each unit trust shall file or cause to be filed with the District Registrar annually an audited statement of the accounts of the trust, and a summary of purchases and sales of property under the unit trust, and a list of all the investments of the unit trust as at the date on which the accounts were filed, together with particulars of the cost and the estimated market value as at that date of the investments and other property. 10 15
- (3) Where a new trustee or a new manager of a unit trust is appointed at any time after the commencement of the trust, that trustee or manager shall give notice of the appointment to the District Registrar within twenty-eight days after the date of the appointment. 20
- (4) The documents lodged with the District Registrar pursuant to section 8 of this Act and the foregoing provisions of this section shall be open for public inspection on payment of the prescribed fee. 25
- (5) Every list, statement, summary, and document filed with the District Registrar under this section shall be verified by a statutory declaration made by a director of the company that is manager of the unit trust or by a responsible officer of the company. 30

20. Appointment of inspectors—(1) One or more inspectors to investigate and report on the affairs of any unit trust and its manager may be appointed by—

- (a) The Minister; or
- (b) The Supreme Court on application made either by one-tenth in number of the unit holders of the unit trust or by a unit holder or unit holders holding at the date of the application not less than one-tenth of the value of the interests in the unit trust then held by unit holders. 35 40

(2) Every such inspector shall have in relation to the unit trust and its manager and affairs all the powers conferred on an inspector in relation to a company and its affairs by section 171 of the Companies Act 1955 (except subsection 5 (3) of that section); and those provisions, so far as they are applicable and with the necessary modifications, shall apply accordingly. The report of every such inspector who is appointed by the Minister shall be made to the Minister; and the report of every such inspector who is appointed by the 10 Supreme Court shall be made to that Court.

(3) If any officer or agent of a company that is manager of a unit trust in respect of which an inspector has been appointed under this section refuses to produce to the inspector any book or paper which it is his duty under this section so 15 to produce, or refuses to answer any question which is put to him by the inspector with respect to the affairs of the company or unit trust, that officer or agent commits an offence and is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding 20 one hundred pounds.

(4) No such officer or agent shall be excused from answering any question put to him by an inspector with respect to the affairs of the company or unit trust on the ground that the answer may incriminate or tend to incriminate him, but no 25 statement made by him in answer to any such question shall be admissible against him in criminal proceedings, except proceedings under the Crimes Act 1960 for making a false statement upon oath.

21. Court may confer additional powers of management—

30 (1) Subject to any contrary intention expressed in the trust deed in respect of any unit trust, where in the opinion of the Supreme Court any sale or other disposition, or any purchase, investment, acquisition, retention, expenditure, or other trans- 35 action is expedient in the management or administration of any money, investments, or other property for the time being subject to the trusts governing a unit trust or would be in the best interests of the unit holders of the unit trust, but it is inexpedient or difficult or impracticable to effect the same without the assistance of the Court, or the same cannot be 40 effected by reason of the absence of any power for that purpose vested in the trustee or manager of the unit trust by the trust deed or by law, the Supreme Court may by order confer upon the trustee or manager, either generally or in any particular instance, the necessary power for the purpose, on such terms

and subject to such provisions and conditions (if any) as that Court may think fit, and may give such directions as it thinks fit to the trustee or manager in respect of the exercise of any power conferred by the order.

(2) An application to the Court under this section may be made by either the manager or the trustee or any unit holder. 5

22. Temporary managers—(1) If any vacancy occurs in the office of manager of a unit trust, the trustee thereof shall have the power to appoint a qualified company as temporary manager thereof, which temporary manager shall have all the powers conferred on the manager by the trust deed or by law until a manager is appointed. 10

(2) Upon any such vacancy occurring, the trustee of the unit trust shall summon a meeting of the unit holders of the unit trust, and shall take such steps as that meeting or any subsequent meeting of those unit holders may require to secure the appointment of that company or some other qualified company as manager of the unit trust. 15

23. Trust deed not to exempt trustee or manager from liability—(1) The trustee of a unit trust and the manager thereof shall each have the same duty to observe care and diligence in the performance of its duties as any other trustee. 20

(2) Any provision in a trust deed governing a unit trust or in any other instrument shall be void so far as it would have the effect of— 25

(a) Exempting the trustee or manager or any director or officer of the trustee or manager from liability for breach of trust where it or he fails to show the degree of care and diligence required of it or him in that capacity, having regard to the provisions of the trust deed and the powers, authorities, or discretions conferred thereby; 30

(b) Indemnifying the trustee or manager or any such director or officer from any such liability.

24. Offences—(1) Every person commits an offence and is liable on summary conviction to a fine not exceeding five hundred pounds who— 35

(a) Issues any interest in a unit trust or offers any such interest to the public for subscription or purchase, or invites the public to subscribe for or purchase such an interest, in contravention of any provision of this Act; or 40

(b) Issues any form of application for an interest in a unit trust in contravention of subsection (2) of section 6 of this Act, or continues any activities related to any unit trust in contravention of subsection (3) of section 18 of this Act.

(2) Every person commits an offence and is liable on summary conviction to a fine not exceeding one hundred pounds who fails to comply with any of the provisions of sections 8, 10, 12, 13, and 19 of this Act.

(3) Every person who has at any time, whether before or after the commencement of this Act, been convicted of a crime involving dishonesty within the meaning of the Crimes Act 1960 commits an offence and is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred pounds, if, after the commencement of this Act, without the consent of the Minister, proof whereof shall lie on the person alleging consent, he acts as a director, officer, or responsible employee of a company that is the manager of a unit trust.

