

TRUSTEE BANKS RESTRUCTURING BILL

EXPLANATORY NOTE

THIS Bill provides for trustee banks established under the Trustee Banks Act 1983 to be constituted as companies under the Companies Act 1955 and for the initial shares in each company to be held by a community trust established for the purpose.

Clause 1 relates to the Short Title and commencement. Except for *clauses 38 (1) and 41*, which come into force on a date to be appointed by the Governor-General by Order in Council, the Bill comes into force on the date on which it receives the Royal assent.

Clause 2 defines terms used in the Bill.

Clause 3 provides that the Bill binds the Crown.

Clause 4 requires every trustee bank, not later than 3 months after the Bill comes into force, to form and register a public company under the Companies Act 1955 which has a memorandum of association and articles of association in a form approved by the Minister of Finance and authorised and issued capital of amounts approved by the Minister. The initial shareholders will be the trustees of the community trust established pursuant to Part II of the Bill to hold shares in the company. The first directors of the company are to be appointed by the Minister who, in making the appointment is required to have regard to the recommendations of the board of trustees of the bank. No person may be appointed a director of the company during the transition period (the period of the Government guarantee under *clause 32* of the Bill of deposits made with the company) without the consent of the Minister. It is also provided that the memorandum and articles of association of the company may not be altered during that period without the Minister's consent.

The clause prohibits a trustee bank's successor company issuing or allotting shares during the transition period without the consent of the Minister.

Where a trustee bank does not form and register a company within the period prescribed the Minister of Finance is authorised and empowered to do so.

Clause 5 excludes the application of section 38A of the Reserve Bank of New Zealand Act 1964 (which contains restrictions on the use of the words "bank", "banker", and "banking" in any name or in connection with carrying on a

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business) in the case of companies formed and registered in accordance with Part I of the Bill.

Clause 6 provides that on a date to be appointed by the Governor-General by Order in Council, (“the appointed day”) the undertaking of a trustee bank named in the order shall vest in its successor company. On that day the trustee bank is deemed to be dissolved and persons holding office as trustees shall cease to hold that office.

Clause 7 is a consequential provision relating to the transfer of the undertaking of a trustee bank to its successor company.

Clause 8 provides that on the appointed day the shares held in a trustee bank’s successor company by a community trust shall be deemed to have been allotted as fully paid up from the trustee bank’s reserve fund (as that term is defined).

Clause 9 protects the position of employees of the trustee bank. It provides that every employee of the bank shall, on the appointed day, become an employee of the company and that for the purposes of every enactment, law, award, determination, contract or agreement, the contract of employment of that employee shall be deemed to have been unbroken and the period of service of that employee with the bank is to be treated as service with the company. Conditions of service with the company shall, until varied, be the same as those with the bank, and be capable of variation in the same manner.

Clauses 10, 11, and 12 are consequential provisions relating to the transfer of the undertaking of a bank to its successor company.

Clause 10 provides that evidence which would have been admissible against a trustee bank shall be admissible against its successor company.

Clause 11 relates to entries in books and registers.

Clause 12 provides that for taxation and other revenue purposes a trustee bank and its successor company are to be treated as the same person and that transactions entered into by, and acts of, the bank before the appointed day are to be treated as having been entered into by, or to be those of, the company.

Clause 13 provides that for the purposes of the Bill the value of a trustee bank’s reserve fund is the value as disclosed in the audited financial statements of the bank as at 31 March 1987.

Clause 14 requires the Minister of Finance not later than 3 months after the Bill comes into force, to execute a trust deed establishing a trust, in respect of each trustee bank’s successor company, to hold shares in the capital of the company. Each trust is required on its formation, to have a name which associates it with the trustee bank and which includes the words “Community Trust”.

Clause 15 relates to the appointment of trustees of a community trust. The first trustees of the trust are to be appointed by the Minister of Finance, and subsequently, in the manner provided in the trust deed. A person may only be appointed a trustee of a community trust if that person—

- (a) Resides in the area or region of the trust; and
- (b) Is suited for appointment by reason of that person’s knowledge of, or experience in business, banking, law or accountancy or that person’s standing in the community.

Clause 16 provides that certain persons may not be appointed or reappointed or hold office as trustees of a community trust.

Clause 17 relates to the term of appointment of trustees. Except for the first trustees of a community trust who hold office for such period as shall be specified in the trust deed, trustees hold office for a term of 4 years.

Clause 18 provides that every community trust shall be established in respect of an area or region which corresponds with the area of operation of the trustee bank, prescribed under section 28 of the Trustee Banks Act 1983, the undertaking of which vests in the company in which the trust is established to hold shares.

Clause 19 empowers the trustees of 2 or more community trusts, in accordance with a resolution of 75 percent of the trustees of each of the trusts, to submit to the Minister a scheme for the amalgamation of those trusts into a single trust. The clause specifies the matters which are to be included in a scheme and provides that the Governor-General may, on the advice of the Minister given on the recommendation of the Reserve Bank, by Order in Council approve the scheme. Before any scheme is submitted to the Minister, the trustees of the community trusts are required to give public notice of the proposal to submit the scheme to the Minister. The notice must contain details of the scheme and state that any person who resides in the area or region of the trust may make submissions regarding the scheme to the trustees within 28 days after the last publication of the notice. The trustees are required to have regard to any submissions made within that period. The clause provides that on a date specified in the order the proposed trust is deemed to be established and the property, rights, assets, and liabilities of each trust shall vest in the trustees of the new community trust. The existing trusts are deemed to be dissolved.

The area or region of the new trust is the same as that of the trusts which are dissolved.

Clause 20 empowers the trustees of a community trust, in accordance with a resolution of 75 percent of the trustees, to submit to the Minister a scheme for the formation of separate community trusts in place of that trust. The clause specifies the matters which are to be included in the scheme and provides that the Governor-General may, on the advice of the Minister, given on the recommendation of the Reserve Bank, by Order in Council approve the scheme.

As is the case under *clause 19* of the Bill, before a scheme may be submitted to the Minister, the trustees are required to give public notice of the proposal to submit the scheme to the Minister. The notice must contain details of the scheme and state that any person who resides in the area or region of the trust may make submissions regarding the scheme to the trustees within 28 days of the last publication of the notice. The trustees are required to have regard to any submissions made within that period.

The clause provides that on a date specified in the order the proposed community trusts shall be deemed to be established and the property, rights, assets and liabilities of the trust shall vest in the trustees of the new community trusts in the manner specified in the order. The existing trust is deemed to be dissolved. The area or region of the new trusts shall be such part of the area or region of the trust which is dissolved as is specified in the order.

Clause 21 provides that all property vested in or belonging to a community trust is held on trust for such charitable purposes beneficial to the community principally in the area or region of the trust as are specified in the trust deed. The purposes of the trust may not be varied without the consent of the Minister of Finance.

Clause 22 requires the income of a community trust to be distributed to organisations or bodies nominated by the trustees, not being organisations or bodies conducted for private profit, on trust for charitable purposes beneficial to the community principally in the area of the trust, or to be credited to a reserve fund.

Clause 23 prohibits the trustees of a community trust selling or disposing of shares held by the trust in a trustee bank's successor company unless the sale or other disposition is authorised by a resolution passed by 75 percent of the trustees. It also provides that the trustees may not sell or dispose of shares in the company during the transition period without the consent of the Minister of Finance.

Clause 24 provides that where a trustee is required or empowered to exercise any power or make any decision in any case where there is a conflict between the interests of the trust and the trustee bank's successor company, the interests of the trust must prevail.

Clause 25 prohibits a trustee from being employed by, or holding office (except the office of director) in, the trustee bank's successor company in which the trust holds shares.

Clause 26 requires the trustees to keep accounts and prepare financial statements. The audited financial statements of the trust are to be sent to the Minister of Finance not later than 1 June in each year and are required to be published in the *Gazette* and in a principal newspaper or newspapers circulating in the area of the trust.

Clause 27 requires the trustees to hold a public meeting before 31 July in each year in the area of the trust to report on the operations of the trust in the preceding financial year and on its financial statements for that year.

Clause 28 specifies matters which must be included in a trust deed establishing a community trust.

Clause 29 provides that no provision of the trust deed and no variation of it shall be inconsistent with the Bill.

Clause 30 relates to the application to a community trust of the Trustee Act 1956.

Clauses 31 to 33 of the Bill relate to the guarantee by the Crown of deposits with and bonds and securities issued by a trustee bank's successor company.

Clause 31 provides that if a trustee bank's successor company is unable to repay—

- (a) Deposits with the company which were also deposits subsisting with the trustee bank immediately before the appointed day; or
- (b) Bonds or securities which were also bonds or securities issued by the trustee bank and subsisting before the appointed day and which were guaranteed by the Crown;—

the Minister of Finance is required to pay the amount of the deficiency to the company out of the Consolidated Account.

The Minister is also empowered to guarantee loans by a financial institution to enable repayments to be made.

The clause expressly provides that money paid or lent to the company under the clause is to be applied solely in repaying the deposits, bonds or securities in respect of which it is paid or lent.

This clause, in effect, continues the Government guarantee of deposits made with trustee banks, and of those bonds and securities issued by trustee banks which were subject to a Government guarantee.

Clause 32 provides that, subject to *clause 33* of the Bill, if a trustee bank's successor company is unable, within 2 years after the appointed day, to repay—

- (a) Deposits made with the company on or after the appointed day; or
- (b) Bonds or securities issued by the company on or after the appointed day on terms corresponding with the terms on which bonds or securities issued by the trustee bank and which were guaranteed by the Crown were issued—

the Minister of Finance is required to pay the amount of the deficiency to the company out of the Consolidated Account.

The Minister is also empowered to guarantee loans by a financial institution to enable repayment to be made.

The clause also provides that money paid or lent to the company under the clause is to be applied solely in repaying the deposits, bonds or securities in respect of which it is paid or lent.

Clause 33 provides that where the Governor-General is satisfied, on the advice of the Minister of Finance, given on the recommendation of the Reserve Bank, that—

- (a) A trustee bank's successor company has an adequate capital to enable it to carry on business without the guarantee of deposits, bonds, or securities under *clause 32*; or
- (b) The company is, as a member of a group of companies, capable of carrying on business without the guarantee; or
- (c) Having regard to the identity of any person who owns or controls the company, it is expedient that deposits made with, and bonds or securities issued by, the company, should not be guaranteed by the Crown—

the Governor-General may, by Order in Council, declare that on and from a date specified in the order, the provisions of *clause 32* of the Bill shall not apply to deposits made with, and bonds and securities issued by, the company on and after the date specified.

Clause 34 makes it an offence for any person to advertise deposits with and bonds or securities of a trustee bank's successor company if the advertisement states or implies that the Crown is, or may be, under any liability to repay the deposits, bonds or securities, if the advertisement does not also state that the liability is transitional and also the period during which the Crown is, or may be, under that liability. It is a defence to a prosecution if the defendant proves—

- (a) That the defendant's business consists of, or includes, publishing, broadcasting, exhibiting or displaying advertisements or arranging for the publication, broadcasting, exhibiting or display of advertisements; and
- (b) That the defendant received the advertisement, or the information in it, in the ordinary course of that business and did not know and had no reason to suspect that the advertisement would contravene the clause.

Clause 35 requires a trustee bank's successor company within 12 months after the appointed day to do everything in its power to ensure that it has adequate capital to enable it to carry on business, or is, as a member of a group of companies able to carry on business, without the guarantee of deposits, bonds, and securities under *clause 32*. If, at any time after 12 months from the appointed day, the Minister of Finance is satisfied that the company does not have

adequate capital to enable it to carry on business, or is not, as a member of a group of companies able to carry on business, without the guarantee, the Minister may, by notice in writing, direct the company to increase its capital or take such other action as may be specified, by a date not later than 18 months after the appointed day.

If the company fails to comply with a direction to increase its capital the Governor-General may, by Order in Council, appoint a person named in the order to take such action as may be necessary to ensure that the company has adequate capital to enable it to carry on business without the guarantee.

Clause 36 relates to the removal of directors of a trustee bank's successor company.

Clause 37 preserves the trustee investment status of deposits made with, and bonds and securities issued by, a trustee bank before the appointed day and which on the appointed day, by virtue of the Bill, become deposits with and bonds and securities of the successor company.

Clause 38 amends the Trustee Act 1956 and provides that deposits made with, and bonds and securities issued by, a trustee bank's successor company, which are guaranteed under *clause 32* of the Bill, are authorised trustee investments.

Clause 39 amends section 38B of the Reserve Bank of New Zealand Act 1964. It provides that section 38A of that Act (which contains restrictions on the use of the words "bank", "banker", or "banking" in the name of any person or body or in connection with carrying on a business) does not prevent any body corporate which immediately before the commencement of the Reserve Bank of New Zealand Amendment Act 1986 was lawfully formed or registered under a name which included the words "bank", "banker", or "banking", or any of those words as part of any other word, with the consent of the Reserve Bank, from changing its name to a name which includes the words "bank", "banker", or "banking", or any of those words as part of any other word, and carrying on business under that name.

Clause 40 amends section 5 of the Securities Act 1978. The amendment exempts a trustee bank's successor company from the requirement to appoint a trustee in respect of offers of debt securities to the public and to execute a trust deed relating to the securities. This exemption is the same as the exemption conferred on trustee banks by section 5 (2) of that Act.

Clause 41 repeals the enactments referred to in the Schedule to the Bill. This clause comes into force on a date to be appointed by the Governor-General by Order in Council.

Clause 42 is a transitional provision relating to Farm Ownership Accounts, Home Ownership Accounts, and Fishing Vessel Ownership Accounts under the Farm Ownership Savings Act 1974, the Home Ownership Savings Act 1974, and the Fishing Vessel Ownership Savings Act 1977, respectively, with a trustee bank. Every such account is deemed to be an account with the trustee bank's successor company as if it were an authorised savings institution.

