

Trustee Companies Regulation 2005

[2005-427]



New South Wales

Status Information

Currency of version

Historical version for 14 December 2009 to 5 May 2010 (accessed 17 July 2024 at 22:19)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Trustee Companies Amendment Act 2009 No 109](#), Sch 2.4 [1] [3] and [4] (not commenced — to commence on the day on which Sch 2 to the [Corporations Legislation Amendment \(Financial Services Modernisation\) Act 2009](#) of the Commonwealth commences)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 30 April 2010

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New South Wales

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Trustee Companies Regulation 2005



New South Wales

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This Regulation replaces the *Trustee Companies Regulation 2000* which is repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*.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

3A Small estates

(1) For the purposes of sections 15A and 15AA of the Act, a trustee company may file an election to administer an estate if the gross value of the estate in New South Wales is less than \$100,000.

(2) A notice of an election under section 15A or 15AA of the Act, or a notice under section 15AB of the Act, must state that the election has been made and may contain any other particulars of the election that the trustee company thinks fit.

(3) A notice of an election under section 15A or 15AA of the Act must be published:

(a) if the deceased person resided in New South Wales at the date of death—in a newspaper circulating in the area where the deceased resided, or

(b) in any other case—in a Sydney daily newspaper.

(4) This clause is taken to have commenced on 1 July 2009.

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.

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 Limited, is \$30 million, and
 - (b) for the Trust Company Fiduciary Services 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 BNY Trust Company of Australia Limited, is \$20 million, and
 - (f) for the Trust Company 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.
- 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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3 That the following contingent liabilities existed at the balance date (show the amounts where they can be quantified):

**Amount
\$ '000**

Guarantees of liabilities of related parties

Guarantee of liabilities of other persons

Other contingent liabilities (*Note 2*)

Total

4 That the guarantees of liabilities of related parties (*Note 3*) stated above were made up as follows:

Name of related party

**Amount
\$ '000**

Total

5 That the nature and amount of credit and standby facilities available to the company as at the balance date, a summary of the restrictions affecting those facilities and the duration of each of those facilities were as described below:

**Nature of
facility**

**Summary of
restrictions**

Duration

**Amount of facility
available to the
company
\$ '000**

**Amount of facility
unused at balance date
\$ '000**

Total

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

Non-current assets

**Amount
\$ '000**

Bills receivable:

bank accepted or endorsed (Note 7)

other (Note 7)

Investments in and loans to related parties (Note 3):

investments (Notes 5 and 7)

loans:

secured (Notes 7 and 10)

unsecured (Note 7)

Other loans and deposits (Note 6):

secured (Notes 7 and 10)

unsecured (Note 7)

Government and semi-government securities (Note 7)

Shares, units, options, debentures and convertible notes:

listed on a prescribed stock exchange—market value (Notes 5, 7 and 8)

not listed on a prescribed stock exchange (Notes 5, 7 and 8)

Interests in partnerships, trusts and unincorporated joint ventures (*Notes 7 and 9*)

Lease receivables (*Note 7*)

Property held for resale (*Note 7*)

Intangible assets (*Notes 2 and 7*)

Other non-current assets (*Notes 2 and 7*)

Total non-current assets

Total assets

Current liabilities

**Amount
\$ '000**

Bank overdrafts and bank loans:

secured (*Note 10*)

unsecured

Loans from other financial institutions:

secured (*Note 10*)

unsecured

Bills payable and liabilities under promissory notes

Subordinated loans from related parties

Clients' balances and deposits:

secured (*Notes 2 and 10*)

unsecured

Trade creditors and accrued expenses

Lease payables

Provisions:

income tax

dividends

other

Deferred income (*Notes 2 and 11*)

Other amounts payable:

secured (*Notes 2 and 10*)

unsecured (*Note 2*)**Total current liabilities****Non-current liabilities****Amount
\$ '000**

Bank overdrafts and bank loans:

secured (*Note 10*)

unsecured

Loans from other financial institutions:

secured (*Note 10*)

unsecured

Bills payable and liabilities under promissory notes

Subordinated loans from related parties

Clients' balances and deposits:

secured (*Notes 2 and 10*)

unsecured

Lease payables

Provisions:

income tax

other

Deferred income (*Notes 2 and 11*)

Other amounts payable:

secured (*Notes 2 and 10*)unsecured (*Note 2*)**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**

(Note 1)

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
(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: