

TRUSTEE BANKS RESTRUCTURING ACT REPEAL BILL

EXPLANATORY NOTE

General Policy Statement

This Bill repeals the Trustee Banks Restructuring Act 1988 and provides for the continued operation of the community trusts and the trustee banks' successor companies established under that Act.

The Bill—

- (a) Recognises that all trustee banks established under the Trustee Banks Act 1983 have now been reconstituted as companies, and that the transition period during which special provisions applied to those companies has now ended;
- (b) Facilitates the transfer of responsibility for administration of community trusts from the Reserve Bank to a Government department;
- (c) Provides for the costs of the administrative and monitoring role of the responsible Government department to be met by the community trusts in accordance with regulations;
- (d) Allows community trusts to effect insurance for trustees on the same basis as companies may effect insurance for directors under the Companies Act 1993;
- (e) Aligns financial reporting and auditing requirements of community trusts with the Financial Reporting Act 1993;
- (f) Provides greater flexibility for the terms of appointment of trustees.

Guide to Parts

Part 1 (clauses 2 to 6) repeals the Trustee Banks Restructuring Act 1988 and re-enacts the provisions of that Act that have continuing application to—

- (a) Trustee banks, which were established under the Trustee Banks Act 1983; and
- (b) Successor companies, in which the undertaking of a trustee bank was vested under the Trustee Banks Restructuring Act 1988.

Part 2 (clauses 7 to 27) contains the provisions that apply to community trusts, which were established under the Trustee Banks Restructuring Act 1988 to acquire the shares in the capital of a successor company.

The 2 Parts of the Bill will be broken up into separate Bills at the committee of the whole stage in the House. *Part 1* will become a separate Bill called the Trustee

Banks Restructuring Act Repeal Bill, and *Part 2* will become a separate Bill called the Community Trusts Bill.

Clause by Clause Analysis

Clause 1 relates to the Short Title and commencement of the Bill. The Bill comes into force on the day after the date it receives the Royal assent.

PART 1

REPEAL OF TRUSTEE BANKS RESTRUCTURING ACT 1988

Clause 2 states the purposes of *Part 1* of the Bill.

Clause 3 states that *Part 1* binds the Crown.

Clause 4 is the interpretation provision for *Part 1*. The terms defined are “trustee bank” and “trustee bank’s successor company”.

Clause 5 repeals the Trustee Banks Restructuring Act 1988 and makes consequential repeals. The enactments repealed are set out in *Schedule 1*.

Clause 6 provides that the provisions in *Schedule 2* apply in relation to every trustee bank and its successor company. *Schedule 2* re-enacts sections 7, 9 to 12, and 41 of the Trustee Banks Restructuring Act 1988, which have continuing application to trustee banks and successor companies.

PART 2

COMMUNITY TRUSTS

Clause 7 states the purpose of *Part 2*, which is to provide for the continuing operation of the community trusts.

Clause 8 states that *Part 2* binds the Crown.

Clause 9 is the interpretation provision for *Part 2*. The terms defined are “community trust”, “Inland Revenue Acts”, “Minister”, “trustee bank”, and “trustee bank’s successor company”.

Trustees of Community Trusts

Clause 10 provides for the appointment of trustees. It re-enacts sections 15 (2) and 17 (2) and (3) of the Trustee Banks Restructuring Act 1988. Section 15 (2) specifies the manner in which the office of trustee must be filled. Section 17 (2) relates to the term of office of trustees. Section 17 (3) allows trustees to hold office on more than 1 occasion.

The new *clause 10* provides that the office of trustee must be filled in accordance with the trust deed of the community trust. A trustee is appointed for a term not exceeding the maximum term permitted by the trust deed. The maximum term of office that may be permitted by the trust deed must not exceed 4 years. However, unless a trustee vacates office early under *clause 11*, that trustee remains in office after his or her term of appointment has expired until—

- (a) The trustee is reappointed; or
- (b) A successor is appointed; or
- (c) The trustee is advised by the Minister that he or she will not be reappointed and that no successor will be appointed.

Clause 11 sets out the manner in which a trustee may resign, the circumstances in which a trustee is deemed to resign, and the circumstances in which the Governor-General may remove a trustee from office. This clause is substantially similar to section 17 (4), (5), (6), and (7) of the Trustee Banks Restructuring Act 1988.

Clause 12 lists the circumstances in which a person is disqualified from being appointed or from holding office as a trustee. This clause re-enacts section 16 of the Trustee Banks Restructuring Act 1988, with updated references to the Companies Act 1993 in *paragraphs (d) and (e)*, and the Mental Health (Compulsory Assessment and Treatment) Act 1992 in *paragraph (f)*.

Clause 13 is a new provision that permits a community trust to effect insurance for its trustees in certain circumstances. The clause is largely based on the directors' insurance provisions in section 162 of the Companies Act 1993.

Subclause (1) requires that the trustee's insurance must be in respect of—

- (a) Liability, other than criminal liability, for an act or omission in his or her capacity as a trustee; or
- (b) Costs incurred by the trustee in defending or settling a claim or proceeding relating to that liability; or
- (c) Costs incurred by the trustee in defending criminal proceedings in which the trustee is acquitted.

Subclause (2) states that effecting the insurance must be expressly authorised in the trust deed and have the prior approval of the trustees.

