



New South Wales

Trustee Companies Regulation 2005

under the

Trustee Companies Act 1964

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Trustee Companies Act 1964*.

BOB DEBUS, M.P.,
Attorney General

Explanatory note

The object of this Regulation is to remake, without any changes in substance, the provisions of the *Trustee Companies Regulation 2000* which is repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation:

- (a) prescribes the services for which management fees may be charged by trustee companies (clause 4 and Schedule 1), and
- (b) prescribes the form of financial statements that must be prepared by a trustee company under the *Trustee Companies Act 1964* (clause 5 and Form 1 of Schedule 2), and
- (c) prescribes the form of application and notice to be used in relation to certain share acquisitions (clause 6 and Form 2 of Schedule 2), and
- (d) prescribes the minimum amount of indemnity that must be maintained by certain trustee companies (clause 7).

This Regulation is made under the *Trustee Companies Act 1964*, including sections 19, 29D, 31A, 36A and 37 (the general regulation-making power).

This Regulation relates to matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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Trustee Companies Regulation 2005

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1 Name of Regulation

This Regulation is the *Trustee Companies Regulation 2005*.

2 Commencement

This Regulation commences on 1 September 2005.

Note. This Regulation replaces the *Trustee Companies Regulation 2000* which is repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

- (1) In this Regulation:
the Act means the *Trustee Companies Act 1964*.
- (2) In this Regulation, a reference to a Form is a reference to a Form set out in Schedule 2.
- (3) Notes in this Regulation (other than in a Form) do not form part of this Regulation.

4 Services for which management fees may be charged

For the purposes of section 19 (1) of the Act, the services specified in Schedule 1 are prescribed as services in respect of which a trustee company is entitled to receive management fees.

5 Financial statement of trustee company

- (1) For the purposes of section 29D (1) of the Act, the prescribed form for a financial statement that a trustee company must prepare is Form 1.
- (2) For the purposes of section 29D (10) of the Act, the costs recoverable for any work undertaken by or on behalf of the Director-General of the Attorney General's Department to review a financial statement are to be calculated at a rate, and in a manner, to be determined by the Director-General of that Department.

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Clause 6 Trustee Companies Regulation 2005

6 Share acquisitions

- (1) An application referred to in section 31A (3) (c) of the Act (application for the approval of the Minister to the acquisition of shares in a trustee company) is to be made in writing.
- (2) A notice referred to in section 31A (5) of the Act (notice to the Minister of the acquisition of shares in a trustee company) is to be in writing in Form 2 and signed by the person or persons who acquired the shares to which the notice relates.

7 Minimum amount of indemnities to be taken out by certain trustee companies

- (1) The object of this clause is to fix the minimum amount of indemnity to be maintained, whether by means of an insurance policy or a bank guarantee lodged with the Attorney General, by certain specified trustee companies.
- (2) For the purposes of section 36A (1) (a) and (b) of the Act, the amount prescribed:
 - (a) for Perpetual Trustees Australia Limited, is \$30 million, and
 - (b) for the Permanent Trustee Company Limited, is \$25 million, and
 - (c) for the Perpetual Trustee Company Limited, is \$25 million, and
 - (d) for National Australia Trustees Limited, is \$20 million, and
 - (e) for Guardian Trust Australia Limited, is \$20 million, and
 - (f) for the Trust Company of Australia Limited, is \$50 million.

8 Savings

Any act, matter or thing that had effect under the *Trustee Companies Regulation 2000*, immediately before its repeal, is taken to have effect under this Regulation.

Schedule 1 Services for which management fees may be charged

(Clause 4)

- 1 Administration or management of assets located interstate or overseas.
- 2 Inspection of and report on real or personal estate.
- 3 Arranging for and supervising repairs to real estate.
- 4 Valuation of assets.
- 5 Preparation and lodgment of returns for:
 - (a) income tax, or
 - (b) land tax, or
 - (c) death and estate duties (other than those required for the original grant of probate or letters of administration).
- 6 Furnishing information for the purpose of any proposed dealing with a beneficial interest or for registering a notice of charge or other dealing.
- 7 Rearrangements of transactions necessary as a result of requests or deeds entered into by the beneficiaries.
- 8 Engagement in litigation (other than litigation arising from any default or neglect by the trustee company).
- 9 Keeping books of accounts (including the preparation of balance sheets and profit and loss accounts) of any business, except where the trustee company also carries on the business.
- 10 Applying, in good faith, for a grant of probate or letters of administration if the application is not granted due to circumstances beyond the control of the trustee company.
- 11 Forming companies or restructuring existing companies for the benefit of existing beneficiaries.
- 12 Duties involved in joint tenancies.
- 13 Attendances outside the offices of a trustee company (other than those in connection with making inquiries for the purpose of applying for a grant of probate or letters of administration).
- 14 Inquiries for missing or unnamed beneficiaries.

