



## Public Trust Regulations 2002

Silvia Cartwright, Governor-General

### Order in Council

At Wellington this 25th day of June 2002

Present:

The Right Hon Helen Clark presiding in Council

Pursuant to section 147 of the Public Trust Act 2001, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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**Schedule**  
**Declaration of fidelity and secrecy**

## Regulations

### 1 Title

These regulations are the Public Trust Regulations 2002.

### 2 Commencement

These regulations come into force on the day after the date of their notification in the *Gazette*.

### 3 Interpretation

(1) In these regulations, unless the context otherwise requires,—

**Act** means the Public Trust Act 2001

**disclosure** means initial and ongoing disclosure

**disclosure statement** means a statement complying with regulations 6 to 9

**expenses** means expenses that may be reimbursed to Public Trust under section 70 of the Act

**fees** means fees or other remuneration Public Trust may charge, demand, receive, or retain under section 71 of the Act

**initial disclosure** means the initial disclosure referred to in sections 71(2) and 171 of the Act

**ongoing disclosure** means the ongoing disclosure referred to in section 71(3) and (4) of the Act

**qualifying beneficiary** means a person who has a qualifying interest

**qualifying interest** means a vested beneficial interest in—

(a) the income of the estate money invested, or to be invested, in a group investment fund if all or some of the expenses or fees referred to in a disclosure statement are attributable (whether directly or indirectly) to income; or

(b) the capital of the estate money invested, or to be invested, in a group investment fund if all or some of the expenses or fees referred to in a disclosure statement are attributable (whether directly or indirectly) to capital

**specified date**, in relation to a particular disclosure statement, means the date of the statement specified under regulation 9.

- (2) Any term or expression that is not defined in these regulations, but that is defined in the Act, has the meaning given to it by the Act.

#### **4 Situation where disclosure generally required**

- (1) Public Trust must make disclosure in accordance with these regulations if an investment of funds belonging to an estate administered by Public Trust is made or is intended to be made in a group investment fund kept by Public Trust.
- (2) This regulation is subject to the dispensations described in regulations 12 to 15.

#### **5 Disclosure must be made in respect of qualifying beneficiary**

- (1) Disclosure must be made in respect of every qualifying beneficiary who holds a qualifying interest at the specified date.
- (2) Despite subclause (1), initial disclosure does not need to be made in respect of a qualifying beneficiary if—
  - (a) there is a change in the qualifying interest of that beneficiary; and
  - (b) initial disclosure has already been made in respect of that beneficiary.
- (3) Nothing in these regulations prevents disclosure being made in respect of any other person.

#### **6 How disclosure is made**

- (1) Disclosure is made in respect of a qualifying beneficiary,—
  - (a) if the qualifying beneficiary is a child, by giving a disclosure statement to the parent or legal guardian; or
  - (b) if a qualifying beneficiary's qualifying interest is subject to a property order under Part III of the Protection of Personal and Property Rights Act 1988, by giving a disclosure statement to the manager of the property subject to the order; or
  - (c) in any other case, by giving a disclosure statement to the qualifying beneficiary.
- (2) The disclosure statement to be given to a parent, legal guardian, manager, or qualifying beneficiary under subclause (1) (the **recipient**) must be given—
  - (a) by personal delivery; or

- (b) by sending it by pre-paid post to the last known place of residence or business of the recipient; or
  - (c) by any other means permitted by law for the service of notices; or
  - (d) by any other means consented to by the recipient.
- (3) Disclosure is made,—
- (a) if a disclosure statement is given in the manner described in subclause (2)(b), at the time when the disclosure statement would have been delivered in the ordinary course of post; and
  - (b) if a disclosure statement is given in the manner described in subclause (2)(c), at the time (if any) deemed by the law permitting the service of notices in that way.

## 7 Disclosure statement must be in writing

A disclosure statement must be in writing.

## 8 What disclosure statement must contain

- (1) A disclosure statement must—
- (a) specify the name or number, or both, of each group investment fund referred to in the statement (the **nominated fund**); and
  - (b) provide a general description of the investment purpose of each nominated fund at the specified date; and
  - (c) state that each nominated fund is kept by Public Trust; and
  - (d) specify which of the following charges are or may be payable to Public Trust or the nominated fund at the specified date by estates investing in that fund (whether directly or indirectly, including by deduction):
    - (i) expenses;
    - (ii) fees;
    - (iii) entry, withdrawal, early termination, switching, sale, or other charges; and
  - (e) specify any qualifications or restrictions at the specified date on the right to make immediate withdrawals from a nominated fund, including, but not limited to, the following:
    - (i) a fixed period of investment;
    - (ii) a required period of notice;

- (iii) if other than daily, the frequency of the dates on which withdrawals may be made.
- (2) The charges referred to in subsection (1)(d), or the minimum or maximum amount of those charges, must be expressed at the specified date in a disclosure statement as a percentage of the capital of a nominated fund.
- (3) Nothing in this regulation prevents a disclosure statement including any other information.

## **9 Date of disclosure statement**

A disclosure statement must specify a statement date, which must not be earlier than 1 month before the date the statement is given in respect of the qualifying beneficiary.

## **10 Application of initial disclosure statement**

- (1) An initial disclosure statement may specify 1 or more group investment funds.
- (2) Initial disclosure is made only in respect of a fund specified in an initial disclosure statement.

## **11 Application of ongoing disclosure statement**

- (1) An ongoing disclosure statement must identify every group investment fund specified in the statement in which estate money subject to a qualifying interest is invested at the specified date.
- (2) Ongoing disclosure is made in respect of every fund specified in an ongoing disclosure statement identified under subclause (1).

## **12 When ongoing disclosure must be made**

- (1) Public Trust must make ongoing disclosure—
  - (a) in any case where the accounting period for the estate to which the ongoing disclosure relates is 12 months or less, at the time of, and on each occasion of the issue of financial statements for that estate; or
  - (b) in any other case, at least once a year commencing from the date the disclosure statement was given on the first occasion that initial disclosure was made in respect of the estate or the most recent occasion on which ongoing disclosure was made.

- (2) Despite subclause (1), Public Trust is not required to make ongoing disclosure—
- (a) in respect only of the accounting period ending on 31 December 2002 for cases referred to in subclause (1)(a); or
  - (b) if at the time disclosure would otherwise be required, none of the funds belonging to the estate to which the disclosure relates are invested in a group investment fund kept by Public Trust.

### 13 **Dispensations from initial disclosure for temporary or continuing investments**

- (1) Public Trust is not required to make initial disclosure in respect of a temporary or continuing investment for the period of 3 months from the establishment date or the date these regulations come into force, whichever is the later.

- (2) In this regulation,—

**continuing investment** means an investment by an estate in a group investment fund—

- (a) in relation to which—
  - (i) an investment statement has been issued in accordance with the requirements of sections 33 and 37A of the Securities Act 1978 and regulations made under that Act; or
  - (ii) a disclosure has been made or dispensed with under these regulations; and
- (b) that has been acquired, transferred to, or otherwise vested in another estate

**establishment date** means,—

- (a) in the case of the estate of a person dying testate or intestate, the date of death of that person or the date administration is granted to the Public Trust, whichever is the later; or
- (b) in any other case, the date on which Public Trust was authorised to administer the estate

**temporary investment** means an investment of estate money after the establishment date in a group investment fund that—

- (a) may be withdrawn in full on demand if the dates on which withdrawals may be made are not less than monthly; and

- (b) on which exit, early termination, or similar charges are not payable as a result of the withdrawal of the investment before the elapse of a particular period of time.

**14 Dispensation from initial disclosure on changes of beneficial interest**

- (1) If, after the first occasion initial disclosure is made for an investment of funds belonging to an estate, a beneficiary attains a qualifying interest, Public Trust is not required to make initial disclosure in respect of that beneficiary for the period of 3 months from becoming aware that the qualifying interest has been attained.
- (2) Nothing in this regulation requires initial disclosure to be made in respect of a change of a qualifying interest to which regulation 5(2) applies.

**15 Dispensation from ongoing disclosure**

Public Trust is not required to make ongoing disclosure in respect of a qualifying beneficiary to whom, in accordance with the requirements of sections 33 and 37A of the Securities Act 1978 and regulations made under that Act, an investment statement was required to be, and was, issued.

**16 Declaration of fidelity and secrecy**

The declaration of fidelity and secrecy to be made under section 34(b) of the Act must be in the form set out in the Schedule of these regulations.

**17 Court fees on election to administer**

- (1) The fee payable to the Registrar of the High Court for the filing of an election to administer under Part 6 of the Act is \$10.
- (2) The fee payable to the Registrar of the High Court for certifying as a correct copy under the seal of the Court a copy of any election under Part 6 of the Act is \$4.
- (3) The fees prescribed by this regulation are inclusive of goods and services tax.

**18 Revocations**

Regulations 4 and 8 and the First Schedule of the Public Trust Office Regulations 1958 (SR 1958/66) are consequentially revoked.

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**Schedule**

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**Declaration of fidelity and secrecy**

I, [*full name*], of [*address and occupation*], do solemnly and sincerely declare that:

I will truly and faithfully, according to the best of my skill and ability, perform my duties as a member of the board of Public Trust (*or a member of a committee appointed under section 17 of the Public Trust Act 2001 or an employee of Public Trust*).

In the performance of those duties, I will maintain and aid in maintaining the secrecy of all matters coming to my knowledge about the affairs of any estate under administration in Public Trust, or the affairs of any person concerned in such an estate, and will not divulge any information concerning any such matters except as may be authorised by law, or for the purpose of assisting to carry out the powers and functions of Public Trust and my own proper duties.

And I make this solemn declaration conscientiously binding myself to adhere to and observe the same, and by virtue of section 34 of the Public Trust Act 2001.

Signature .....

Declared at                    this                    day of                    20                    before me

Signature .....

[*Person authorised to take a statutory declaration in New Zealand under the Oaths and Declarations Act 1957.*]

Marie Shroff,  
Clerk of the Executive Council.

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### Explanatory note

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on the day after the date of their notification in the *Gazette*,—

- prescribe disclosure requirements for funds invested in a group investment fund kept by Public Trust. Subject to certain exemptions, disclosure of expenses and management fees must be made before Public Trust can charge and recover those expenses and fees;
- provide for the form of a declaration of fidelity and secrecy for the purposes of section 34 of the Public Trust Act 2001;
- prescribe fees payable to the Registrar of the High Court for matters under Part 6 of the Public Trust Act 2001;
- consequentially revoke regulations 4 and 8 and the First Schedule of the Public Trust Office Regulations 1958.

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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 27 June 2002.

These regulations are administered in the Public Trust.

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