TRUSTEE BANKS RESTRUCTURING

ANALYSIS

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38. Amendment to Trustee Act 1956	42. Special provisions relating to application of Farm Ownership Savings Act 1974, Home Ownership Savings Act 1974, and Fishing Vessel Ownership Savings Act 1977
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A BILL INTITULED

An Act to reconstitute trustee banks established under the Trustee Banks Act 1983 as companies under the Companies Act 1955, to make provision for the establishment of community trusts to hold shares in such companies, and to repeal the Trustee Banks Act 1983 5

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

1. Short Title and commencement—(1) This Act may be cited as the Trustee Banks Restructuring Act 1987. 10

(2) Except as provided in sections 38 (4) and 41 of this Act, this Act shall come into force on the date on which it receives the Royal assent.

2. Interpretation—In this Act, unless the context otherwise requires— 15

“Appointed day” means the date appointed by the Governor-General in an Order in Council made under section 6 of this Act for the vesting of the undertaking of a trustee bank named in the order in that trustee bank’s successor company: 20

“Financial year”, in relation to a community trust, means a year ending on the 31st day of March:

“Instrument” includes—

(a) Any instrument (other than an enactment) of any form or kind that creates, evidences, modifies, or extinguishes rights, interests, or liabilities or would do so if it or a copy thereof were lodged, filed, or registered under any enactment; and 25

(b) Any 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: 30

“Land” has the meaning assigned to it in section 2 of the Land Transfer Act 1952:

“Liabilities” means liabilities, debts, charges, duties, and obligations of every description (whether present or future, actual or contingent, and whether payable or 35

to be observed or performed in New Zealand or elsewhere):

“Minister” means the Minister of Finance:

5 “Property” means property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal and, without limiting the generality of the foregoing, includes—

(a) Choses in action and money:

(b) Goodwill:

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

15 “Reserve fund”, in relation to a trustee bank, means the Reserve Fund of the bank established and maintained under section 41 of the Trustee Banks Act 1983 and includes any other reserves of the trustee bank:

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

25 “Security” means a mortgage, submortgage, 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 in any case whether upon demand or otherwise, whether present or future and whether actual or contingent, and includes an agreement or undertaking to give or execute whether upon demand or otherwise any of the foregoing:

30 “Transition period”, in relation to a trustee bank’s successor company, means the period during which the Crown is, or may be, liable to pay any sum to that company under **section 32** of this Act:

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

40 “Trustee bank’s successor company”, in relation to a trustee bank, means the company formed and registered by that trustee bank in accordance with **section 4** of this Act:

“Undertaking”, in relation to a trustee bank, means the property, rights and liabilities of the trustee bank.

3. Act to bind the Crown—This Act shall bind the Crown.

PART I

TRANSFER OF UNDERTAKING OF TRUSTEE BANKS TO COMPANIES
INCORPORATED UNDER COMPANIES ACT 1955

4. Trustee banks to form and register companies under Companies Act 1955—(1) Notwithstanding anything contained in the Trustee Banks Act 1983, every trustee bank shall, not later than 3 months after the coming into force of this Act, form and register under the Companies Act 1955, a public company limited by shares—

- (a) That has a memorandum of association and articles of association approved by the Minister; and
- (b) That has an authorised capital and an issued capital of such amounts, and in shares of such classes, as shall be approved by the Minister; and
- (c) In which the subscribers are the trustees of the community trust established under Part II of this Act to hold shares in the company.

(2) The first directors of the company shall be appointed by the Minister, who, in making the appointment, shall have regard to, but shall not be bound by, the recommendations of the board of trustees of the trustee bank.

(3) No person shall be appointed as a director of the company during the transition period without the approval of the Minister.

(4) The memorandum and articles of the company shall not be altered by the company at any time before the end of the transition period without the consent of the Minister and any alteration made without the consent of the Minister shall be void and of no effect.

(5) Except as provided in section 8 of this Act, no trustee bank's successor company shall issue or allot any shares in the share capital of the company during the transition period without the prior written consent of the Minister.

(6) Except as provided in this Act, the Companies Act 1955 shall apply to every company formed and registered in accordance with this section except that in so far as no person other than the community trust is a shareholder in the company nothing in the following provisions of the Companies Act 1955 shall apply to the company—

- (a) Section 41, as to carrying on business when the number of members is reduced below the legal minimum:

(b) Section 217 (d), as to winding up by the court when the number of members is reduced below the legal minimum:

5 (c) Section 219 (a) (i), as to the presentation of a winding up petition by a contributory when the number of members is reduced below the legal minimum.

(7) In any case where a company has not been formed and registered by a trustee bank in accordance with this section within the period referred to in **subsection (1)** of this section the
10 Minister may form and register the company and shall have all such powers as are necessary or desirable for that purpose including, without limitation, the power to appoint the first directors of the company and the power to issue and allot shares in the capital of the company to the trustees of the
15 community trust.

(8) Every trustee bank shall have such powers as may be necessary or desirable for the purposes of this section.

5. Restrictions on use of words “bank”, “banker”, or “banking” not to apply to companies formed and registered in accordance with this Part—(1) Nothing in
20 section 38A of the Reserve Bank of New Zealand Act 1964 applies in respect of any company the formation and registration of which is provided for under this Part of this Act.

(2) Nothing in **subsection (1)** of this section prevents a trustee
25 bank’s successor company from being registered as a registered bank under Part VA of the Reserve Bank of New Zealand Act 1964.

(3) The provisions of **subsection (1)** of this section shall not apply to a trustee bank’s successor company registered as a
30 registered bank in any case where the registration of that company as a registered bank is cancelled.

6. Transfer of undertaking of trustee bank to successor company—(1) On a date appointed by the Governor-General by Order in Council the undertaking of a trustee bank named
35 in the order shall, by virtue of this Act, vest in that trustee bank’s successor company.

(2) On the date so appointed—

(a) The trustee bank shall be deemed to be dissolved; and

(b) Every person holding office as a trustee of the trustee
40 bank shall cease to hold that office.

(3) An Order in Council shall be made under **subsection (1)** of this section in relation to every trustee bank and its successor

company not later than 3 months after the date on which that successor company is incorporated.

7. Consequential provisions on transfer of undertaking of trustee bank to successor company—Without limiting the generality of section 6 of this Act, on and from the appointed day in relation to a trustee bank—

- (a) A reference (express or implied) to the trustee bank in any instrument made, given, passed or executed before the appointed day shall be read and construed as a reference to its successor company: 10
- (b) The relationship between the trustee bank and a customer or depositor shall become the same relationship between the successor company and that customer or depositor and the same rights and liabilities, including rights of set-off, shall exist 15 between the successor company and a customer or depositor as existed immediately before the appointed day between the trustee bank and that customer or depositor:
- (c) All contracts, agreements, conveyances, deeds, leases, 20 licences, and other instruments, undertakings, and notices, (whether or not in writing), entered into by, made with, given to or by, or addressed to the trustee bank (whether alone or with any other person) before the appointed day and subsisting immediately before 25 the appointed day shall, to the extent that they were previously binding on and enforceable by, against, or in favour of the trustee bank be binding on and enforceable by, against, or in favour of its successor company as fully and effectually in every respect as if, 30 instead of the trustee bank the company 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, as the case may be:
- (d) An instruction, order, direction, mandate, or authority 35 given to the trustee bank and subsisting immediately before the appointed day shall be deemed to have been given to its successor company:
- (e) A security held by the trustee bank as security for a debt or other liability to the trustee bank incurred before 40 the appointed day shall be available to its successor company as security for the discharge of that debt or liability and, where the security extends to future or prospective debts or liabilities, shall be available as