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Schedule 1 Services for which management fees may be charged

- 15** Passing of accounts with Registrar in Probate where the trustee company is acting as co-executor or co-administrator.
- 16** Collecting rent on behalf of an estate (not being an estate in respect of which the trustee company charges a commission under section 18 of the Act on the rent received on account of the estate).
- 17** Carrying on of a business which belongs wholly to an estate or in which an estate has an interest as partner.

Schedule 2 Forms

(Clause 3 (2))

Form 1 Financial statement by a trustee company

(Clause 5 (1))

(Trustee Companies Act 1964)

[Name] (“the company”)

in accordance with a resolution of the directors of the company, states:

- 1 That on [date] (*Note 1*)
(referred to as “the balance date” in this Form):
 - (a) The authorised capital of the company was \$ [amount] divided into [number] shares of \$ [amount] each.
 - (b) The issued capital was made up of [number] shares of \$ [amount] each paid to \$ [amount] per share.
 - (c) The total amount of paid up capital was \$ [amount]
 - (d) The uncalled capital being \$ [amount] per share and amounting to \$ [amount] was made up as follows:
 - (i) \$ [amount] per share amounting to \$ [amount] which may be called up at the discretion of the company, and
 - (ii) \$ [amount] per share amounting to \$ [amount] which can only be called up on and for the purpose of the winding up of the company (reserve liability).
 - (e) Calls to the amount of \$ [amount] per share amounting to \$ [amount] had been made but remained unpaid and the shares had not been forfeited.
 - (f) The net tangible assets of the company (ie the amount calculated by deducting total liabilities from total tangible assets) amounted to \$ [amount]
- 2 That the following loans were obtained from financial institutions other than banks and insurance companies during the period of 6 months preceding the balance date:

Name of institution	Amount of loan \$'000	Term of loan and maturity date	Interest rate	Security (if applicable)
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- 6 That the balance sheet as at [date] (Note 1) and the profit and loss account for the 6 months ended on that date were as follows:

Balance sheet as at [date]

Current assets	Amount \$ '000
Cash at bank and on hand	
Bills receivable:	
bank accepted or endorsed (Note 4)	
other (Note 4)	
Investments in and loans to related parties (Note 3):	
investments (Notes 4 and 5)	
loans:	
secured (Notes 4 and 10)	
unsecured (Note 4)	
Other loans and deposits (Note 6):	
secured (Notes 4 and 10)	
unsecured (Note 4)	
Government and semi-government securities (Note 7)	
Shares, units, options, debentures and convertible notes:	
listed on a prescribed stock exchange—market value (Notes 4, 5 and 8)	
not listed on a prescribed stock exchange (Notes 4, 5 and 8)	
Interests in partnerships, trusts and unincorporated joint ventures (Notes 4 and 9)	
Lease receivables (Note 4)	
Property held for resale (Note 4)	
Other current assets (Notes 2 and 4)	
Total current assets	

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Non-current assets	Amount
	\$ '000
Bills receivable:	
bank accepted or endorsed (<i>Note 7</i>)	
other (<i>Note 7</i>)	
Investments in and loans to related parties (<i>Note 3</i>):	
investments (<i>Notes 5 and 7</i>)	
loans:	
secured (<i>Notes 7 and 10</i>)	
unsecured (<i>Note 7</i>)	
Other loans and deposits (<i>Note 6</i>):	
secured (<i>Notes 7 and 10</i>)	
unsecured (<i>Note 7</i>)	
Government and semi-government securities (<i>Note 7</i>)	
Shares, units, options, debentures and convertible notes:	
listed on a prescribed stock exchange—market value (<i>Notes 5, 7 and 8</i>)	
not listed on a prescribed stock exchange (<i>Notes 5, 7 and 8</i>)	
Interests in partnerships, trusts and unincorporated joint ventures (<i>Notes 7 and 9</i>)	
Lease receivables (<i>Note 7</i>)	
Property held for resale (<i>Note 7</i>)	
Intangible assets (<i>Notes 2 and 7</i>)	
Other non-current assets (<i>Notes 2 and 7</i>)	
Total non-current assets	
Total assets	

Current liabilities	Amount
	\$ '000
Bank overdrafts and bank loans:	
secured (<i>Note 10</i>)	
unsecured	
Loans from other financial institutions:	
secured (<i>Note 10</i>)	
unsecured	
Bills payable and liabilities under promissory notes	
Subordinated loans from related parties	
Clients' balances and deposits:	
secured (<i>Notes 2 and 10</i>)	
unsecured	
Trade creditors and accrued expenses	
Lease payables	
Provisions:	
income tax	
dividends	
other	
Deferred income (<i>Notes 2 and 11</i>)	
Other amounts payable:	
secured (<i>Notes 2 and 10</i>)	
unsecured (<i>Note 2</i>)	
Total current liabilities	_____

Non-current liabilities	Amount
	\$ '000
Bank overdrafts and bank loans:	