Subclause (3) requires that the trustees who vote in favour of the insurance being effected must certify that in their opinion the cost of the insurance is fair to the trust.

Under *subclause (4)* a trustee is liable to the trust for the cost of the insurance if *subclauses (1) and (2)*, or the relevant provisions of the trust deed, have not been complied with, or reasonable grounds did not exist for the certificate given by the trustees under *subclause (3)*.

Subclause (5) provides an exception to the liability of a trustee for the cost of the insurance to the extent that the trustee proves the cost was fair to the trust at the time the insurance was effected.

Clause 14, which is also a new provision, provides that an indemnity given by a trust to one of its trustees that relates to liability for acts or omissions in his or her capacity as a trustee, or costs incurred by the trustee relating to that liability, is void.

Clause 15 prohibits a trustee of a community trust from being employed by, or holding office in, a trustee bank's successor company in which the trust holds shares. The prohibition does not apply to the office of director of the company. This clause re-enacts section 23 of the Trustee Banks Restructuring Act 1988.

Regional Identity and Purposes of Community Trusts

Clause 16 requires that a community trust remain established in respect of the area or region which corresponds with the area of operation of the trustee bank whose undertaking was transferred to the successor company in which the trust holds, or has held, shares. This clause is substantially similar to section 18 of the Trustee Banks Restructuring Act 1988.

Clause 17, which re-enacts section 21 of the Trustee Banks Restructuring Act 1988, states the purposes of a community trust and deems them to be charitable.

Operational Requirements Relating to Community Trusts

Clause 18 sets out the financial reporting requirements that apply to community trusts, and replaces section 24 of the Trustee Banks Restructuring Act 1988. Under that Act, a community trust is required to keep full and correct accounts, and prepare financial statements giving a true and fair view of the trust's affairs after the end of each financial year. Those statements must be audited, sent to the Minister, and published.

Under the new *clause 18*, a community trust must comply with the Financial Reporting Act 1993 as if it were a reporting entity under that Act, and the trustees of the trust are deemed to be directors.

In addition, a number of sections of the Financial Reporting Act 1993 apply to community trusts as if they were issuers. The applicable sections are—

- (a) Section 15 (Financial Statements of Issuers and Group Financial Statements of Issuers to be Audited);
- (b) Section 16 (1) (Auditor's Report on Reporting Entities);
- (c) Section 38 (a) (Offences by Directors of Issuers – failure to audit accounts);
- (d) Section 40 (Defences).

Subclause (5) requires that the financial statements of a community trust must show separately the names of persons or organisations to whom distributions of income have been made, and the amounts distributed.

Subclause (6) states that an auditor appointed by a community trust must be appointed in accordance with the provisions of the Companies Act 1993, and must not be a trustee, employee, or agent of the trust.

Subclause (7) requires that not later than 30 September in each year the financial statements and auditor's report must be sent to the Minister. The financial statements must also be published in the *Gazette* and in at least 1 newspaper circulating in the area or region of the trust.

Clause 19 re-enacts section 25 of the Trustee Banks Restructuring Act 1988, and states that the trustees of a community trust must hold a public meeting in the area or region of the trust, not later than 30 November in each year.

Contents of Trust Deeds

Clause 20 sets out the matters that must be contained in the trust deed of a community trust. It re-enacts section 26 of the Trustee Banks Restructuring Act 1988.

Clause 21 provides that the provisions in the trust deed of a community trust, and amendments made to the trust deed, must not be inconsistent with the Bill. This clause re-enacts section 27 of the Trustee Banks Restructuring Act 1988.

Restructuring of Community Trusts

Clause 22 sets out the procedure that must be followed if the trustees of 2 or more community trusts wish to amalgamate the trusts into a single trust. This clause re-enacts section 19 of the Trustee Banks Restructuring Act 1988.

Clause 23 sets out the procedure that must be followed if the trustees of a single community trust wish to divide the trust into 2 or more separate trusts. It re-enacts section 20 of the Trustee Banks Restructuring Act 1988.

Other Matters

Clause 24 allows the trustees of a community trust to sell or dispose of shares that it holds in the capital of a successor company if a resolution is passed by not less than 75% of the trustees approving the sale or disposition. The clause re-enacts section 22 (1) of the Trustee Banks Restructuring Act 1988.

Clause 25 re-enacts section 14 (4) of the Trustee Banks Restructuring Act 1988. It provides that section 64 of the Reserve Bank of New Zealand Act 1989 does not apply to a community trust, or to the incorporation of the trustees under the Charitable Trusts Act 1957. Section 64 prohibits incorporation and the carrying on of business under a name that includes the words “bank”, “banker”, or “banking”.

Clause 26 sets out the manner in which the Trustee Act 1956 applies to both community trusts and the trustees of a community trust. It re-enacts section 28 of the Trustee Banks Restructuring Act 1988.

Clause 27 is new. It authorises the Governor-General to make regulations prescribing or providing for fees or charges payable by community trusts for services provided by the Government department with responsibility for providing such services.

Rt Hon W F Birch

TRUSTEE BANKS RESTRUCTURING ACT REPEAL

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A BILL INTITULED

**An Act to repeal the Trustee Banks Restructuring Act
1988 and to make provision for the continued
operation of the community trusts established under
that Act**

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BE IT ENACTED by the Parliament of New Zealand as follows:

No. 158—1

1. Short Title and commencement—(1) This Act may be cited as the Trustee Banks Restructuring Act Repeal Act 1998.

(2) This Act comes into force on the day after the date on which it receives the Royal assent.

