

Reprint
as at 1 May 2011

Unit Trusts Act 1960

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

This Act is administered in the Ministry of Commerce.

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An Act to provide for regulating the operations of unit trusts

1 Short Title and commencement

- (1) This Act may be cited as the Unit Trusts Act 1960.
- (2) This Act shall come into force on 1 April 1961.

2 Interpretation

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

Bank means a person carrying on in New Zealand the business of banking

Bank: the reference to the “Banking Act 1982” was substituted, as from 16 December 1982, for a reference to the “Banking Act 1908” pursuant to section 15 Banking Act 1982 (1982 No 144). The Banking Act 1982 was repealed, as from 30 June 1995, by section 2(1) Banking Act Repeal Act 1995 (1995 No 32).

Company means a company within the meaning of the Companies Act 1955 or the Companies Act 1993, as the case may be

Company: this definition was substituted, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

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

FMA means the Financial Markets Authority established under Part 2 of the Financial Markets Authority Act 2011

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

manager, in relation to a unit trust, means the company (however it is described) in which is vested the powers and functions of the manager of a unit trust under this Act

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

Minister: this definition was substituted, as from 1 October 1995, by section 10(3) Department of Justice (Restructuring) Act 1995 (1995 No 39).

nominated company*[Repealed]*

Nominated company: this definition was repealed, as from 3 June 1998, by section 2(1) Unit Trusts Amendment Act 1998 (1998 No 64).

[Repealed]

nominated person, in relation to any trustee, means a person nominated by that trustee under section 6

Nominated person: this definition was inserted, as from 3 June 1998, by section 2(1) Unit Trusts Amendment Act 1998 (1998 No 64).

nominee, in relation to any nominated person, means a person appointed by that nominated person under section 6B

Nominee: this definition was inserted, as from 3 June 1998, by section 2(1) Unit Trusts Amendment Act 1998 (1998 No 64).

portfolio investment entity means a portfolio investment entity within the meaning of the Income Tax Act 2004

Registrar means the Registrar of Companies; and includes the Deputy Registrar of Companies

trust means a trust within the meaning of the Trustee Act 1956

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

trustee, in relation to any unit trust, means—

- (a) the trustee in which is vested any money, investments, and other property that are for the time being subject to the trusts governing the unit trust; or
- (b) if any money, investments, and other property that are for the time being subject to the trusts governing the unit trust are vested in a nominated person, the trustee that appointed the nominated person; or
- (c) if any money, investments, and other property that are for the time being subject to the trusts governing the unit trust are vested in a nominee of a nominated person, the trustee that appointed the nominated person

Trustee: this definition was substituted, as from 3 June 1998, by section 2(2) Unit Trusts Amendment Act 1998 (1998 No 64).

unit holder, in relation to any unit trust, means any person (other than the manager) who is the lawful holder of a certificate evidencing that he has an interest in the unit trust; and includes a purchaser of or a subscriber for such an interest who is entitled to have a certificate issued to him in accordance with section 13

unit trust means any scheme or arrangement, whether made before or after the commencement of this Act, that is established under New Zealand law and that is made for the purpose or has the effect of providing facilities for the participation, as beneficiaries under a trust, by subscribers or purchasers as members of the public and not as an association, in income and gains (whether in the nature of capital or income) arising from the money, investments, and other property that are for the time being subject to the trust; but does not include—

- (a) a trust for the benefit of debenture holders; or
- (b) the Common Fund of Public Trust; or
- (c) the Common Fund of the Maori Trustee; or
- (d) any Group Investment Fund established under the Trustee Companies Act 1960; or

- (da) any group investment fund established under the Public Trust Office Act 1957 or the Public Trust Act 2001; or
 - (e) any friendly society or credit union registered or deemed to be registered under the Friendly Societies and Credit Unions Act 1982; or
 - (f) any superannuation scheme which is registered under the Superannuation Schemes Act 1989; or
 - (g) a share purchase scheme as defined in section YA 1 of the Income Tax Act 2007; or
 - (h) any trust fund or global asset trust or GAT subsidiary or pool within the meaning of the National Provident Fund Restructuring Act 1990.
- (2) Section 63 of the Companies Act 1955 shall apply to interests in a unit trust as if they were shares.

Section 2(1) **FMA**: inserted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 2(1) **portfolio investment entity**: inserted, on 1 October 2007, by section 246 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

Unit trust: this definition was amended, as from 1 January 1974, by section 56(1) Syndicates Act 1973 (1973 No 17) by inserting the words “and not as an association”.

Unit trust: this definition was amended, as from 1 December 2002, by section 28 Securities Amendment Act 2002 (2002 No 43), by inserting the words “that is established under New Zealand law and” after the words “whether made before or after the commencement of this Act”.