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Schedule 2 Forms

Non-current liabilities	Amount
	\$ '000
secured (<i>Note 10</i>)	
unsecured	
Loans from other financial institutions:	
secured (<i>Note 10</i>)	
unsecured	
Bills payable and liabilities under promissory notes	
Subordinated loans from related parties	
Clients' balances and deposits:	
secured (<i>Notes 2 and 10</i>)	
unsecured	
Lease payables	
Provisions:	
income tax	
other	
Deferred income (<i>Notes 2 and 11</i>)	
Other amounts payable:	
secured (<i>Notes 2 and 10</i>)	
unsecured (<i>Note 2</i>)	
Total non-current liabilities	_____
Total liabilities	_____
Net assets/shareholders' funds (Total assets	
 less total liabilities)	_____
Less: intangible assets	_____
Net tangible assets	_____

Profit and loss account for the 6 month period ended	Amount \$ '000
<i>(Note 1)</i>	
Operating profit (loss)	
Income tax	
Operating profit (loss) after income tax	
Profit (loss) on extraordinary items after income tax	
Subordinated loans from related parties	
Net profit (loss)	

- 7 That, in the opinion of the directors who have passed the resolution in accordance with which this Statement is made, the balance sheet and the profit and loss account of the company have been drawn up so as to give a true and fair view of the state of affairs of the company as at [date] (*Note 1*) and the profit or loss of the company for the period ended on that date.
- 8 That the classification of assets and liabilities and the valuation of assets in the balance sheet are based upon the company's intentions at the balance date as to the use or disposal of those assets and the repayment of liabilities.
- 9 That, in the opinion of the directors who have passed the resolution in accordance with which this Statement is made, at the date of this Statement there are reasonable grounds to believe that the company will be able to pay its debts as and when they fall due.
- 10 That during the period of 6 months preceding the balance date:
 There had been the following significant changes in the nature of the principal activities of the company (*Note 12*) [*state changes*]:
 The following items, transactions or events of a material and unusual nature affected the results of the company's operations (*Note 13*):
 The provisions of the *Trustee Companies Act 1964* and of the *Trustee Companies Regulation 2000* or the *Trustee Companies Regulation 2005* in respect of the investment of money held by the company on trust had been complied with.
 The company had complied with all other requirements of the *Trustee Companies Act 1964* and of the *Trustee Companies Regulation 2000* or the *Trustee Companies Regulation 2005*.
- 11 That the following matters or circumstances have arisen since the balance date and have significantly affected or may significantly affect:
- (a) the operations of the company, or
 - (b) the results of those operations, or

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Schedule 2 Forms

- (c) the state of affairs of the company,
in subsequent periods (*Note 13*) [*list matters or circumstances*]:

Date:

Signed:

Signature:

Name:

Position: Director

Date:

Signed:

Signature:

Name:

Position: Director

Definitions

- 1 ***Current assets*** means cash or other assets which would in the normal course of business be consumed or converted into cash within 12 months after the balance date.
- 2 ***Current liabilities*** means liabilities which in the normal course of business would be due and payable within 12 months after the balance date.
- 3 ***Non-current assets*** means assets other than current assets.
- 4 ***Non-current liabilities*** means liabilities other than current liabilities.

Notes

- 1 Show the date of the last day of the 6 month period.
- 2 Provide details of major components if the total amount is material.
- 3 ***Related party*** includes:
 - (a) a related corporation,
 - (b) a director of, an executive officer of, or a secretary of, the reporting company or of a related corporation, their relatives and companies controlled by them, and any unincorporated association (including trading trust) where a material beneficial interest is held by those parties or any combination of those parties,
 - (c) any party which can significantly influence the management or operating policies of the reporting company,
 - (d) any party whose management or operating policies are able to be significantly influenced by the reporting company or a director, executive officer or secretary of the reporting company, and
 - (e) any party whose management or operating policies are able to be significantly influenced by a third party which is in a position to exercise a similar influence on the reporting company.

Unincorporated association means an unincorporated joint venture, partnership, trust or any other form of unincorporated association.

- 4 State at lower of cost and net realisable value.
- 5 Indicate types of investments by broad categories.
- 6 Includes mortgages.
- 7 State at cost or valuation less amounts written off or provided for depreciation or permanent diminution in value.
- 8 *Prescribed stock exchange* means the Australian Stock Exchange Limited
- 9 Indicate the nature and extent of the interests by broad categories.
- 10 Indicate the nature and extent of security by broad categories.
- 11 Any unearned income is not to be included in any estimate of the gross amount of any class of debts unless the amount of unearned income so included is shown as a deduction from the estimate of the gross amount of the class of debts concerned.
- 12 If no change, insert "nil".
- 13 If no effect, insert "nil".

Form 2 Notice of acquisition of shares in a trustee company
(Trustee Companies Act 1964)

(Clause 6 (2))

To the Minister administering the *Trustee Companies Act 1964*:

Notice is given for the purposes of section 31A (5) of the Act of the acquisition of shares in a trustee company, as follows:

- Name of trustee company:
- Name of person or persons who acquired shares:
- Percentage entitlement of the person or persons to shares in the company before the acquisition:
- Percentage entitlement of the person or persons to shares in the company after the acquisition:
- Name of person or persons from whom shares acquired:
- Date shares acquired:

Signed (by the person or persons who acquired the shares):

Date of this notice:

BY AUTHORITY