PART 1

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REPEAL OF TRUSTEE BANKS RESTRUCTURING ACT 1988

2. Purpose of this Part—The purpose of this Part is to repeal the Trustee Banks Restructuring Act 1988, and to re-enact the provisions of that Act that continue to apply to trustee banks and their successor companies.

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3. Part to bind the Crown—This Part binds the Crown.

4. Interpretation—In this Part, unless the context otherwise requires,—

“Trustee bank” means a trustee bank established under the Trustee Banks Act 1983:

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“Trustee bank’s successor company”, in relation to a trustee bank, means a company formed and registered by that trustee bank and in which the undertaking of the trustee bank was vested under the Trustee Banks Restructuring Act 1988.

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5. Repeal of Trustee Banks Restructuring Act 1988—The enactments specified in **Schedule 1** are repealed.

6. Provisions applying to trustee banks and successor companies—The provisions in **Schedule 2** apply in relation to every trustee bank and every trustee bank’s successor company.

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PART 2

COMMUNITY TRUSTS

7. Purpose of this Part—The purpose of this Part is to make provision for the continued operation of the community trusts that were established under the Trustee Banks Restructuring Act 1988 to acquire the shares in the capital of a trustee bank’s successor company.

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8. Part to bind the Crown—This Part binds the Crown.

9. Interpretation—In this Part, unless the context otherwise requires,—

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- 5 “Community trust” means a community trust established under Part II of the Trustee Banks Restructuring Act 1988 to acquire the shares in the capital of a trustee bank’s successor company and for the purposes specified in this Act:
- “Inland Revenue Acts” means the Acts specified in the Schedule to the Tax Administration Act 1994:
- “Minister” means the Minister of Finance:
- 10 “Trustee bank” means a trustee bank established under the Trustee Banks Act 1983:
- “Trustee bank’s successor company”, in relation to a trustee bank, means a company formed and registered by that trustee bank and in which the undertaking of the trustee bank was vested under the
- 15 Trustee Banks Restructuring Act 1988.

Trustees of Community Trusts

- 10. Appointment of trustees**—(1) The office of trustee of a community trust must be filled in the manner prescribed in the trust deed.
- 20 (2) Every trustee must be appointed for a term not exceeding the maximum term of office for trustees permitted by the trust deed.
- (3) The maximum term of office for trustees permitted by a trust deed must not exceed 4 years.
- 25 (4) A trustee may hold office on more than 1 occasion.
- (5) Despite **subsections (2) and (3)**, where the term of office of a trustee expires, that trustee, unless sooner vacating office or being removed from office under **section 11**, continues to hold office by virtue of the appointment for the expired term
- 30 until—
- (a) The trustee is reappointed; or
 - (b) A successor to the trustee is appointed; or
 - (c) The trustee is advised in writing by the Minister that the trustee will not be reappointed and that a successor
- 35 to the trustee will not be appointed.

Cf. 1988, No. 90, s. 15 (2), 17 (2), (3)

- 11. Resignation and removal of trustees**—(1) A trustee of a community trust may resign office in the manner prescribed in the trust deed.
- 40 (2) A trustee is deemed to have resigned office if at any time he or she is prohibited from acting as a trustee by **section 12**.
- (3) The Governor-General may remove a trustee from office if—

- (a) Disability in relation to the performance of his or her duties as a trustee, neglect of duty, or misconduct is proved to the satisfaction of the Governor-General; or
- (b) The Governor-General is satisfied on reasonable grounds that the trustee has acted or is acting in a manner which is, or is likely to be, prejudicial to the interests of the trust. 5
- (4) If a trustee dies, resigns, or ceases to hold office, the office of the trustee becomes vacant and must be filled in the manner prescribed by the trust deed. 10
- (5) Any person filling a vacancy under **subsection (4)** holds office for the remainder of that trustee's term of office.

Cf. 1988, No. 90, s. 17 (4), (5), (6), (7)

12. Disqualification of trustees—A person must not be appointed or reappointed, or hold office as a trustee of a community trust, if he or she is— 15

- (a) A bankrupt who has not obtained a final order of discharge, or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled: 20
- (b) Convicted of an offence punishable by imprisonment for a term of 2 years or more:
- (c) Convicted of an offence punishable by a term of imprisonment of less than 2 years and is sentenced to imprisonment for that offence: 25
- (d) Subject to an order made under section 383 of the Companies Act 1993:
- (e) A person to whom section 151 (2) (ba) or section 151 (2) (c) of the Companies Act 1993 applies:
- (f) Mentally disordered within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992: 30
- (g) Not resident in the area or region of the trust:
- (h) Employed in the service of, or holding an office (other than the office of director) in, a trustee bank's successor company in which that trust holds shares. 35

Cf. 1988, No. 90, s. 16

13. Liability insurance for trustees—(1) A community trust may directly or indirectly effect insurance for a trustee of the trust but only in respect of— 40

- (a) Liability, not being criminal liability, for an act or omission in his or her capacity as a trustee; or

(b) Costs incurred by that trustee in defending or settling a claim or proceeding relating to that liability; or

(c) Costs incurred by that trustee in defending criminal proceedings in which the trustee is acquitted.