5 security for the discharge of debts or liabilities to the company incurred on or after the appointed day; and, in relation to a security, the company shall be entitled to all the rights and priorities (howsoever arising) and shall be subject to all liabilities to which the trustee bank would have been entitled or subject if this Act had not been passed:

10 (f) All the rights and liabilities of the trustee bank as bailor or bailee of documents or chattels shall be vested in and assumed by its successor company:

15 (g) A negotiable instrument or order for payment of money which before the appointed day is drawn on or given to or accepted or indorsed by the trustee bank or payable at a place of business of the trustee bank shall, unless the context otherwise requires, have the same effect on and after the appointed day as if it had been drawn on or given to or accepted or indorsed by its successor company instead of the trustee bank or was payable at the place of business of the company:

20 (h) A reference (express or implied) to the holder for the time being of a particular office (other than the office of trustee, secretary, or auditor) within the trustee bank in any instrument made, given, passed, or executed before the appointed day shall be read and construed as a reference to the person for the time being holding office as the chief executive of its successor company or such other officer of the company as is designated from time to time by the chief executive or by any other person acting under delegation from the chief executive:

25 (i) Nothing effected or authorised by this Act—

30 (i) Shall be regarded as placing the trustee bank or its successor company or any other person in breach of contract or confidence or as otherwise making any of them guilty of a civil wrong; or

35 (ii) Shall be regarded as giving rise to a right for any person to terminate or cancel any contract or arrangement or to accelerate the performance of any obligation; or

40 (iii) Shall be regarded as placing the trustee bank or its successor company or any other person in breach of any enactment or rule of law or contractual provision prohibiting, restricting, or regulating the

assignment or transfer of any property or the disclosure of any information; or

(iv) Shall release any surety wholly or in part from all or any obligation; or

(v) Shall invalidate or discharge any contract or security: 5

- (j) Any action, arbitration or proceedings or cause of action which immediately before the appointed day is pending or existing by, against, or in favour of the trustee bank or to which the trustee bank is a party 10 may be prosecuted, and without amendment of any writ, pleading or other document, continued and enforced by, against, or in favour of its successor company.

8. Shares subscribed for on incorporation of trustee bank's successor company deemed to be fully paid up— 15

(1) On the appointed day in relation to a trustee bank the shares subscribed for in the capital of the trustee bank's successor company on its incorporation shall be deemed to have been allotted as fully paid up from the reserve fund of the trustee bank to the subscribers. 20

(2) Nothing in section 60 of the Companies Act 1955 (which relates to returns of allotments and prescribes the documents that must be delivered to the Registrar of Companies when shares are allotted for a consideration other than cash) shall 25 apply to shares which are deemed to have been allotted pursuant to subsection (1) of this section.

9. Employees—Notwithstanding any other provision of this Act—

- (a) On the appointed day in relation to a trustee bank each 30 employee of the trustee bank shall become an employee of its successor company but, for the purposes of every enactment, law, award, determination, contract, and agreement relating to the employment of each such employee, the contract 35 of employment of that employee shall be deemed to have been unbroken and the period of service with the trustee bank shall be deemed to have been a period of service with the company:

- (b) The terms and conditions of employment of each such 40 employee shall, until varied, be identical with the terms and conditions of that employee's employment with the trustee bank immediately before the

appointed day and be capable of variation in the same manner:

- (c) No such employee shall be entitled to receive any payment or other benefit by reason only of that employee ceasing by virtue of this Act to be an employee of the trustee bank.

10. Books and documents to remain evidence—(1) Any document, matter, or thing, which, if this Act had not been passed, would have been admissible in evidence in respect of any matter for or against a trustee bank shall, on and after the appointed day in relation to that trustee bank, be admissible in evidence in respect of the same matter for or against that trustee bank's successor company.

(2) In this section, "document" has the same meaning as in section 2 (1) of the Evidence Amendment Act (No. 2) 1980.

11. Registers—(1) No Registrar of Deeds or District Land Registrar or any other person charged with the keeping of any books or registers shall be obliged solely by reason of the foregoing provisions of this Act to change the name of a trustee bank to that of its successor company in those books or registers or in any document.

(2) The presentation to any registrar or other person of any instrument, whether or not comprising an instrument of transfer, by a trustee bank's successor company,—

- (a) Executed or purporting to be executed by the company; and
- (b) Relating to any property held immediately before the appointed day in relation to the trustee bank by that trustee bank; and
- (c) Containing a recital that that property has become vested in the company by virtue of the provisions of this Act—

shall, in the absence of evidence of the contrary, be sufficient proof that the property is vested in the company.

12. Taxes and duties—(1) 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 shall be deemed to be the same person; and
- (b) All transactions entered into by, and acts of, the trustee bank before the appointed day in relation to the

trustee bank shall be deemed to have been entered into by, or to be those of, the trustee bank's successor company and to have been entered into or performed by the company at the time when they were entered into or performed by the trustee bank. 5

(2) For the purposes of **subsection (1)** of this section, the expression "Inland Revenue Acts" means the Acts specified in the First Schedule to the Inland Revenue Department Act 1974.

13. Valuation of reserve fund—For the purposes of this Act, the value of the reserve fund of a trustee bank shall be the value of that fund as shown in the audited financial statements of the trustee bank as at the 31st day of March 1987. 10

PART II

ESTABLISHMENT OF COMMUNITY TRUSTS

14. Minister of Finance to establish community trusts—(1) Not later than 3 months after the coming into force of this Act, the Minister shall execute, in respect of each trustee bank's successor company to be incorporated in accordance with Part I of this Act, a trust deed establishing a trust to acquire shares in the capital of the company and for the purposes specified in this Part of this Act. 15 20

(2) Each trust shall, on its establishment, have a name which associates it with the trustee bank the undertaking of which is to be transferred to the company in which the trust is to hold shares and which includes the words "Community Trust". 25

(3) Nothing in **subsection (2)** of this section shall prevent a community trust from changing its name in accordance with the trust deed establishing the trust.

(4) Nothing in section 38A of the Reserve Bank of New Zealand Act 1964 applies in respect of— 30

(a) A community trust the establishment of which is provided for under this Part of this Act:

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

15. Appointment of trustees—(1) The first trustees of a community trust shall be appointed by the Minister, who, in making the appointment shall have regard to, but shall not be bound by, the recommendations of the board of trustees of the trustee bank in relation to whose successor company the trust is established. 35 40

(2) Subject to **subsection (1)** of this section, the trustees of a community trust shall be appointed in the manner prescribed in the trust deed establishing the trust.

(3) A trust deed establishing a community trust may provide
5 for the appointment of the trustees by the Minister.

(4) No variation of the terms of the trust deed providing for the appointment of trustees shall be made without the consent of the Minister.