Unit trust: paragraph (b) was amended, as from 1 March 2002, by section 170(1) Public Trust Act 2001 (2001 No 100) by substituting the words “Public Trust” for the words “the Public Trustee”. See clause 2 Public Trust Act Commencement Order 2002 (SR 2002/11).

Unit trust: paragraph (da) was inserted, as from 1 March 2002, by section 170(1) Public Trust Act 2001 (2001 No 100). See clause 2 Public Trust Act Commencement Order 2002 (SR 2002/11).

Unit trust: paragraph (e) was substituted, as from 1 April 1983, by section 161(1) Friendly Societies and Credit Unions Act 1982 (1982 No 118).

Unit trust: paragraph (f) was amended, as from 2 August 1974, by section 2(1) Unit Trusts Amendment Act 1974 (1974 No 34) by substituting the words “Land and Income Tax Act 1954; or” for the words “Land and Income Tax Act 1954”.

Unit trust: paragraph (f) was substituted, as from 22 March 1989, by section 31(1) Superannuation Schemes Act 1989 (1989 No 10).

Unit trust: paragraph (f) was amended, as from 1 April 1990, by section 32(3) Superannuation Schemes Act 1989 (1989 No 10) by omitting the words “is approved under the Superannuation Schemes Act 1976 or”.

Unit trust: paragraph (g) was inserted, as from 2 August 1974, by section 2(2) Unit Trusts Amendment Act 1974 (1974 No 34).

Unit trust: paragraph (g), section 166 of the Income Tax Act 1976 was substituted for section 129CH of the repealed Land and Income Tax Act 1954.

Unit trust: paragraph (g) was substituted, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

Section 2(1) **unit trust** paragraph (g): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Unit trust: paragraph (h) was inserted, as from 1 April 1991, by section 77 National Provident Fund Restructuring Act 1990 (1990 No 126).

3 Unit trust to have manager and trustee

- (1) There shall be a manager and a trustee of every unit trust.
- (2) Subject to the provisions of this Act, the company that is the manager of any unit trust—
 - (a) shall have vested in it the powers of management of the investments and other property that are subject to the trusts governing that unit trust; and
 - (b) shall have the function (whether as principal or by an agent) of issuing or offering interests in the unit trust to the public for subscription or purchase, or of inviting the public to subscribe for or purchase such interests, or both of those functions; and
 - (c) shall have the same liability for its acts and omissions in the exercise of its powers and functions as manager of the unit trust as it would if it exercised those powers and functions as a trustee.
- (3) Subject to this Act, the trustee of a unit trust must have vested in it or in 1 or more nominated persons of the trustee or in 1 or more nominees of a nominated person of the trustee the investments and other property that are for the time being subject to the trusts governing the unit trust.
- (4) A trustee corporation or company or bank must not act as a trustee of a unit trust, and a company must not act as manager of a unit trust if those 2 persons are associated with each other under subpart YB of the Income Tax Act 2007.

Subsection (3) was substituted, as from 3 June 1998, by section 3 Unit Trusts Amendment Act 1998 (1998 No 64).

Section 3(4): substituted, on 1 April 2010, by section 861 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

4 Restriction as to manager

- (1) Every manager of a unit trust shall be either—
 - (a) a company within the meaning of the Companies Act 1955, other than a private company; or
 - (b) a company within the meaning of the Companies Act 1993 that is—
 - (i) a reporting entity within the meaning of the Financial Reporting Act 1993; or
 - (ii) an exempt company within the meaning of the Financial Reporting Act 1993 that complies with the requirements of that Act as if it were a reporting entity.
- (1A) Notwithstanding anything in the Financial Reporting Act 1993, a manager of a unit trust that is an exempt company within the meaning of that Act and that complies with the requirements of that Act relating to reporting entities shall not be required to comply with the requirements of that Act relating to exempt companies.
- (2) No company shall act as manager of a unit trust unless a person approved by the FMA has given a bond to Her Majesty the Queen in the sum of \$40,000 conditioned to secure the due discharge by the manager of its obligations.
- (3) The sum of \$40,000 named in a bond given under this section shall not be deemed to be a penalty, but shall be liquidated damages, and shall accordingly be recoverable in full as a debt due by the surety to Her Majesty the Queen unless the surety proves performance of every condition upon which the bond is defeasible.
- (4) Every sum so recovered shall be paid into the Public Account to the credit of the Consolidated Account, and the residue, after the deduction of costs and other expenses, shall, without further appropriation than this section, be paid to the trustee and applied by it towards the discharge of the obligations of the manager; and any balance not required for that purpose shall be refunded to the surety.
- (5) A bond given under subsection (2) must be released if the unit trust has been wound up and the trustee and manager of the unit trust have given notice in writing of the winding up to the FMA.

Subsection (1) was substituted, and subsection (1A) was inserted, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Section 4(2): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Subsection (4) was amended, as from 1 April 1964, by section 4 Public Revenues Amendment Act 1963 (1963 No 46) by substituting the words “Consolidated Revenue Account” for the words “Consolidated Fund”.