5 (2) Effecting the insurance must be expressly authorised by the trust deed and have the prior approval of the trustees.

(3) The trustees who vote in favour of authorising the effecting of the insurance must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the
10 community trust.

(4) A trustee is personally liable to the community trust for the cost of effecting insurance if—

(a) **Subsections (1) and (2)** have not been complied with; or

15 (b) The relevant provisions of the trust deed have not been complied with; or

(c) Reasonable grounds did not exist for the opinion set out in the certificate given under **subsection (3)**.

(5) A trustee is not personally liable to the community trust under **subsection (4)** to the extent that the trustee proves that the
20 cost of effecting the insurance was fair to the community trust at the time the insurance was effected.

(6) In this section,—

(a) “Effect insurance” includes pay, whether directly or indirectly, the costs of the insurance:

25 (b) “Trustee” includes a former trustee.

Cf. 1993, No. 105, s. 162 (1), (5), (6), (8), (9)

14. Indemnities of trustees void—An indemnity given by a community trust to a trustee of that trust in respect of liability for acts or omissions in his or her capacity as a trustee,
30 or costs incurred by the trustee relating to that liability, is void.

15. Trustees not to be employed by successor companies—(1) A trustee of a community trust must not be employed in the service of, or hold an office in, a trustee bank’s successor company in which that trust holds shares.

35 (2) Despite **subsection (1)**, a trustee may be appointed, or hold office, as a director of the company.

Cf. 1988, No. 90, s. 23

Regional Identity and Purposes of Community Trusts

16. Regional identity of community trusts—(1) A
40 community trust must remain established in respect of the area or region which corresponds with the area of operation of the trustee bank (as prescribed under section 28 of the Trustee

Banks Act 1983), the undertaking of which was transferred to that bank's successor company, in which the trust holds shares, or held shares at the time of its establishment.

(2) This section is subject to **sections 22** and **23**.

Cf. 1988, No. 90, s. 18

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17. Purposes of community trusts—(1) Property vested in, or belonging to, a community trust must be—

(a) Held on trust to be applied for charitable, cultural, philanthropic, recreational, and other purposes; and

(b) Applied for purposes that are beneficial to the community principally in the area or region of the trust.

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(2) The purposes of a community trust are deemed to be charitable for the purposes of the application to a community trust of any enactment or rule of law.

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(3) Despite **subsection (2)**, the application to a community trust of the Inland Revenue Acts or any other enactment that imposes or provides for the collection of a tax, duty, levy, or other charge is not affected.

Cf. 1988, No. 90, s. 21

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Operational Requirements Relating to Community Trusts

18. Community trusts must comply with Financial Reporting Act 1993—(1) A community trust must comply with the Financial Reporting Act 1993 as if it were a reporting entity within the meaning of section 2 of that Act.

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(2) The trustees of a community trust are deemed to be directors within the meaning of section 2 of the Financial Reporting Act 1993.

(3) Sections 15, 16 (1), 38 (a), and 40 of the Financial Reporting Act 1993 apply to a community trust as if it were an issuer within the meaning of section 4 of that Act.

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(4) Despite section 7 of the Financial Reporting Act 1993, the balance date of a community trust is the close of 31 March.

(5) In addition to complying with section 8 of the Financial Reporting Act 1993, the financial statements of a community trust must show separately—

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(a) The names of persons or organisations to whom distributions of income have been made by the community trust under **section 17** in that financial year; and

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(b) The amounts distributed.

- (6) Despite section 15 (2) of the Financial Reporting Act 1993, an auditor appointed by the trustees of a community trust—
- (a) Must be appointed in accordance with the provisions of the Companies Act 1993 which, for that purpose, apply with such modifications as may be necessary; and
 - (b) Must not be a trustee, employee, or agent of the trust.
- (7) Unless directed otherwise by the Minister, the trustees of a community trust must, not later than 30 September in each year,—
- (a) Send the financial statements and the auditor's report to the Minister; and
 - (b) Publish copies of the financial statements and the auditor's report in the *Gazette* and in 1 or more principal newspapers circulating in the area or region of the trust.
- Cf. 1988, No. 90, s. 24 (3), (6)

- 19. Trustees must hold public meeting**—(1) The trustees of a community trust must hold a public meeting in the area or region of the trust not later than 30 November in each year.
- (2) The trustees must give not less than 14 days' notice of the meeting in 1 or more principal newspapers circulating in the area or region of the trust.
- (3) At the meeting the trustees must report on—
- (a) The operation of the trust during the preceding financial year; and
 - (b) The financial statements of the trust for that year.
- Cf. 1988, No. 90, s. 25

Contents of Trust Deeds

- 20. Provisions required in trust deed**—The trust deed of a community trust must contain provisions—
- (a) Specifying the number of trustees;
 - (b) For the holding of, and voting at, meetings of trustees;
 - (c) Specifying the quorum required for the holding of meetings of trustees;
 - (d) For the remuneration of trustees;
 - (e) Specifying the manner in which a vacancy in the office of trustee must be filled;
 - (f) For the appointment of officers, employees, managers, and agents;
 - (g) Specifying the investment powers of trustees;

- (h) Specifying the powers of trustees to expend capital and income of the trust:
- (i) For the keeping of accounts:
- (j) Specifying the manner in which the trust deed may be varied: 5
- (k) Specifying any other matters that the Minister considers appropriate.