(5) No person shall be appointed a trustee of a community
10 trust unless that person—

(a) Resides in the area or region of the trust; and

(b) Is suited for appointment by reason of—

(i) That person's knowledge of, or experience in,
15 business, banking, law or accountancy; or

(ii) That person's standing in community affairs.

16. Disqualification from appointment—The following persons shall not be capable of being appointed or reappointed, or holding office, as a trustee of a community trust—

(a) A bankrupt who has not obtained a final order of
20 discharge, or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled:

(b) A person who is convicted of any offence punishable by imprisonment for a term of 2 years or more:

(c) A person who is convicted of any offence punishable by
25 imprisonment for a term of less than 2 years and is sentenced to imprisonment for that offence:

(d) A mentally disordered person within the meaning of the Mental Health Act 1969:

(e) A person who does not reside in the area or region of the
30 trust:

(f) A person who is employed in the service of, or who holds any office (other than the office of director) in, a trustee bank's successor company in which that trust
35 holds shares.

17. Term of appointment—(1) The first trustees of a community trust shall hold office for such period as shall be specified by the Minister in the trust deed establishing the trust.

(2) Subject to **subsection (1)** of this section, every trustee shall
40 hold office for a term of 4 years.

(3) A trustee shall be eligible for reappointment from time to time.

(4) A trustee may at any time resign office by notice in writing to the Minister.

(5) A trustee shall be deemed to have resigned office as a trustee if at any time that trustee is prohibited from acting as a trustee by virtue of **section 16** of this Act.

(6) A trustee may be removed from office at any time by the Governor-General—

(a) For disability, neglect of duty, or misconduct proved to the satisfaction of the Governor-General:

(b) In any case where the Governor-General is satisfied on reasonable grounds that the trustee has acted or is acting in a manner prejudicial, or likely to be prejudicial, to the interests of the trust.

(7) If any trustee dies or resigns or ceases to hold office, the office of that trustee shall become vacant and the vacancy shall be filled in the manner prescribed by the trust deed establishing the trust for the appointment of trustees and any person appointed shall hold office for the residue of the term of office of that trustee.

18. Regional identity of community trusts—Subject to this Act, every community trust shall be 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 is transferred to the successor company of that bank in which the trust holds shares.

19. Merger of community trusts—(1) The trustees of any 2 or more community trusts may, at any time, in accordance with a resolution passed by 75 percent of the trustees of each trust, submit to the Minister a scheme for the amalgamation of those trusts into a single community trust.

(2) A scheme submitted under **subsection (1)** of this section shall—

(a) State the names of the community trusts:

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

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

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

(e) State the names, addresses, and occupations of the persons who it is proposed will be trustees of the community trust:

- (f) Contain a summary of any submissions made under **subsection (4)** of this section:
- (g) Contain such other matters as may be appropriate:
- (h) Be dated.
- 5 (3) The trustees of the community trusts shall supply to the Minister such additional information relating to the scheme as the Minister may from time to time require.
- (4) Before submitting a scheme to the Minister under **subsection (1)** of this section the trustees of each community trust
- 10 shall—
- (a) Give notice in the *Gazette* and in a principal newspaper or newspapers circulating in the area or region of the trust—
- 15 (i) Stating that the trustees of the trust intend to submit the scheme to the Minister; and
- (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
- 20 publication of the notice, make submissions to the trustees in writing regarding the scheme; and
- (b) Have regard to any submissions made within that period.
- (5) The Governor-General may, on the advice of the Minister given on the recommendation of the Reserve Bank, by Order in Council, approve a scheme for the amalgamation of any 2 or
- 25 more community trusts submitted under this section and referred to in the order.
- (6) On a date specified in the order—
- (a) The community trust upon which the property, rights, assets, and liabilities of each of the community trusts
- 30 are proposed to be held shall be deemed to be established in the terms of the proposed trust deed submitted to the Minister under **subsection (1)** of this section; and
- (b) The persons proposed for appointment as trustees of the trust under the scheme shall be deemed to be
- 35 appointed as trustees of the community trust; and
- (c) The property, rights, assets, and liabilities of each community trust shall vest in the trustees of the community trust and shall be held by those trustees
- 40 upon and subject to the trusts contained in the trust deed; and
- (d) The community trusts shall be deemed to be dissolved; and
- (e) The trustees of each of those community trusts shall cease
- 45 to hold office as trustees of those trusts.

(7) The area or region of the community trust referred to in **subsection (6) (a)** of this section shall correspond with the area or region of the community trusts referred to in **subsection (2) (a)** of this section.

(8) The provisions of this Part of this Act shall apply with such modifications as shall be necessary in respect of every community trust established pursuant to this section and in respect of the trustees of every such trust. 5

20. Formation of separate community trusts in place of existing community trust—(1) The trustees of a community trust may, at any time, in accordance with a resolution passed by 75 percent 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. 10

(2) A scheme submitted under **subsection (1)** of this section shall— 15

- (a) State the name of the community trust:
- (b) State the names of the trustees of the community trust:
- (c) Have annexed to it the trust deed establishing the community trust: 20
- (d) Have annexed to it the trust deeds for the proposed community trusts pursuant to which the property, rights, assets, and liabilities of the community trust are proposed to be held:
- (e) Specify the property, rights, assets, and liabilities of the community trust which it is proposed shall be held by each of the proposed community trusts: 25
- (f) State the names, addresses, and occupations of the persons who it is proposed will be trustees of the proposed community trusts: 30
- (g) Contain a summary of any submissions made under **subsection (4)** of this section:
- (h) Contain such other matters as may be appropriate:
- (i) Be dated.

(3) The trustees of the community trust shall supply to the Minister such additional information relating to the scheme as the Minister may from time to time require. 35

(4) Before submitting a scheme to the Minister under **subsection (1)** of this section the trustees of the community trust shall— 40

- (a) Give notice in the *Gazette* and in a principal newspaper or 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
- (ii) Specifying details of the scheme; and
- 5 (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 submissions to the trustees in writing regarding the scheme; and
- (b) Have regard to any submissions made within that period.
- 10 (5) The Governor-General may, on the advice of the Minister given on the recommendation of the Reserve Bank, by Order in Council, approve a scheme for the formation of separate community trusts in place of a community trust submitted under this section and referred to in the order.
- (6) On a date specified in the order—
- 15 (a) The community trusts upon which the property, rights, assets, and liabilities of the community trust are proposed to be held shall be deemed to be established in the terms of the proposed trust deeds submitted to the Minister under **subsection (1)** of this section; and
- 20 (b) The persons proposed for appointment as trustees of the trusts under the scheme shall be deemed to be appointed as trustees of the community trusts; and
- (c) The property, rights, assets, and liabilities of the community trust shall vest in the trustees of the
- 25 community trusts in the manner specified in the order and shall be held by those trustees upon and subject to the trusts contained in the trust deeds; and
- (d) The community trust shall be deemed to be dissolved; and
- 30 (e) The trustees of the community trust shall cease to hold office as trustees of that trust.
- (7) The area or region of each community trust referred to in **subsection (6) (a)** of this section shall be such part of the area or region of the community trust referred to in **subsection (2) (a)** of
- 35 this section as shall be specified in the order.
- (8) The provisions of this Part of this Act shall apply with such modifications as shall be necessary in respect of every community trust established pursuant to this section and in respect of the trustees of every such trust.
- 40 **21. Purposes of community trust**—(1) All property vested in or belonging to a community trust shall be held on trust for charitable purposes beneficial to the community principally in the area or region of the trust being charitable purposes specified in the trust deed establishing the trust.