Subsection (4) was further amended, as from 1 April 1978, by section 114(6) Public Finance Act 1977 (1977 No 65) by substituting the words “Consolidated Account” for the words “Consolidated Revenue Account”.

Section 4(5): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Subsection (5) was inserted, as from 15 April 2004, by section 3 Unit Trusts Amendment Act 2004 (2004 No 34).

5 Restrictions as to trustee

Every trustee of a unit trust shall be—

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

6 Nomination of person

- (1) If authorised by the trust deed, any trustee of a unit trust has power to nominate, in writing, 1 or more persons in which are vested any of the investments and other property referred to in section 3(3).
- (2) Upon the nomination of a person by the trustee, the trustee, in addition to its own obligations as trustee in relation to the unit trust, is jointly and severally liable with the nominated person for the due and faithful performance and observance by the nominated person of all the duties and obligations imposed on the nominated person in relation to the unit trust either by this Act or by law.

Section 6 was substituted as from 3 June 1998, by section 4 Unit Trusts Amendment Act 1998 (1998 No 64).

6A Restrictions as to nominated person

A person must not be nominated by a trustee under section 6 if—

- (a) the person is the manager or proposed manager of the unit trust in respect of which the nomination relates; or
- (b) the persons who are deemed by section YC 1 of the Income Tax Act 2007 to control the manager or proposed manager and the persons who are deemed by that section to control the proposed nominated person are the same persons.

Sections 6A to 6C were inserted, as from 3 June 1998, by section 4 Unit Trusts Amendment Act 1998 (1998 No 64).

Section 6A was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 6A(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

6B Appointment of nominee by nominated person

- (1) A nominated person may, if authorised in writing by the trustee of a unit trust, appoint 1 or more nominees in which are vested any of the investments and other property referred to in section 3(3).
- (2) Upon the appointment of a nominee, the trustee and the nominated person that appointed the nominee, in addition to their own obligations in relation to the unit trust, are jointly and severally liable with the nominee for the due and faithful performance and observance by the nominee of all the duties and obligations imposed on the nominee in relation to the unit trust by this Act or by law.

Sections 6A to 6C were inserted, as from 3 June 1998, by section 4 Unit Trusts Amendment Act 1998 (1998 No 64).

6C Restrictions as to nominee

A person must not be appointed nominee by a nominated person under section 6B if—

- (a) the person is the manager or proposed manager of the unit trust in respect of which the appointment relates; or
- (b) the persons who are deemed by section YC 1 of the Income Tax Act 2007 to control the manager or proposed

manager and the persons who are deemed by that section to control the proposed nominee are the same persons.

Sections 6A to 6C were inserted, as from 3 June 1998, by section 4 Unit Trusts Amendment Act 1998 (1998 No 64).

Section 6C was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994”.

Section 6C(b): amended, on 1 April 2008, by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

7 **Application of Securities Act 1978**

The Securities Act 1978 applies to the offering to the public for subscription of interests in unit trusts.

Subsections (1) and (2) of the original section 7 were amended, as from 20 October 1972, by section 2(1) Unit Trusts Amendment Act 1972 (1972 No 110) by substituting the expression “6” for the word “thirteen”. *See* section 2(2) of that Act.

Subsection (3) was repealed, as from 6 December 1983, by section 26(b) Companies Amendment Act 1983 (1983 No 53).

Section 7 was substituted, as from 1 October 1997, by section 3 Unit Trusts Amendment Act 1996 (1996 No 101).

8 **Appointment of trustee**

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

- (a) provision has been made in a deed for the appointment of a trustee of the unit trust and for such other matters as are prescribed by this Act and by any regulations made thereunder; and
- (b) a trustee eligible in accordance with section 5 has accepted appointment as trustee of the unit trust and has executed the trust deed; and
- (c) the trust deed has been approved for the purposes of this Act by the Registrar or the District Registrar and an authenticated copy thereof has been lodged with the District Registrar as required by section 9.

Paragraph (c) was amended, as from 10 July 1987, by section 2 Unit Trusts Amendment Act 1987 (1987 No 158) by inserting the words “or the District Registrar”.

9 Copy of deed to be lodged with District Registrar

- (1) Notwithstanding anything to the contrary in section 125 of the Companies Act 1955, or section 92 of the Companies Act 1993, as the case may be, the manager of each unit trust shall lodge an authenticated copy of the trust deed in respect thereof and of every amendment of that deed with the District Registrar.
- (2) Every such copy shall be authenticated by a director or responsible officer of the company that is trustee of the unit trust.
- (3) Where an authenticated copy of any amendment of the trust deed in respect of any unit trust has to be lodged with the District Registrar as aforesaid, it shall be so lodged within 14 days after the date of the execution of the amendment or (if the trust deed has not been so lodged at that date) within 14 days after the date on which the trust deed is so lodged.