Cf. 1988, No. 90, s. 26

21. Trust deed and amendments not to be inconsistent with this Act—(1) A provision in the trust deed of a community trust must not be inconsistent with this Act. 10

(2) A trust deed must not be varied in a manner that is inconsistent with this Act.

(3) A provision in the trust deed of a community trust, or a variation of a trust deed, which is inconsistent with this Act is of no effect. 15

Cf. 1988, No. 90, s. 27

Restructuring of Community Trusts

22. Merger of community trusts—(1) The trustees of 2 or more community trusts may, in accordance with a resolution passed by not less than 75% of the trustees of each trust, submit to the Minister a scheme for the amalgamation of those trusts into a single community trust. 20

(2) A scheme submitted under **subsection (1)** must—

(a) State the names of the existing community trusts: 25

(b) State the names of the trustees of the existing community trusts:

(c) Have annexed to it the trust deeds establishing the existing community trusts:

(d) Have annexed to it a proposed trust deed for the proposed community trust on which the property, rights, assets, and liabilities of the existing community trusts are proposed to be held: 30

(e) State the names, addresses, and occupations of the proposed trustees of the proposed community trust: 35

(f) Contain a summary of any submissions made under **subsection (4)**:

(g) Contain such other matters as may be appropriate:

(h) Be dated.

(3) The trustees of the existing community trusts must supply to the Minister any additional information relating to the scheme required by the Minister. 40

(4) Before submitting a scheme to the Minister under **subsection (1)**, the trustees of each existing community trust must—

5 (a) Give notice in the *Gazette* and in 1 or more principal newspapers circulating in the area or region of the trust—

(i) Stating that the trustees of the trust intend to submit the scheme to the Minister; and

10 (ii) Specifying details of the scheme; and

(iii) Stating that any person residing in the area or region of the trust may, within 28 days after the last publication of the notice, make written submissions to the trustees regarding the scheme; and

15 (b) Have regard to any submissions made within that period.

(5) The Governor-General may on the advice of the Minister, by Order in Council, approve a scheme for the amalgamation of 2 or more existing community trusts referred to in the order.

(6) On a date specified in the order,—

20 (a) The new community trust on which the property, rights, assets, and liabilities of each of the existing community trusts are proposed to be held is deemed to be established on the terms in the proposed trust deed submitted to the Minister under **subsection (1)**; and

25 (b) The persons proposed for appointment as trustees of the trust under the scheme are appointed as trustees of the new community trust; and

30 (c) The property, rights, assets, and liabilities of each of the existing community trusts vest in those trustees in the manner specified in the order, and are held by them on and subject to the trusts contained in the trust deed; and

(d) The existing community trusts are dissolved; and

(e) The trustees of the existing community trusts cease to hold office as trustees of those trusts.

35 (7) The area or region of the new community trust established under **subsection (6) (a)** must correspond with the area or region of the existing community trusts referred to in **subsection (2) (a)**.

40 (8) This Act applies with any necessary modifications to every new community trust established under this section and to the trustees of those trusts.

Cf. 1988, No. 90, s. 19

23. Formation of separate community trusts in place of existing community trust—(1) The trustees of a community

trust may, in accordance with a resolution passed by not less than 75% of the trustees, submit to the Minister a scheme for the formation of 2 or more separate community trusts in place of that community trust.

- (2) A scheme submitted under **subsection (1)** must— 5
- (a) State the name of the existing community trust:
 - (b) State the names of the trustees of the existing community trust:
 - (c) Have annexed to it the trust deed establishing the existing community trust: 10
 - (d) Have annexed to it the trust deeds for the proposed community trusts on which the property, rights, assets, and liabilities of the existing community trust are proposed to be held:
 - (e) Specify the property, rights, assets, and liabilities of the existing community trust which it is proposed will be held by each of the proposed community trusts: 15
 - (f) State the names, addresses, and occupations of the persons who it is proposed will be trustees of the proposed community trusts: 20
 - (g) Contain a summary of any submissions made under **subsection (4)**:
 - (h) Contain such other matters as may be appropriate:
 - (i) Be dated.
- (3) The trustees of the existing community trust must supply 25 to the Minister any additional information relating to the scheme required by the Minister.
- (4) Before submitting a scheme to the Minister under **subsection (1)**, the trustees of the existing community trust must— 30
- (a) Give notice in the *Gazette* and in 1 or more principal newspapers circulating in the area or region of the trust—
 - (i) Stating that the trustees of the trust intend to submit the scheme to the Minister; and 35
 - (ii) Specifying details of the scheme; and
 - (iii) Stating that any person residing in the area or region of the trust may, within 28 days after the last publication of the notice, make written submissions to the trustees regarding the scheme; and 40
 - (b) Have regard to any submissions made within that period.
- (5) The Governor-General may on the advice of the Minister, by Order in Council, approve a scheme for the formation of separate community trusts in place of an existing community trust referred to in the order. 45

(6) On a date specified in the order,—

- 5 (a) The new community trusts on which the property, rights, assets, and liabilities of the existing community trust are proposed to be held are established on the terms in the proposed trust deeds submitted to the Minister under **subsection (1)**; and
- (b) The persons proposed for appointment as trustees of the trusts under the scheme are appointed as trustees of the new community trusts; and
- 10 (c) The property, rights, assets, and liabilities of the existing community trust vest in those trustees in the manner specified in the order and are held by them on and subject to the trusts contained in the trust deeds; and
- (d) The existing community trust is dissolved; and
- 15 (e) The trustees of the existing community trust cease to hold office as trustees of that trust.

(7) The area or region of each new community trust established under **subsection (6) (a)** is the part of the area or region of the existing community trust referred to in **subsection (2) (a)** as is specified in the order.

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(8) This Act applies with any necessary modifications to every new community trust established under this section and to the trustees of those trusts.

Cf. 1988, No. 90, s. 20

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Other Matters

24. Sale of shares in trustee bank's successor company—The trustees of a community trust may sell or otherwise dispose of any shares held by the trust in the capital of a trustee bank's successor company if a resolution has been

30 passed by not less than 75% of the trustees approving the sale or disposition.

Cf. 1988, No. 90, s. 22 (1)

25. Section 64 of Reserve Bank of New Zealand Act 1989 not to apply to community trusts—Section 64 of the Reserve Bank of New Zealand Act 1989 does not apply to—

35

- (a) A community trust;
- (b) The incorporation of the trustees of a community trust under Part II of the Charitable Trusts Act 1957.

Cf. 1988, No. 90, s. 14 (4)

26. Application of Trustee Act 1956 not affected—

40

- (1) The Trustee Act 1956 applies to a community trust.

- (2) Despite section 2 (4) of the Trustee Act 1956, if the trustees of a community trust are not a body corporate, the powers conferred on a trustee by the Trustee Act 1956—
- (a) Are in addition to the powers given by this Act and the instrument creating the trust: 5
 - (b) Unless otherwise stated, apply and have effect subject to any contrary intention expressed in this Act or the instrument creating the trust.
- (3) Despite section 2 (5) of the Trustee Act 1956, if the trustees of a community trust are a body corporate, the powers conferred on that body corporate by the Trustee Act 1956— 10
- (a) Are in addition to the powers given by this Act, the instrument creating the trust, and the powers given by any Act under which the trustees are incorporated: 15
 - (b) Unless otherwise stated, apply and have effect subject to any contrary intention expressed in this Act or the instrument creating the trust:
 - (c) Unless otherwise stated, apply and have effect subject to any contrary intention expressed in the Act under which the trustees are incorporated. 20
- (4) Nothing in **subsection (3) (c)** affects any Act which applies to all trustees, whether corporations or not.

Cf. 1988, No. 90, s. 28

27. Fees—(1) The Governor-General may from time to time, by Order in Council, make regulations prescribing or providing for fees or charges payable by community trusts to the department for the provision of services by the department. 25

- (2) The regulations may prescribe or provide for—
- (a) The amounts of any fees or charges or the method or rates by which they are to be assessed: 30
 - (b) The method of recovery of any fees or charges:
 - (c) The circumstances in which the payment of the whole or any part of the fees or charges may be remitted or waived. 35

(3) Any fee or charge imposed by regulations made under **subsection (1)** is payable to the department and recoverable in a court of competent jurisdiction as a debt due to the Crown.

(4) The department may also charge fees for providing, at the request of a community trust, information or services in respect of which no fees are prescribed by regulations made under **subsection (1)**. 40

(5) In this section, “department” means the department of State that, under an enactment or with the authority of the

SCHEDULES

Section 5

SCHEDULE 1

ENACTMENTS REPEALED

- 1988, No. 90—The Trustee Banks Restructuring Act 1988.
- 1988, No. 119—The Trustee Amendment Act 1988: So much of the Fourth Schedule as relates to the Trustee Banks Restructuring Act 1988.
- 1989, No. 27—The Trustee Banks Restructuring Amendment Act 1989.
- 1989, No. 44—The Public Finance Act 1989: So much of the First Schedule as relates to the Trustee Banks Restructuring Act 1988. (R.S. Vol. 33, p. 510)
- 1989, No. 157—The Reserve Bank of New Zealand Act 1989: Section 183.
- 1994, No. 164—The Income Tax Act 1994: So much of Schedule 20 as relates to the Trustee Banks Restructuring Act 1988.

Section 6

SCHEDULE 2

PROVISIONS APPLYING TO TRUSTEE BANKS AND SUCCESSOR COMPANIES

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| 1. Interpretation | 8. Status of negotiable instruments |
| 2. References to trustee bank and its officers in existing instruments | 9. Effect of this Act |
| 3. Relationship with customers | 10. Continuation of proceedings |
| 4. Status of contracts and other instruments | 11. Employees |
| 5. Status of existing instructions | 12. Books and documents to remain evidence |
| 6. Status of securities | 13. Registers |
| 7. Rights as bailor or bailee | 14. Taxes and duties |
| | 15. Ownership accounts |

1. Interpretation—In this Schedule, unless the context otherwise requires,—

“Appointed day” means the date on which the undertaking of a trustee bank vested in that trustee bank’s successor company under section 6 of the Trustee Banks Restructuring Act 1988; being—