(2) No variation of the terms of the trust deed setting out the purposes of the trust shall be made without the consent of the Minister.

22. Application of income—The income derived by a community trust in each financial year shall be— 5

- (a) Distributed to such organisations or bodies as the trustees shall nominate, whether incorporated or not, not being organisations or bodies conducted for private profit, on trust for charitable purposes beneficial to the community principally in the area or region of the trust; or 10
- (b) Credited to a reserve fund in accordance with the trust deed. 10

23. Sale of shares in trustee bank's successor company—(1) Subject to subsection (2) of this section, the trustees of a community trust may, at any time or times, in accordance with a resolution passed by 75 percent of the trustees approving the sale or disposition, sell or otherwise dispose of all or any of the shares held by the trust in the capital of a trustee bank's successor company. 20

(2) The trustees of a community trust shall not sell or otherwise dispose of all or any of the shares held by the trust in the capital of a trustee bank's successor company during the transition period without the consent of the Minister.

(3) Any consent may be given subject to such conditions as the Minister thinks fit. 25

24. Interests of community trust to prevail in case of conflict with interests of trustee bank's successor company or other body corporate—Where a trustee of a community trust is required or empowered to exercise any power or to make any decision or determination in any case where there is a conflict between the interests of the community trust and the interests of the trustee bank's successor company or any other body corporate in which the trust holds shares, the interests of the community trust shall prevail. 30 35

25. Trustees of community trusts not to be employed by successor companies—(1) Subject to subsection (2) of this section, no trustee of a community trust shall be employed in the service of, or hold any office in, a trustee bank's successor company in which that trust holds shares. 40

(2) Nothing in **subsection (1)** of this section prevents a trustee of a community trust from being appointed, or holding office, as a director of the company.

26. Financial statements—(1) The trustees of every
5 community trust shall ensure that full and correct accounts of all the financial transactions of the trust and its assets, liabilities, and funds are kept.

(2) The trustees of every community trust shall, after the end of each financial year, have prepared financial statements
15 including a balance sheet and income and expenditure account and notes thereto, giving a true and fair view of the financial affairs of the trust for the financial year.

(3) The financial statements shall show separately the distributions made pursuant to **section 22** of this Act.

(4) The financial statements shall be audited by an auditor
15 appointed for the purpose, being a person qualified for appointment as auditor of a company under the Companies Act 1955 and not being a trustee, employee or agent of the trust.

(5) The auditor shall certify whether the financial statements
20 are properly drawn up and give a true and fair view of the financial affairs of the trust for the financial year.

(6) The financial statements together with the auditor's report thereon shall be sent to the Minister not later than the
25 1st day of June in each year, and copies of the financial statements and the auditor's report shall be published by the trustees in the *Gazette* and in a principal newspaper or newspapers circulating in the area or region of the trust.

27. Trustees to hold public meeting—(1) The trustees of
30 a community trust shall, not later than the 31st day of July in each year, hold a public meeting in the area or region of the trust and shall at that meeting report on the operation of the trust during the preceding financial year and on the financial statements of the trust for that year.

(2) The trustees of a community trust shall give not less than
35 14 days' notice of the holding of a public meeting under **subsection (1)** of this section in a principal newspaper or newspapers circulating in the area or region of the trust.

28. Matters to be included in trust deed—Every trust
40 deed establishing a community trust shall contain provisions—

(a) Specifying the number of persons who shall be appointed trustees:

- (b) For the holding of, and voting at, meetings of trustees and specifying the quorum necessary for the holding of meetings of trustees:
- (c) For the remuneration of trustees:
- (d) Specifying the manner in which a vacancy in the office of trustee shall be filled: 5
- (e) For the appointment of officers, employees, managers, and agents:
- (f) Specifying the powers of investment of the trustees:
- (g) Specifying the powers of the trustees to expend capital and income of the trust: 10
- (h) For the keeping of accounts:
- (i) Specifying the manner in which the trust deed may be varied:
- (j) Specifying such other matters as the Minister considers appropriate. 15

29. Trust deed not to be inconsistent with provisions of this Act—(1) No provision of a trust deed establishing a community trust shall be inconsistent with the provisions of this Act and no trust deed shall be varied in a manner which is inconsistent with the provisions of this Act. 20

(2) Any provision of a trust deed establishing a community trust which is inconsistent with the provisions of this Act and any variation of a trust deed which is inconsistent with the provisions of this Act shall be unenforceable and of no effect. 25

30. Application of Trustee Act 1956 not affected—(1) The Trustee Act 1956 applies to a community trust established under this Act.

(2) Notwithstanding subsection (4) of section 2 of the Trustee Act 1956, in the case where the trustees of a community trust are not a body corporate, the powers conferred by or under the Trustee Act 1956 on a trustee are in addition to the powers given by this Act and the instrument creating the trust; but the powers conferred on a trustee by the Trustee Act 1956, unless otherwise stated, apply if and so far only as a contrary intention is not expressed in this Act or the instrument creating the trust, and have effect subject to the terms of this Act and that instrument. 30 35

(3) Notwithstanding subsection (5) of section 2 of the Trustee Act 1956, in any case where the trustees of a community trust are a body corporate, the powers conferred by or under the Trustee Act 1956 on that body corporate are in addition to the powers given by this Act, the instrument creating the trust and 40

to the powers given by or under any Act by or under which the trustees are incorporated, but the powers conferred on that body corporate by the Trustee Act 1956, unless otherwise stated,—

5 (a) Apply if and so far only as a contrary intention is not expressed in this Act or the instrument creating the trust, and have effect subject to the terms of this Act and that instrument:

10 (b) Apply if and so far only as a contrary intention is not expressed in the Act by or under which the trustees are incorporated and have effect subject to the terms of that Act:

Provided that nothing in this paragraph shall affect any Act which applies to all trustees, whether corporations or not.

15

PART III

GUARANTEE OF DEPOSITS, BONDS, AND SECURITIES

31. Guarantee of existing deposits, bonds, and securities to continue—(1) If the money for the time being available to a trustee bank's successor company is not sufficient

20 to meet claims by—

(a) Depositors for the payment of money standing to their credit (including accrued interest), being money on deposit with the trustee bank immediately before the appointed day; or

25 (b) The holders of bonds or securities, being bonds or securities issued by the trustee bank and not repaid before the appointed day and to which immediately before the appointed day a notice under section 44 (1) (b) of the Trustee Banks Act 1983 applied—

30 the Minister shall, without further appropriation than this section, but subject to **subsection (2)** of this section, pay to the company out of the Consolidated Account, such sums as may be necessary to meet the deficiency.

35 (2) If in any such case the Minister thinks fit, the Minister may, instead of paying money under **subsection (1)** of this section, guarantee under section 86 of the Public Finance Act 1977, loans to the company by any financial institution to enable repayment of the amounts claimed.