Subsection (1) was amended, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16) by inserting the words “or section 92 of the Companies Act 1993, as the case may be,”.

10 Removal of trustee

- (1) Notwithstanding any rule of law or anything to the contrary in the trust deed governing any unit trust, the manager of the unit trust shall not have power to remove the trustee thereof; but may apply to the Court for an order providing for the removal of that trustee.
- (2) The Minister shall have power—
 - (a) to remove the trustee of any unit trust in any case where the trustee was approved by the Minister under paragraph (b) of section 5; or
 - (b) to apply to the Court for the removal of the trustee of any unit trust.
- (3) Notwithstanding anything to the contrary in the trust deed governing the unit trust, no trustee of a unit trust shall, except as provided in subsection (2), be discharged or retire from that trust until another trustee has been appointed to and assumed that office in accordance with the provisions of the trust deed or the Trustee Act 1956.

11 Manager to send audited accounts annually

- (1) Every manager of a unit trust, not being an issuer within the meaning of section 4 of the Financial Reporting Act 1993, shall cause to be sent annually, to every person who is a unit holder at the date of the statement, an audited statement of accounts in respect of the unit trust, together with a summary of any amendments of the trust deed that have been made since the date of the last statement.
- (2) Every manager of a unit trust that is an issuer within the meaning of section 4 of the Financial Reporting Act 1993 shall cause to be sent annually, to every person who is a unit holder at the balance date of the unit trust,—
- (a) a copy of the financial statements registered under that Act; and
 - (b) a copy of the auditor's report on those statements registered under that Act—
- in respect of the trust, together with a summary of any amendments of the trust deed that have been made since the last balance date of the unit trust.

Section 11 was substituted, as from 1 July 1994, by section 49 Financial Reporting Act 1993 (1993 No 106).

Section 11 was substituted, as from 1 October 1997, by section 4 Unit Trusts Amendment Act 1996 (1996 No 101).

12 Implied provisions in trust deed

- (1) The following provisions shall be implied in every trust deed relating to a unit trust, notwithstanding anything to the contrary in the deed:
- (a) that the manager of the unit trust shall use its best endeavours to ensure that the unit trust is carried on in a proper and efficient manner:
 - (b) that the manager of the unit trust shall—
 - (i) make available upon demand to the trustee thereof for inspection the whole of the manager's books and papers and all books and papers relating to the unit trust:
 - (ii) give to the trustee of the unit trust such information as that trustee requires with respect to all matters relating to the unit trust or to any business

of the manager, or to any property of the manager (whether acquired before or after the date of the trust deed), or otherwise relating to the affairs of the manager:

- (c) that the trustee of the unit trust shall not act on any direction of the manager to acquire any property for the unit trust or dispose of any property of the unit trust if, in the trustee's opinion conveyed in writing to the manager, the proposed acquisition or disposal is manifestly not in the interests of the unit holders; and the trustee shall not be liable to the unit holders or to the manager for so refusing to act on any direction of the manager:
 - (d) that the manager of a unit trust shall,—
 - (i) on request in writing of the trustee, or of either one-tenth in number of the unit holders, or of a unit holder or unit holders holding (at the date of the receipt by the manager of the request) not less than one-tenth of the value of the interests in the unit trust then held by unit holders, summon a meeting of unit holders to be held in accordance with section 18, by sending by post a notice specifying the time and place of the meeting to every unit holder at his last known address not later than 14 days before the date of the proposed meeting:
 - (ii) lay before the meeting copies of the last statements and summaries filed with the District Registrar in accordance with paragraph (b) of subsection (1) of section 20 and subsection (2) of that section.
- (2) Every provision implied in the trust deed relating to any unit trust in accordance with this section shall be enforceable by the trustee or any unit holder of the unit trust.

Subsection (1)(b)(i) and (ii) were amended, as from 3 June 1998, by section 5(a) Unit Trusts Amendment Act 1998 (1998 No 64) by omitting the words “or to its nominated company”.

Subsection (1)(b)(ii) was amended, as from 3 June 1998, by section 5(b) Unit Trusts Amendment Act 1998 (1998 No 64) by omitting the words “or nominated company”.

12A Implied provision in trust deed of portfolio investment entity

- (1) The provision in subsection (2) shall be implied in every trust deed relating to a unit trust for which the trustee is a portfolio investment entity, notwithstanding anything to the contrary in the deed.
- (2) Where any money, investments or other property of the unit trust is employed in an activity carried on as a portfolio investment entity, the manager may adjust the interests in the unit trust of the beneficiaries in the way required by section HL 7 of the Income Tax Act 2004.

Section 12A: inserted, on 1 October 2007, by section 247 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

13 Certificate of interest to be issued

[Repealed]

Section 13 was repealed, as from 1 October 1997, by section 5 Unit Trusts Amendment Act 1996 (1996 No 101).