25. Power of Court to assess damages against delinquent directors of manager—(1) If, in the course of winding up any company that is the manager of a unit trust, it appears that the company has misapplied or retained or become liable or accountable for any money or property of the unit trust, or committed any misfeasance or breach of trust in relation to the unit trust, the Court may, on the application of the Official Assignee or of the liquidator or of the trustee or of any unit holder, examine into the conduct of any past or present director, manager, or liquidator, or any officer of the company who has been a party to or knowingly permitted the misapplication, retention, misfeasance, or breach of trust, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the Court thinks just or to contribute such sum to the assets of the trust by way of compensation in respect of the misapplication, retention, misfeasance, or breach of trust as the Court thinks just.

(2) The provisions of this section shall have effect notwithstanding that the act is one for which the offender may be criminally liable.

(3) Where an order for payment of money is made under this section, the order shall be deemed to be a final judgment within the meaning of paragraph (f) of section 26 of the Bankruptcy Act 1908.

26. Regulations—(1) The Governor-General may from time to time, by Order in Council, make all such regulations as may in his opinion be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof. 5

(2) Without limiting the general power to make regulations conferred by subsection (1) of this section, regulations may be made under this section for all or any of the following purposes:

- (a) Prescribing the maximum commission that may be charged, and the maximum charge for administration and other expenses that may be made, by the manager or trustee of any unit trust: 10
- (b) Prescribing the fees to be paid on the lodging or filing of any documents in respect of a unit trust with the Registrar or District Registrar, and on the inspection of any such documents: 15
- (c) Prescribing the manner in which the accounts of the unit trust are to be kept.

(3) All regulations made under this section shall be laid before Parliament. 20

27. Amendment—Section 2 of the Trustee Companies Protection Act 1934–35 is hereby amended by adding the words “and includes any other company that is for the time being lawfully acting as trustee of a unit trust after being approved for that purpose by the Minister of Justice under paragraph (b) of section 5 of the Unit Trusts Act 1960”. 25

28. Existing unit trusts—The terms of any trust created before the commencement of this Act in pursuance of a unit trust scheme or arrangement may, notwithstanding anything in any deed or other instrument, be varied or supplemented by a deed made between the trustee and manager under the scheme or arrangement, or otherwise as the Minister may approve, to enable compliance with the requirements of this Act. 30 35

SCHEDULE

Section 5 (1)

PARTICULARS TO BE INCLUDED IN STATEMENT BY MANAGER

1. The date of the statement.
2. The date of and parties to the trust deed under this Act.
3. The date of and parties to any deed or instrument by which any of the provisions of the trust deed has been amended or abrogated.
4. The name of the trustee and the address of the trustee's registered office.
5. A summary of the provisions of the trust deed and of this Act regulating the retirement, removal, and replacement of the trustee.
6. The name of the manager and the address of its registered office, and the names of the directors of the company that is the manager.
7. A summary of the provisions of the trust deed and of this Act regulating the retirement, removal, and replacement of the manager.
8. The name and address of the auditor of the trust.
9. A summary of the provisions (if any) of the trust deed regulating the appointment, retirement, removal, and replacement of the auditor.
10. The period of the trust, if that is declared by the trust deed, and a summary of the provisions (if any) of the trust deed for the winding up of the trust on its termination.
11. The method of calculation (if any) provided by the trust deed of the price at which the manager may sell any interest.
12. Whether or not the trust deed imposes upon the manager any obligation to buy back the interest of any unit holder, and if so a summary of the conditions attaching to that obligation and the method provided by the trust deed for the calculation of the minimum purchase price of an interest in the unit trust payable by the manager.
13. A summary of the investments and property and classes of investments and property that may be held or acquired under the trust, including particulars of the companies and classes of companies whose securities may be so held or acquired, and a statement of the percentage of the assets of the trust that may be invested in any one company or class of companies or investments or property. If there is no such percentage limitation, this shall be expressly stated.
14. Full information regarding the remuneration of the trustee and the manager, and the provisions (if any) of the trust deed governing the manner in which provision is made for their remuneration, and regarding the charges (if any) that are made in respect of their remuneration upon the sale of or subscription for or purchase of an interest in the unit trust and upon the distribution of income and capital under the trust deed.
15. Whether or not an interest in the unit trust is transferable by the holder thereof and, if so, a summary of the provisions of the trust deed regulating the transfer thereof.

SCHEDULE—*continued*

16. A summary of the provisions (if any) of the trust deed regulating the distribution to the unit holders of the income and gains (whether in the nature of capital or income) of the unit trust.

17. If any reference is made in the statement to the yield of income obtained by unit holders, a statement as to whether and to what extent anything other than cash receipts by way of dividends, interest, or bonuses has been taken into account in calculating the yield.

18. A summary of the provisions of the trust deed and of this Act regulating the convening of meetings of unit holders.

19. The names and the date of commencement of operation of any other unit trusts conducted by the manager during the five years immediately preceding the date of the statement.

20. If the statement by the manager of the unit trust is issued after any date on which the manager is required to file a statement under paragraph (b) of subsection (1) of section 19 of this Act with the District Registrar, the statement by the manager shall set out the particulars required to be set out in the last statement required to be so filed under that paragraph.