40 (3) Money paid or lent to the company under this section shall be applied in payment of claims to which this section applies and shall not be available to meet any other liabilities of the company.

(4) Any money required to be paid by the Crown pursuant to subsection (1) of this section or pursuant to any guarantee given under section 86 of the Public Finance Act 1977 in accordance with subsection (2) of this section shall constitute a debt due to the Crown from the company and shall be recoverable as such in any Court of competent jurisdiction. 5

(5) Nothing in this section applies to any deposit or bond or security on and from the first day after the appointed day on which repayment of the amount of the deposit or the amount owing under the bond or security may, in accordance with the terms of the deposit, bond or security, be required or demanded, and the deposit shall be deemed to have been made with, or the bond or security deemed to have been issued by, the trustee bank's successor company on that date. 10

32. Guarantee of deposits made with, and bonds or securities issued by, trustee bank's successor company on or after appointed day—(1) Subject to section 33 of this Act, if the money for the time being available to a trustee bank's successor company is not sufficient to meet claims by— 15

(a) Depositors for the payment of money deposited with the company on or after the appointed day in relation to that company standing to their credit (including accrued interest); or 20

(b) The holders of bonds and securities issued by the company on or after the appointed day in relation to that company, being bonds or securities issued on terms and conditions corresponding with the terms and conditions on which bonds or securities owing by the trustee bank immediately before the appointed day and to which a notice under section 44 (1) (b) of the Trustee Banks Act 1983 applied were issued— 25 30

the Minister shall, without further appropriation than this section, but subject to subsection (2) of this section, pay to the company out of the Consolidated Account, such sums as may be necessary to meet the deficiency. 35

(2) If in any such case the Minister thinks fit, the Minister may, instead of paying money under subsection (1) of this section guarantee under section 86 of the Public Finance Act 1977, loans to the company by any financial institution to enable payment of the amounts claimed. 40

(3) Subsections (1) and (2) of this section shall cease to apply at the expiration of 2 years from and after the appointed day except in the case of claims by depositors or the holders of bonds and securities where, during such period, the money

available to the company was not sufficient to meet those claims.

(4) Money paid or lent to the company under this section shall be applied in payment of claims to which this section applies and shall not be available to meet any other liabilities of the company.

(5) Any money required to be paid by the Crown pursuant to subsection (1) of this section or pursuant to any guarantee given under section 86 of the Public Finance Act 1977 in accordance with subsection (2) of this section shall constitute a debt due to the Crown from the company and shall be recoverable as such in any Court of competent jurisdiction.

33. Termination of guarantee under section 32—

(1) Subject to this section, where the Governor-General is satisfied, on the advice of the Minister given on the recommendation of the Reserve Bank, that—

(a) A trustee bank's successor company has an adequate capital to enable it to carry on business without the application to the company of the provisions of section 32 of this Act; or

(b) The company is, as a member of a group of companies, capable of carrying on business without the application to the company of the provisions of section 32 of this Act; or

(c) Having regard to the identity of any person or persons who directly or indirectly own or control the company, it is expedient that the provisions of section 32 of this Act should not continue to apply to the company—

the Governor-General may, by Order in Council, declare that on and from a date specified in the order, the provisions of section 32 of this Act shall not apply to deposits made with, and bonds and securities issued by, the company on and after the date specified in the order, and on and after that date the provisions of that section shall cease to apply to such deposits, bonds and securities.

(2) For the purposes of this section, the term of any deposit, bond or security shall be deemed to expire on the first day on which payment from the company may, in accordance with the terms of the deposit, bond or security, be demanded or required and any such deposit, bond, or security not repaid on that date shall be deemed to be a new deposit, bond or security, made with, or issued by, the company on that date.

(3) An Order in Council made under subsection (1) of this section may require the company to give public notice of the making of the order and the terms thereof in such manner as shall be specified in the order.

34. References to guarantee in advertisements relating to deposits with, and bonds and securities issued by, trustee bank's successor company— 5
 (1) No person shall publish, broadcast, exhibit or display, or cause to be published, broadcast, exhibited or displayed, any advertisement that relates to deposits with, or bonds and securities issued by, a trustee bank's successor company, being an advertisement which states or implies that the Crown is, or may be, under any liability in respect of such deposits, bonds or securities, if the advertisement does not also state that any liability of the Crown is transitional in nature and the period during which the Crown is, or may be, under that liability. 10 15

(2) Every person who contravenes subsection (1) of this section commits an offence and is liable on summary conviction—

- (a) In the case of an individual, to a fine not exceeding \$5,000; and 20
- (b) In the case of a body corporate, to a fine not exceeding \$50,000.

(3) It is a defence to a prosecution under this section if the defendant proves—

- (a) That the defendant's business consists of or includes publishing, broadcasting, exhibiting or displaying advertisements or arranging for the publication, broadcasting, exhibiting or display of advertisements; and 25
- (b) That the defendant received the advertisement, or the information contained in the advertisement, as the case may be, in the ordinary course of that business and did not know and had no reason to suspect that the publication, broadcasting, exhibiting or display of the advertisement or the publication, broadcasting, exhibiting, or display of the advertisement containing that information, as the case may be, would constitute a contravention of subsection (1) of this section. 30 35

35. Trustee banks' successor companies to raise sufficient capital to carry on business without application of provisions of section 32— 40
 (1) Every trustee bank's successor company shall, within 12 months after the

appointed day, do everything in its power to ensure that the company—

(a) Has adequate capital to enable it to carry on business; or

5 (b) Is, as a member of a group of companies, capable of carrying on business—

without the application to the company of the provisions of **section 32** of this Act.

(2) Where, at any time after 12 months from the appointed day, the Minister is satisfied in relation to a trustee bank's
10 successor company, that the company—

(a) Does not have adequate capital to enable it to carry on business without the application to the company of the provisions of **section 32** of this Act; or

15 (b) Is not, as a member of a group of companies, capable of carrying on business without the application to the company of the provisions of **section 32** of this Act—

the Minister may, by notice in writing to the company, direct the company to increase its capital, or take such other action, as may be specified in the notice, by such date, not being a date
20 later than 18 months after the appointed day as may be specified.

(3) In the event that the company fails to comply with a direction given under **subsection (2)** of this section to increase its capital, the Governor-General may, on the advice of the
25 Minister given on the recommendation of the Reserve Bank, by Order in Council, appoint a person named in the order to take such action as may be necessary for the purpose of ensuring that the company has adequate capital to enable it to carry on business without the application to the company of the
30 provisions of **section 32** of this Act.

(4) Any person so appointed shall have such powers as shall be specified in the order and all the powers of the members of the company in general meeting and the board of directors of the company.

35 (5) All costs, charges, and expenses incurred by any such person in the exercise of the powers conferred under this section (including such fees and remuneration as shall be approved by the Minister) shall be payable out of the property of the company.