14 Duty of manager with respect to subscriptions

- (1) The manager of any unit trust shall pay into a separate bank account all money received by that manager or any agent of that manager in respect of purchases of or subscriptions for interests in that unit trust.
- (2) The manager of any unit trust shall, within such period not exceeding 7 days as the trust deed provides, pay to the trustee or a nominated person of the trustee or a nominee of a nominated person of the trustee all money received by that manager or any agent of that manager in respect of purchases of or subscriptions for interests in that unit trust, except so much thereof as the manager is entitled to deduct or retain in accordance with the trust deed.

Subsection (2) was amended, as from 3 June 1998, by section 6 Unit Trusts Amendment Act 1998 (1998 No 64) by substituting the words “a nominated person of the trustee or a nominee of a nominated person of the trustee” for the words “its nominated company”.

15 Subscriptions, etc to become subject to trusts

All money required to be paid to the trustee or a nominated person of the trustee or a nominee of a nominated person of the

trustee in accordance with subsection (2) of section 14 shall, upon receipt by the manager or any agent of the manager, become subject to the trusts declared in the trust deed governing the unit trust.

Section 15 was amended, as from 3 June 1998, by section 6 Unit Trusts Amendment Act 1998 (1998 No 64) by substituting the words “a nominated person of the trustee or a nominee of a nominated person of the trustee” for the words “its nominated company”.

16 Trust deed to state conditions for buying back interests

- (1) The trust deed in respect of each unit trust shall state whether the manager has an obligation to buy back interests in the unit trust if requested to do so.
- (2) Where the manager has such an obligation, the trust deed shall also state the manner in which and the conditions on which such interests are to be bought back, including the method of calculating the minimum price at which interests are to be bought back.

17 Interests in unit trust to be transferable

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

18 Meeting of unit holders

- (1) Where a meeting of the unit holders of any unit trust is held in accordance with subparagraph (i) of paragraph (d) of subsection (1) of section 12, the meeting shall be under the chairmanship of a nominee of the trustee, and shall be conducted in accordance with any provisions in that connection in the trust deed and otherwise as directed by the Chairman of the meeting.
- (2) A unit holder or unit holders holding not less than three-quarters of the value of the interests in the unit trust held by the unit holders who are present in person or by proxy at any such meeting and vote, and who hold not less than one-quarter of the value of all the interests in the unit trust held by unit hold-

ers, shall have the power by resolution to give such directions to the trustee of the unit trust as they think proper concerning the unit trust, being directions that are consistent with the provisions of the trust deed and this Act.

- (3) Where any direction is so given to the trustee of a unit trust, the trustee may comply with the direction, and shall not be liable for anything done or omitted by it by reason of its following that advice or direction.
- (4) In any case where the trustee of a unit trust is of opinion that any direction so given conflicts with the trusts or any rule of law or is otherwise objectionable, the trustee may apply to the High Court for directions in the matter, and the decision and order therein shall be final:
Provided that nothing in this subsection shall make it necessary to apply to the Court for directions.
- (5) Where a unit holder is a company or other corporation its properly appointed representative may be its proxy.

The words “the High Court” were substituted for the words “the Supreme Court”, as from 1 April 1980, pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

19 Removal of manager

- (1) The Court may, on the application of the trustee of a unit trust, or any unit holder, or of the FMA, order that the manager be removed from that office.
- (2) The manager of any unit trust shall cease to hold that office if—
 - (a) the trustee certifies that it is in the interest of the unit holders that the manager should do so; or
 - (b) the unit holders, at a meeting held pursuant to section 18, so direct.
- (3) If the Court orders the removal of the manager of any unit trust, or if any manager of a unit trust ceases to hold office under subsection (2), that manager shall immediately desist from all activities related to the unit trust.

Section 19(1): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

20 Accounts, etc, to be filed

(1) *[Repealed]*

(2) The manager, in relation to each unit trust, that is not an issuer within the meaning of section 4 of the Financial Reporting Act 1993, shall file or cause to be filed with the District Registrar annually an audited statement of the accounts of the trust, and a summary of purchases and sales of property under the unit trust, and a list of all the investments of the unit trust as at the end of the period to which the accounts relate, together with particulars of the cost and the estimated market value as at that date of the investments and other property.

(2A) The manager, in relation to each unit trust, that is an issuer within the meaning of section 4 of the Financial Reporting Act 1993, shall attach to the financial statements to be delivered to the Registrar of Companies under that Act a summary of purchases and sales of property under the unit trust, and a list of all the investments of the unit trust as at the end of the period to which the financial statements relate, together with particulars of the cost and the estimated market value as at that date of the investments and other property.

(3) Where a new trustee or a new manager of a unit trust is appointed at any time after the commencement of the trust, that trustee or manager shall give notice of the appointment to the District Registrar within 28 days after the date of the appointment.

