

Legislative Impact on The Role of the Corporate Trustee

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Corporate Trustees

- They do not regulate against risk
- They do not underwrite financial performance

Their role is that of “Referee”

They provide a framework for investor protection ie **RULES**

Impact on the Finance Sector

- Finance Company receiverships - 20
- Finance Company moratoriums - 12
- Managed Funds frozen - 6+

The Damage

Finance Company receiverships

- \$2.1billion

Finance Company Moratoriums

- \$2.8billion

Managed Funds frozen

- \$1.7billion

The Lessons

- **Client selection (risk management)**
- **Understand the client's business**
- **Monitor risk concentration**
- **Concentrate on Cash Flow**
- **Monitor proactively**
- **Business model flawed and**
- **Clearly define the role of Trustee so investors understand what a Trustee can do and cannot do.**

Crown Guarantee

- Build Public confidence
- Unintended Consequence
- Excludes beneficiaries where a Trustee Company is a Trustee
- Lack of understanding by officials of beneficial ownership

Corporate Trustees

What are they?

Defined by legislation

- The Trustee Act
- The Trustee Corporations Act

Long established

- Since 1872

Trustee Corporations

Who are they?

- The Public Trustee
- The Maori Trustee
- Trustees Executors Ltd
- The New Zealand Guardian Trust Co Ltd
- Perpetual Trust Ltd
- New Zealand Permanent Trustees Ltd
- ...and as approved by section 48 of the Securities Act



Trustee Corporations Association of New Zealand Inc.

TCA members include all the authorised statutory Trustee Corporations together with an associate member authorised by the Securities Commission.



Trustee Corporations



The Public Trust was established in 1872 and is owned by the New Zealand Government and, under the terms of various statutes, performs a public policy role as well as commercial activities.

In 2000, the Public Trust acquired New Zealand Permanent Trustees, another statutory Trustee.

Funds under supervision - \$23.3 billion

Trustee Corporations



Trustees Executors Limited was the first privately owned Trustee Company in New Zealand, established in Dunedin in 1881.

Trustees Executors Limited provides its services through the key business lines of personal and corporate trustee services, custodial and investment administration services and mortgage management.

It is wholly owned by Trustees Executors Holdings Limited, a member of the Sterling Grace group of companies.

Funds under supervision - \$44.3 billion

The Champions for Investor and Beneficiary Protection



Trustee Corporations

The logo for Guardian Trust, featuring the text "Guardian Trust" in white serif font on a dark blue rectangular background, with a yellow vertical bar to the right.

Guardian Trust was established in 1882.

It is New Zealand's largest independent investment funds manager, specialising in financial advice and asset management.

It is a member of the Promina Group of companies.

Funds under supervision - \$30.4 billion

The Champions for Investor and Beneficiary Protection



Trustee Corporations



Perpetual Trust

Perpetual Trust was established in 1884 under its own Act of Parliament. It provides professional trustee services to personal and corporate clients, as well as specialising in wealth, financial and asset management. It is a wholly owned subsidiary of Pyne Gould Corporation.

Funds under supervision - \$19.3 billion

Trustee Corporations

Associate member:



Covenant Trustee Company

Covenant Trustee Company was established in 1983.

Not a statutory corporation, Covenant has approval to act as a Trustee and statutory supervisor under the Securities Act and the Unit Trust Act.

Funds under supervision - \$3.8 billion

The Champions for Investor and Beneficiary Protection



Trustee Corporations

The Trustee Proposition

- Independence is paramount
- Experienced and Professional
- Focus on investor and beneficiary protection

Trustee Corporations

What do they do?

- Corporate Trusts – 1,300
- Personal Trusts – 18,900
- Estates – 7,400
- Agencies – 27,300

Total funds under Supervision - \$121 billion

Trustee Corporations

Relevant Legislation

- Securities Act
- Reserve Bank of New Zealand Amendment Act
- Financial Service Providers (Registration and Disputes Resolution) Act
- Financial Advisers Act

Securities Act

Criteria for approval of a Trustee

- Independence
- Competence
- Character
- Financial Capacity
- Accountability

Securities Act

Regulatory requirements for Issuers

- Investment Statement
- Prospectus
- Trust Deed
- Registration

Current role of Trustees

- Agree terms of the Trust Deed ie the rules
- Ensure the offer documents comply with the deed
- Monitor compliance with the deed
- Monitor reports from the issuer

The Reserve Bank Amendment Act 2008

Objective:

“To promote a sound and efficient financial system.”

Reserve Bank Amendment Act

- **RBNZ Role:** *“Prudential regulator of NBDTs. To monitor NBDT sector”*
- **Trustee’s Role:** *“Supervising NBDTs to ensure compliance with Trust Deeds. To report to RBNZ material non compliance”*
- **Sec Com Role:** *Formulating and enforcing NBDT disclosure requirements.*

Reserve Bank Amendment Act

Key features:

- Establishes minimum standards
- Deposit takers to be registered
- Deposit takers to be licensed
- Trust Deed required
- Trustee Corporations as Prudential Supervisors
- Does not promote uniform level of risk

Reserve Bank Amendment Act

Details:

- Minimum capital requirement
- Minimum related party lending
- Minimum liquidity
- Independent Directors
- Credit Rating
- Proper governance

Reserve Bank Amendment Act

Corporate Trustee obligations to the Bank

- Confirm issuer compliance in support of licensing application
- Agreeing the terms of the Trust Deed
- Monitoring issuers are in compliance
- Report any material or likely material non compliance
- Report on specific issuers if required
- Taking enforcement actions

Financial Service Providers (Registration and Disputes Resolution) Act 2008

Objective:

“To promote confidence and participation in financial markets by investors and institutions.”

Financial Service Providers (Registration and Disputes Resolution) Act 2008

- Identify/Registration
- Fit and proper persons
- AML
- Industry based dispute resolution system

Financial Advisers Act 2008

Objective:

“To establish a new regulatory regime for financial advisors by establishing standards (including disclosure, competence and accountability) for and requiring oversight of those who provide financial advice .”

TCA Code of Practice

- **Acceptance**
- **Governance**
- **Monitoring**
- **Compliance**
- **Related party lending**

TCA Code of Practice

The impact of the new Reserve Bank Act and the related RFPP legislation will be that **Best Practice** will become **Standard Practice**

Conclusions

- TCA supports the new legislation
- Governance/Risk management focus
- Provides for more consistency
- Better access to information
- Trustee Corporation supervision role enhanced
- Preserves the best features of the current system
- Improves investor protection