40

PART IV

GENERAL PROVISIONS

36. Removal of directors—(1) The Minister may, at any time during the transition period, by notice in writing to the

director of a trustee bank's successor company or the director of any company of which 2 or more such companies are subsidiaries, as the case may be, remove that director from office on any of the following grounds—

- (a) That the director has acted in a way prejudicial to the financial stability of the trustee bank's successor company or a trustee bank's successor company which is a subsidiary of a company of which that person is a director, as the case may be; or
 - (b) That the director is adjudged bankrupt or makes a composition with the creditors of that director; or
 - (c) That the director is a person in respect of whom the High Court is empowered to make an order under section 189 of the Companies Act 1955; or
 - (d) That the director is mentally disordered within the meaning of the Mental Health Act 1969.
- (2) Nothing in this section limits or affects the Companies Act 1955 or the articles of association of a trustee bank's successor company or of a company of which 2 or more such companies are subsidiaries.

37. Continuation of trustee investment status for deposits, bonds, and securities made with or issued by trustee bank before appointed day—(1) Deposits made with a trustee bank and subsisting immediately before the appointed day in relation to that trustee bank which were authorised trustee investments under section 4 (1) (h) of the Trustee Act 1956 and which, by virtue of this Act, that trustee bank's successor company is liable to repay, shall continue to be investments in which a trustee may invest trust funds.

(2) Bonds and securities issued by a trustee bank and subsisting immediately before the appointed day in relation to that trustee bank which were authorised trustee investments under section 4 (1) (ea) of the Trustee Act 1956 and which, by virtue of this Act, that trustee bank's successor company is liable to repay, shall continue to be investments in which a trustee may invest trust funds.

38. Amendment to Trustee Act 1956—(1) Section 2 (1) of the Trustee Act 1956 (as amended by section 16 (4) of the State Services Conditions of Employment Amendment Act 1987) is hereby amended by repealing the definition of the term "bank", and substituting the following definition:

“ ‘Bank’ means a bank within the meaning of the Banking Act 1982; and includes the Reserve Bank of New

Zealand established under the Reserve Bank of New Zealand Act 1964, Post Office Bank Limited, a company duly incorporated under the Companies Act 1955 pursuant to the State-Owned Enterprises Act 1986, and any private savings bank established under the Private Savings Banks Act 1983:".

(2) Section 4 (1) of the Trustee Act 1956 is hereby amended by inserting after paragraph (ea) (as substituted by section 52 of the Trustee Banks Act 1983), the following paragraphs:

10 "(eb) On deposit with a trustee bank's successor company (within the meaning of section 2 of the Trustee Banks Restructuring Act 1987) where the deposit is a deposit in respect of which section 32 of that Act applies:

15 "(ec) In bonds or securities issued by a trustee bank's successor company (within the meaning of section 2 of the Trustee Banks Restructuring Act 1987) in respect of which section 32 of that Act applies:".

(3) Section 4 of the Trustee Act 1956 is hereby amended by adding the following subsection:

20 "(6) Nothing in paragraph (eb) of subsection (1) of this section limits or affects paragraph (h) of that subsection."

(4) Subsection (1) of this section shall come into force on a date to be appointed by the Governor-General by Order in Council.

25 **39. Amendment to Reserve Bank of New Zealand Act 1964**—Section 38B of the Reserve Bank of New Zealand Act 1964 (as enacted by section 10 of the Reserve Bank of New Zealand Amendment Act 1986) is hereby amended by inserting, after subsection (2), the following subsection:

30 "(2A) Nothing in section 38A of this Act shall prevent any body corporate which immediately before the commencement of the Reserve Bank of New Zealand Amendment Act 1986 was lawfully formed or registered under a name which included the words 'bank', 'banker', or 'banking' or any of those words as
35 part of any other word, from changing its name, with the consent of the Reserve Bank, to a name that includes the words 'bank', 'banker', or 'banking' or any of those words as part of any other word and from carrying on any business, trade, or occupation under that name".

40 **40. Amendment to Securities Act 1978**—Section 5 of the Securities Act 1978 is hereby amended by inserting, after subsection (2A), (as substituted by section 12 of the Reserve

Bank of New Zealand Amendment Act 1986), the following subsections:

“(2B) Nothing in sections 33 (2), 45 to 52, and section 54 of this Act shall apply in respect of any debt security the issuer of which is a trustee bank’s successor company (within the meaning of section 2 of the Trustee Banks Restructuring Act 1987).” 5

“(2c) Nothing in subsection (2B) of this section limits or affects paragraph (a) of subsection (2) of this section.”

41. Repeal of Trustee Banks Act 1983 and other enactments—(1) The enactments specified in the Schedule to this Act are hereby repealed. 10

(2) This section shall come into force on a date to be appointed by the Governor-General by Order in Council.

(3) No Order in Council shall be made under this section until an Order in Council has been made under section 6 of this Act and has come into force in respect of each trustee bank incorporated under the Trustee Banks Act 1983. 15

42. Special provisions relating to application of Farm Ownership Savings Act 1974, Home Ownership Savings Act 1974, and Fishing Vessel Ownership Savings Act 1977—For the purposes of the Farm Ownership Savings Act 1974, the Home Ownership Savings Act 1974, and the Fishing Vessel Ownership Savings Act 1977— 20

(a) Every Ordinary Farm Ownership Account and Special Farm Ownership Account (within the meaning of section 2 (1) of the Farm Ownership Savings Act 1974) with a trustee bank and which is subsisting immediately before the appointed day in relation to that trustee bank shall, on and after that day, be deemed to be an Ordinary Farm Ownership Account or Special Farm Ownership Account, as the case may be, with that trustee bank’s successor company as if that company were an authorised savings institution (within the meaning of that section): 25 30 35

(b) Every Ordinary Home Ownership Account and Special Home Ownership Account (within the meaning of section 2 (1) of the Home Ownership Savings Act 1974) with a trustee bank and which is subsisting immediately before the appointed day in relation to that trustee bank shall, on and after that day, be deemed to be an Ordinary Home Ownership Account or Special Home Ownership Account, as the case may 40

be, with that trustee bank's successor company as if that company were an authorised savings institution (within the meaning of that section):

- 5 (c) Every Fishing Vessel Ownership Account and Special Fishing Vessel Ownership Account (within the meaning of section 2(1) of the Fishing Vessel Ownership Savings Act 1977) with a trustee bank and subsisting immediately before the appointed day in relation to that trustee bank shall, on and after that day, be deemed to be a Fishing Vessel Ownership Account or a Special Fishing Vessel Ownership Account, as the case may be, with that trustee bank's successor company as if that company were an authorised savings institution (within the meaning of that section),—
- 10
- 15 and the provisions of those Acts shall apply accordingly with such modifications as shall be necessary.

SCHEDULE

Section 41

ENACTMENTS REPEALED

- 1956, No. 61—The Trustee Act 1956: Section 4(1)(ea). (R.S. Vol. 15, p. 615.)
- 1978, No. 103—The Securities Act 1978: Section 5(2)(b).
- 1983, No. 116—The Trustee Banks Act 1983.
- 1986, No. 5—The Commerce Act 1986: So much of the Second Schedule as relates to the Trustee Banks Act 1983.
- 1987, No. 17—The State Services Conditions of Employment Amendment Act 1987: So much of the Fourth Schedule as relates to the Trustee Act 1956.