(4) The documents lodged with the District Registrar pursuant to section 9 and the foregoing provisions of this section shall be open for public inspection on payment of the prescribed fee.

(5) Every list, statement, summary, and document filed with the District Registrar under this section shall be verified by a statutory declaration made by a director of the company that is manager of the unit trust or by a responsible officer of the company.

Subsection (1) was repealed, as from 15 April 2004, by section 4 Unit Trusts Amendment Act 2004 (2004 No 34).

Subsection (2) was amended, as from 1 July 1994, by section 49 Financial Reporting Act 1993 (1993 No 106) by inserting the words “, not being an issuer within the meaning of section 4 of the Financial Reporting Act 1993”.

Subsection (2) was amended, as from 3 May 2001, by section 3 Unit Trusts Amendment Act 2001 (2001 No 27) by substituting the words “, in relation to each unit trust, that is not” for the words “of each unit trust, not being”.

Subsection (2A) was inserted, as from 1 July 1994, by section 49 Financial Reporting Act 1993 (1993 No 106).

Subsection (2A) was amended, as from 3 May 2001, by section 3 Unit Trusts Amendment Act 2001 (2001 No 27) by substituting the words “, in relation to each unit trust,” for the words “of each unit trust”.

21 Appointment of inspectors

- (1) One or more inspectors to investigate and report on the affairs of any unit trust and its manager may be appointed by—
 - (a) *[Repealed]*
 - (b) the High Court on application made either by one-tenth in number of the unit holders of the unit trust or by a unit holder or unit holders holding at the date of the application not less than one-tenth of the value of the interests in the unit trust then held by unit holders.
- (2) Every such inspector shall have in relation to the unit trust and its manager and affairs all the powers conferred on an inspector in relation to a company and its affairs by section 171 of the Companies Act 1955 (except subsection (3) of that section); and those provisions, so far as they are applicable and with the necessary modifications, shall apply accordingly. The report of every such inspector who is appointed by the High Court shall be made to that Court.
- (3) If any officer or agent of a company that is manager of a unit trust in respect of which an inspector has been appointed under this section refuses to produce to the inspector any book or paper which it is his duty under this section so to produce, or refuses to answer any question which is put to him by the inspector with respect to the affairs of the company or unit trust, that officer or agent commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$200.
- (4) No such officer or agent shall be excused from answering any question put to him by an inspector with respect to the affairs of the company or unit trust on the ground that the answer may incriminate or tend to incriminate him, but no statement made by him in answer to any such question shall be admissible against him in criminal proceedings, except proceedings under the Crimes Act 1961 for making a false statement upon oath.

The words “the High Court” were substituted for the words “the Supreme Court”, as from 1 April 1980, pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

Section 21(1)(a): repealed, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 21(2): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

In subsection (4) “the Crimes Act 1961” has been substituted, being the corresponding enactment in force, for the repealed “Crimes Act 1908”.

22 Court may confer additional powers of management

- (1) Subject to any contrary intention expressed in the trust deed in respect of any unit trust, where in the opinion of the High Court any sale or other disposition, or any purchase, investment, acquisition, retention, expenditure, or other transaction is expedient in the management or administration of any money, investments, or other property for the time being subject to the trusts governing a unit trust or would be in the best interests of the unit holders of the unit trust, but it is inexpedient or difficult or impracticable to effect the same without the assistance of the Court, or the same cannot be effected by reason of the absence of any power for that purpose vested in the trustee or manager of the unit trust by the trust deed or by law, the High Court may by order confer upon the trustee or manager, either generally or in any particular instance, the necessary power for the purpose, on such terms and subject to such provisions and conditions (if any) as that Court may think fit, and may give such directions as it thinks fit to the trustee or manager in respect of the exercise of any power conferred by the order.
- (2) An application to the Court under this section may be made by either the manager or the trustee or any unit holder.

23 Temporary managers

- (1) If any vacancy occurs in the office of manager of a unit trust, the trustee thereof shall have the power to appoint a qualified company as temporary manager thereof, which temporary manager shall have all the powers conferred on the manager by the trust deed or by law until a manager is appointed.
- (2) Upon any such vacancy occurring, the trustee of the unit trust shall summon a meeting of the unit holders of the unit trust,

and shall take such steps as that meeting or any subsequent meeting of those unit holders may require to secure the appointment of that company or some other qualified company as manager of the unit trust.

24 Trust deed not to exempt trustee or manager from liability

- (1) The trustee of a unit trust and the manager thereof shall each have the same duty to observe care and diligence in the performance of its duties as any other trustee, and shall each be entitled to the same indemnities and relief as any other trustee.
- (2) Any provision in a trust deed governing a unit trust or in any other instrument shall be void so far as it would have the effect of—
 - (a) exempting the trustee or manager or any director or officer of the trustee or manager from liability for breach of trust where it or he fails to show the degree of care and diligence required of it or him in that capacity, having regard to the provisions of the trust deed and the powers, authorities, or discretions conferred thereby;
 - (b) indemnifying the trustee or manager or any such director or officer from any such liability.