(a) 1 September 1988 in relation to ASB Bank Limited, Trust Bank Bay of Plenty Limited, Trust Bank Central Limited, Trust Bank Canterbury Limited, Trust Bank Otago Limited, Trust Bank South Canterbury Limited, Trust Bank Southland Limited, Trust Bank Waikato Limited, Trust Bank Auckland Limited, Trust Bank Wellington Limited, and Westland Bank Limited;

(b) 9 September 1988 in relation to Taranaki Savings Bank Limited;

“Inland Revenue Acts” means the Acts specified in the Schedule to the Tax Administration Act 1994:

“Instrument” includes—

(a) An instrument that creates, evidences, modifies, or extinguishes rights, interests, or liabilities or would do so if it or a copy of it were lodged, filed, or registered under an Act; and

SCHEDULE 2—*continued*

PROVISIONS APPLYING TO TRUSTEE BANKS AND SUCCESSOR COMPANIES—
continued

(b) A judgment, order, or process of a court:

“Instrument by way of security” has the meaning assigned to it in section 2 of the Chattels Transfer Act 1924:

“Liabilities” means liabilities, debts, charges, duties, and obligations (whether present or future, actual or contingent, or payable or to be observed or performed in New Zealand or elsewhere):

“Property” means real or personal property; and includes—

(a) Choses in action and money:

(b) Goodwill:

(c) Rights, interests, and claims in or to property, whether arising from, accruing under, created or evidenced by, or the subject of, an instrument and whether liquidated or unliquidated, actual, contingent, or prospective:

“Rights” means rights, powers, privileges, and immunities, whether actual, contingent, or prospective:

“Security”—

(a) Means a mortgage, charge (whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, indemnity, defeasance, hypothecation, instrument by way of security, lien, pledge, or other security for the payment of money or for the discharge of any other obligation or liability and whether on demand or not, present or future, actual, or contingent; and

(b) Includes an agreement or undertaking to give or execute, whether on demand or not, any of the things specified in **paragraph (a)**.

Cf. 1988, No. 90, s. 2

2. References to trustee bank and its officers in existing instruments—(1) A reference (express or implied) to a trustee bank in any instrument made, given, passed, or executed before the appointed day must be read as a reference to that trustee bank’s successor company.

(2) A reference (express or implied) to the holder of an office (other than the office of trustee, secretary, or auditor) within a trustee bank in an instrument made, given, passed, or executed before the appointed day must be read as a reference to the person who, for the time being, holds office as the chief executive of its successor company or another officer of the company who is designated from time to time by the chief executive or by another person acting under delegation from the chief executive.

Cf. 1988, No. 90, s. 7 (a), (h)

3. Relationship with customers—(1) On and from the appointed day, the relationship between a trustee bank and a customer or depositor remains the same relationship between the successor company and that customer or depositor.

(2) The same rights and liabilities, including rights of set-off, continue to exist between the successor company and a customer or depositor as existed between the trustee bank and that customer or depositor immediately before the appointed day.

Cf. 1988, No. 90, s. 7 (b)

SCHEDULE 2—*continued*PROVISIONS APPLYING TO TRUSTEE BANKS AND SUCCESSOR COMPANIES—
continued

4. Status of contracts and other instruments—Contracts, agreements, conveyances, deeds, leases, licences, and other instruments, undertakings, and notices (whether in writing or not), entered into by, made with, given to or by, or addressed to a trustee bank (whether alone or with another person) before the appointed day and subsisting immediately before the appointed day are binding on, and enforceable by, against, or in favour of the trustee bank's successor company as if the company and not the trustee bank had been the person by whom they were entered into, with whom they were made, or to or by whom they were given or addressed.

Cf. 1988, No. 90, s. 7 (c)

5. Status of existing instructions—An instruction, order, direction, mandate, or authority given to a trustee bank and subsisting immediately before the appointed day is deemed to have been given to its successor company.

Cf. 1988, No. 90, s. 7 (d)

6. Status of securities—(1) A security held by a trustee bank as security for a debt or other liability to the trustee bank incurred before the appointed day is available to its successor company as security for the discharge of that debt or liability and, if the security extends to future or prospective debts or liabilities, is available as security for the discharge of debts or liabilities to the company incurred on or after the appointed day.

(2) The company is entitled to the same rights and priorities and is subject to the same liabilities in relation to the security as the trustee bank.

Cf. 1988, No. 90, s. 7 (e)

7. Rights as bailor or bailee—All rights and liabilities of a trustee bank as bailor or bailee of documents or chattels are vested in and assumed by its successor company.

Cf. 1988, No. 90, s. 7 (f)

8. Status of negotiable instruments—Unless the context otherwise requires, a negotiable instrument or order for payment of money which was drawn on, given to, accepted by, or indorsed by a trustee bank before the appointed day, or was payable at a place of business of the trustee bank, has the same effect on and after the appointed day as if it had been drawn on, given to, accepted by, indorsed by, or was payable at the place of business of, the successor company.

Cf. 1988, No. 90, s. 7 (g)

9. Effect of this Act—Nothing in this Act, and nothing done under this Act,—

- (a) Places a trustee bank's successor company or any other person in breach of contract or confidence, or makes any of them liable for a civil wrong; or
- (b) Entitles a person to terminate or cancel a contract or arrangement or to accelerate the performance of an obligation; or
- (c) Places a trustee bank's successor company, or any other person in breach of an enactment, a rule of law, or a provision of a contract

SCHEDULE 2—*continued*

PROVISIONS APPLYING TO TRUSTEE BANKS AND SUCCESSOR COMPANIES—
continued

that prohibits, restricts, or regulates the assignment or transfer of property or the disclosure of information; or

- (d) Releases a surety from an obligation; or
- (e) Invalidates or discharges a contract or security.

Cf. 1988, No. 90, s. 7 (i)

10. Continuation of proceedings—(1) An action, arbitration, proceeding, or cause of action that was pending or existing by, against, or in favour of a trustee bank or to which the bank was a party before the appointed day may be continued and enforced by, against, or in favour of its successor company.

(2) It is not necessary to amend a writ, pleading, or other document to continue the action, arbitration, proceeding, or cause of action.

Cf. 1988, No. 90, s. 7 (j)

11. Employees—(1) On and from the appointed day each employee of a trustee bank is an employee of its successor company.

(2) For the purposes of an enactment, rule of law, contract, or agreement relating to an employee, the contract of employment of the employee is unbroken and a period of service with the trustee bank is a period of service with the company.

(3) The terms and conditions of employment of the employee are the same as the terms and conditions of his or her employment with the trustee bank immediately before the appointed day, but they may be varied in the same manner.

(4) An employee is not entitled to receive a payment or other benefit because the employee has, by reason solely of the Trustee Banks Restructuring Act 1988, ceased to be an employee of the trustee bank.

(5) Property held on trust or vested in a person under any provident, benefit, superannuation, or retirement fund or scheme for the employees of a trustee bank, their dependants, or other persons immediately before the appointed day is, on and after the appointed day, held on trust or vested in that person for those employees (in their capacity as employees of the successor company), their dependants, or other persons on the same terms and conditions.

(6) A reference in an instrument constituting a fund or scheme referred to in **subclause (5)** to a trustee bank, an employee of the trustee bank, a dependant of that employee, or any other person is a reference to the trustee bank's successor company, an employee of that company, a dependant of that employee, or any other person.

(7) This clause applies despite anything else in this Schedule.

Cf. 1988, No. 90, s. 9

12. Books and documents to remain evidence—(1) A document, matter, or thing which would have been admissible in evidence for or against a trustee bank is, on and after the appointed day, admissible in evidence for or against the trustee bank's successor company.

(2) In this clause, "document" has the meaning given to it in section 2 (1) of the Evidence Amendment Act (No. 2) 1980.

Cf. 1988, No. 90, s. 10

SCHEDULE 2—*continued*PROVISIONS APPLYING TO TRUSTEE BANKS AND SUCCESSOR COMPANIES—
continued

13. Registers—(1) A Registrar of Deeds, District Land Registrar, or any other person charged with keeping books or registers is not required to change the name of a trustee bank to the name of its successor company in the books, registers, or a document solely by reason of the provisions of the Trustee Banks Restructuring Act 1988.

(2) The presentation to a registrar or other person of an instrument, whether it is an instrument of transfer or not, by a trustee bank's successor company is, in the absence of evidence to the contrary, sufficient proof that the property is vested in the company if the instrument—

- (a) Is executed or purports to be executed by the company; and
- (b) Relates to property held by the trustee bank immediately before the appointed day; and
- (c) Contains a recital that the property became vested in the company by virtue of the provisions of the Trustee Banks Restructuring Act 1988.

Cf. 1988, No. 90, s. 11

14. Taxes and duties—For the purposes of the Inland Revenue Acts and any other enactment that imposes or provides for the collection of a tax, duty, levy, or other charge,—

- (a) A trustee bank and its successor company are the same person; and
- (b) A transaction entered into by, and an act of, a trustee bank is—
 - (i) Entered into by, or an act of, the trustee bank's successor company; and
 - (ii) Entered into or performed by the company at the time it was entered into or performed by the trustee bank.

Cf. 1988, No. 90, s. 12

15. Ownership accounts—(1) On and after the appointed day, a trustee bank's successor company is deemed to be an authorised savings institution for the purposes of—

- (a) The Farm Ownership Savings Act 1974;
- (b) The Home Ownership Savings Act 1974;
- (c) The Fishing Vessel Ownership Savings Act 1977.

(2) A Farm Ownership Account (within the meaning of section 2 (1) of the Farm Ownership Savings Act 1974) subsisting with a trustee bank immediately before the appointed day is, on and after the appointed day, deemed to be a Farm Ownership Account with that trustee bank's successor company, and the provisions of that Act apply with any necessary modifications.

(3) A Home Ownership Account (within the meaning of section 2 (1) of the Home Ownership Savings Act 1974) subsisting with a trustee bank immediately before the appointed day is, on and after the appointed day, deemed to be a Home Ownership Account with that trustee bank's successor company, and the provisions of that Act apply with any necessary modifications.

(4) A Fishing Vessel Ownership Account (within the meaning of section 2 (1) of the Fishing Vessel Ownership Savings Act 1977) subsisting with a trustee bank immediately before the appointed day is, on and after the appointed day, deemed to be a Fishing Vessel Ownership Account with that

SCHEDULE 2—*continued*

PROVISIONS APPLYING TO TRUSTEE BANKS AND SUCCESSOR COMPANIES—
continued

trustee bank's successor company, and the provisions of that Act apply with any necessary modifications.

Cf. 1988, No. 90, s. 41