25 Offences

- (1) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000,000 who—
 - (a) issues any interest in a unit trust or offers any such interest to the public for subscription or purchase, or invites the public to subscribe for or purchase such an interest, in contravention of any provision of this Act; or
 - (b) continues any activities related to any unit trust in contravention of subsection (3) of section 19.
- (2) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 who fails to comply with any of the provisions of sections 9, 11, 14, and 20.
- (3) Every person who has at any time, whether before or after the commencement of this Act, been convicted of a crime involving dishonesty within the meaning of the Crimes Act 1961 commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine

not exceeding \$200,000, if, after the commencement of this Act, without the consent of the FMA, proof whereof shall lie on the person alleging consent, he acts as a director, officer, or responsible employee of a company that is the manager of a unit trust.

Subsection (1) was amended, as from 15 April 2004, by section 5(1)(a) Unit Trusts Amendment Act 2004 (2004 No 34) by substituting the expression “\$1,000,000” for the expression “\$1,000”.

Subsection (1)(b) was amended, as from 15 April 2004, by section 5(1)(b) Unit Trusts Amendment Act 2004 (2004 No 34) by omitting the words “issues any form of application for an interest in a unit trust in contravention of subsection (2) of section 7 of this Act, or”.

Subsection (2) was amended, as from 15 April 2004, by section 5(2)(a) Unit Trusts Amendment Act 2004 (2004 No 34) by substituting the expression “\$10,000” for the expression “\$200”.

Subsection (2) was amended, as from 15 April 2004, by section 5(2)(b) Unit Trusts Amendment Act 2004 (2004 No 34) by omitting the expression “13,”.

Section 25(3): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Subsection (3) was amended, as from 15 April 2004, by section 5(3) Unit Trusts Amendment Act 2004 (2004 No 34) by substituting the expression “\$200,000” for the expression “\$200”.

In subsection (3) the Crimes Act 1961 was substituted, as from 1 January 1962, for the repealed Crimes Act 1908.

26 Restriction on personal benefits by directors or officers

- (1) Every person who is a director or officer of a company that is the manager of a unit trust, or of a trustee corporation or company or bank that is the trustee of a unit trust, shall be a trustee for the benefit of the unit holders of any personal profit or benefit which he gains by availing himself of his position, whether by buying or selling or joining in buying or selling investments or securities or otherwise:
Provided that nothing in this subsection shall affect the right of any such director or officer to receive and retain remuneration from the trustee corporation or company or bank of which he is a director or officer.
- (2) Any such personal profit shall be transferred to the trustee of the unit trust, and may be recovered by that trustee from the person who gained it.

27 Power of Court to assess damages against delinquent directors of manager

- (1) If, in the course of winding up any company that is the manager of a unit trust, it appears that the company has misapplied or retained or become liable or accountable for any money or property of the unit trust, or committed any misfeasance or breach of trust in relation to the unit trust, the Court may, on the application of the Official Assignee or of the liquidator or of the trustee or of any unit holder, examine into the conduct of any past or present director, manager, or liquidator, or any officer of the company who has been a party to or knowingly permitted the misapplication, retention, misfeasance, or breach of trust, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the Court thinks just or to contribute such sum to the assets of the trust by way of compensation in respect of the misapplication, retention, misfeasance, or breach of trust as the Court thinks just.
- (2) The provisions of this section shall have effect notwithstanding that the act is one for which the offender may be criminally liable.
- (3) Where an order for payment of money is made under this section, the order shall be deemed to be a final judgment within the meaning of section 17(1)(a) of the Insolvency Act 2006.

Section 27(3): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

In subsection (3) the reference to section 19(1)(d) of the Insolvency Act 1967, being the corresponding enactment in force, has been substituted for the repealed section 26(f) of the Bankruptcy Act 1908.

28 Regulations

- (1) The Governor-General may from time to time, by Order in Council, make all such regulations as may in his opinion be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.
- (2) Without limiting the general power to make regulations conferred by subsection (1), regulations may be made under this section for all or any of the following purposes:

- (a) prescribing the maximum commission that may be charged, and the maximum charge for administration and other expenses that may be made, by the manager or trustee of any unit trust:
 - (b) prescribing the fees to be paid on the lodging or filing of any documents in respect of a unit trust with the Registrar or District Registrar, and on the inspection of any such documents:
 - (c) prescribing the manner in which the accounts of the unit trust are to be kept.
- (3) *[Repealed]*
Subsection (3) was repealed, as from 19 December 1989, by section 11 of the Regulations (Disallowance) Act 1989.

29 Amendment

[Repealed]

Section 29 was repealed, as from 26 October 1967, by section 48 Trustee Companies Act 1967 (1967 No 35).

30 Existing unit trusts

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

Schedule
**Particulars to be included in statement by
manager**

s 7(1)

- 1 The date of the statement.
- 2 The date of and parties to the trust deed under this Act.
- 3 The date of and parties to any deed or instrument by which any of the provisions of the trust deed has been amended or abrogated.
- 4 The name of the trustee and the address of the trustee's registered office, and the name of any nominated company of the trustee and the address of that nominated company's registered office.
- 5 A summary of the provisions of the trust deed and of this Act regulating the retirement, removal, and replacement of the trustee.
- 6 The name of the manager and the address of its registered office, and the names of the directors of the company that is the manager.
- 7 A summary of the provisions of the trust deed and of this Act regulating the retirement, removal, and replacement of the manager.
- 8 The name and address of the auditor of the trust.
- 9 A summary of the provisions (if any) of the trust deed regulating the appointment, retirement, removal, and replacement of the auditor.
- 10 The period of the trust, if that is declared by the trust deed, and a summary of the provisions (if any) of the trust deed for the winding up of the trust on its termination.
- 11 The method of calculation (if any) provided by the trust deed of the price at which the manager may sell any interest.
- 12 Whether or not the trust deed imposes upon the manager any obligation to buy back the interest of any unit holder, and if so a summary of the conditions attaching to that obligation and the method provided by the trust deed for the calculation of the minimum purchase price of an interest in the unit trust payable by the manager.

- 13 A summary of the investments and property and classes of investments and property that may be held or acquired under the trust, including particulars of the companies and classes of companies whose securities may be so held or acquired, and a statement of the percentage of the assets of the trust that may be invested in any one company or class of companies or investments or property. If there is no such percentage limitation, this shall be expressly stated.
- 14 Full information regarding the remuneration of the trustee and the manager, and the provisions (if any) of the trust deed governing the manner in which provision is made for their remuneration, and regarding the charges (if any) that are made in respect of their remuneration upon the sale of or subscription for or purchase of an interest in the unit trust and upon the distribution of income and capital under the trust deed.
- 15 Whether or not an interest in the unit trust is transferable by the holder thereof and, if so, a summary of the provisions of the trust deed regulating the transfer thereof.
- 16 A summary of the provisions (if any) of the trust deed regulating the distribution to the unit holders of the income and gains (whether in the nature of capital or income) of the unit trust.
- 17 If any reference is made in the statement to the yield of income obtained by unit holders, a statement as to whether and to what extent anything other than cash receipts by way of dividends, interest, or bonuses has been taken into account in calculating the yield.
- 18 A summary of the provisions of the trust deed and of this Act regulating the convening of meetings of unit holders.
- 19 The names and the date of commencement of operation of any other unit trusts conducted by the manager during the 5 years immediately preceding the date of the statement.
- 20 If the statement by the manager of the unit trust is issued after any date on which the manager is required to file a statement under paragraph (b) of subsection (1) of section 20 with the District Registrar, the statement by the manager shall set out the particulars required to be set out in the last statement required to be so filed under that paragraph.

Financial Markets Authority Act 2011

Public Act 2011 No 5
Date of assent 18 April 2011
Commencement see section 2

1 Title

This Act is the Financial Markets Authority Act 2011.

2 Commencement

This Act comes into force on 1 May 2011.

Part 4

Miscellaneous provisions

Subpart 2—Transitional provisions

Miscellaneous provisions

83 Transitional provisions relating to consequential amendments to Unit Trusts Act 1960

- (1) Every person who, before the commencement of this section, was approved by a Minister under section 4(2) of the Unit Trusts Act 1960 must, after that commencement, be treated as having been approved by the FMA under that provision.
- (2) If, before the commencement of this section, an application has been made by a Minister under section 19(1) of the Unit Trusts Act 1960 and the court has not yet made a decision on the application, the FMA may continue with the application.
- (3) If, before the commencement of this section, an inspector is appointed by a Minister under section 21 of the Unit Trusts Act 1960, the inspector—
 - (a) may continue the investigation as if section 21 had not been amended by this Act; but
 - (b) must make his or her report to the FMA rather than the Minister.

- (4) A consent under section 25(3) of the Unit Trusts Act 1960 given before the commencement of this section remains valid despite the amendment made to that provision by this Act.
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Contents

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Notes**1 General**

This is an eprint of the Unit Trusts Act 1960. The eprint incorporates all the amendments to the Act as at 1 May 2011. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the eprint are also included, after the principal enactment, in chronological order.

2 About this eprint

This eprint has not been officialised. For more information about eprints and officialisation, please *see* <http://www.pco.parliament.govt.nz/eprints/>.

3 List of amendments incorporated in this eprint (most recent first)

Financial Markets Authority Act 2011 (2011 No 5): section 82

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

Income Tax Act 2007 (2007 No 97): section ZA 2(1)

Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81): sections 246, 247

Insolvency Act 2006 (2006 No 55): section 445
