

## NEWSLETTER NO. 60 DECEMBER 2006

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### **KiwiSaver Act 2006 and KiwiSaver Regulations 2006**

#### **1. Overview**

The KiwiSaver Act 2006 (“the Act”) has to a large extent now been brought into force with effect from 1<sup>st</sup> December 2006 together with the KiwiSaver Regulations 2006 which have established the processes necessary to establish a KiwiSaver Scheme (KS) or Exempt Employer Status (EES).

The Government Actuary is the Regulator/Registrar and this Newsletter addresses how we propose to administer the processes within the Insurance and Superannuation Unit (ISU).

These processes include registration of:-

- a new KS
- conversion to a KS from an existing Registered Super Scheme (RSS)
- a “bolt-on” section to an existing RSS

Additional responsibilities include:-

- approval of an EES
- review of anticipated Trust Deed amendments to enable a “bolt-on” or reflect changes within the tax environment
- approval of transactions under sections 9BAA and 9BAB of the Superannuation Schemes Act 1989 (SSA) to both registered superannuation schemes and KiwiSaver schemes.

The remainder of this newsletter deals with the specific issues.

## **2. Personnel**

The nucleus of the team is unchanged and comprises Gavin Quigan, Manager ISU and Lesley Carrig, Superannuation Officer as well as myself, David Benison, Government Actuary.

We will add to this team as needs develop.

We remain appreciative of confidential information provided to us by industry participants as to potential work volumes to allow us to manage the work efficiently both for our own work flow and to assist the speedy return of documents to our clients.

## **3. Registration**

The actual process specified in the Act follows a similar process methodology to that which currently applies for registration of a scheme under the SSA.

There is no application form specified within the regulations for registration. We therefore expect the application from the trustee(s) to take the form of a letter that contains all the applicable information, as is set out in appropriate part of schedule 2 of the Act together with a statement of fees as detailed in schedule 1 of the Act. When filing the application please ensure that:-

- the application, if not made by the trustee(s), is made “explicitly“ on behalf of and with the authority of the trustee(s).
- the fee of \$100 is included only for the New KS registrations.
- we receive a copy of the complete deed signed and dated.
- the trustee/solicitor certificate required is signed and dated and does not contain any qualifying phrases like “in the opinion of”.

Registration takes effect once the KS is entered on the KS Register by the Government Actuary.

### **New KS Registration**

The requirements for Registration of a new KS are set out in the sections of the Act beginning at section 131, together with the detail in schedule 2 part 1 of the Act.

It is our intention to deal with each application in turn once all the required information is received. To this end we have included our current internal checklist for your information as Appendix 1 of this newsletter.

We would highlight the need to include the certificate signed by the Commissioner of Inland Revenue. We would also highlight the importance of the certificate signed by the trustees or the trustees solicitor which certifies that the application does not contain any provision contrary to the KS rules.

### **Conversion to KS from RSS Registration**

The requirements for registration on conversion to KS from a RSS are set out in the sections of the Act beginning at section 135, together with the detail in schedule 2 part 2 of the Act. To consider the application we will also need the draft amendment to the existing RSS deed and the draft explanatory material to be provided to members.

Note that provisional registration and its effects are covered in sections 136-7.

Registration would take place after the written consent of the employees and participating employers has been obtained.

#### **Bolt-on (or Umbrella Trust) Registration**

The requirements for registration of a “bolt-on” section to an existing RSS are set out in the sections of the Act beginning at section 148, together with the detail in schedule 2 part 3 of the Act.

This section covers where a new KiwiSaver section is added to an existing RSS. “Bolt-on” has become the accepted jargon to describe the activity with more precision.

We draw your attention to the items in section 149 and the requirement in section 154 requiring members to be notified in the next annual report to the details of their right to elect to transfer to the KS.

#### **4. Exempt Employer Application**

The requirements for EES are set out in the sections of the Act beginning at section 24. We also refer you to regulation 5 concerning the additional supporting evidence required. Included as appendix 2 of this newsletter is our current checklist which we will use when processing an application.

#### **5. KiwiSaver Regulations 2006**

One item needs specific comment as there has been concern at the level of reporting required. The Statistical Return required is a “snapshot in time” and will be used only for annual consolidated reporting required for the Minister under section 194 of the Act. It will enable trends to become visible as the overall KiwiSaver regime ages and will provide the Minister with information about take up, cash flows and other social and economic data. The annual trustee(s) report including audited accounts which the trustee(s) will sign off each year will continue to be reviewed from a compliance perspective by the ISU staff.

#### **6. KiwiSaver Fees Regulations**

The new Schedule 2 of the KiwiSaver Regulations 2006 sets out the GST inclusive fees payable in respect of the operation of KiwiSaver schemes.

#### **7. Unreasonable Fees**

Rule 2, KS Rules, requires that fees charged to members of a KS scheme must not be unreasonable.

This is a continuing requirement. It applies on registration, and afterwards. See Schedule 1 clause 2 and Regulations 11 and 12, and also section 127.

It is my task to verify whether these provisions are complied with.

In undertaking this task I expect to take some comfort that the fact that the trustee(s) or the trustee(s)' solicitors have confirmed, as part of the application for registration, that the trust deed application does not contain any provision contrary to KS rules as implied in section 126 and schedule 1.

When applying schedule 1 clause 2 of the Act at outset prior to registration, I will consider only those contributions and relevant fees which are made through the IRD to KiwiSaver and

any fees associated with KiwiSaver. I will exclude contributions identified in section 68 which are not counted as contributions under the Act.

In determining whether fees are unreasonable in any particular instance, one factor that is likely to be relevant is a comparison between the fee structure of the particular KS and that of other similar retirement products.

However the fact that it can be shown that the fees in one scheme are similar to those charged in another scheme does not prove they are “not unreasonable”. The fees in both schemes may be unreasonable. All applicants for registration should consider the provisions of Regulations 11 and 12 before fixing fees.

Following registration, consideration of unreasonable fees will be part of the review of each audited annual report. The legislation also provides for this issue to be raised at any time.

### **8. Preferred Provider (sections 46 to 49)**

I understand that the some industry participants consider that section 47 of the Act is wide enough to allow a person to select a preferred provider without entering into a formal (or written) participation agreement.

It is however my view that market best practice would be for the trustee(s) to expect an employer to enter into a participating agreement to meet the requirement of section 47(1)(a).

A participation agreement may also be useful at a later date in that members associated with that agreement can be identified in respect of any application of section 9B to 9BA inclusive of the SSA as implied by section 121 of the Act.

I note that the trustee(s) is still liable for providing the investment statements to members. However, section 43 also provides that the employer must provide certain information including the investment statement for the scheme to employees if they select a preferred scheme.

### **9. Section 9BAA and 9BAB**

The SSA has been amended to include the ability for trustee(s) of registered superannuation schemes and employers within a multi-employer registered superannuation scheme to apply for exemption from the requirement to obtain members and beneficiaries written consent to transfers as required by section 9B. These new sections have come into force with effect from 1<sup>st</sup> December 2006.

At this time I will not be issuing Guidelines as I wish to consider any applications on a case by case basis. However I would draw your attention to the detail of the Australian successive fund transfer process (to be found in APRA Superannuation Circular No. I.C.4)

In relation to the requirement to notify every affected member and beneficiary that they have the right to make a submission to the Government Actuary about the transfer proposal, I would expect them to be given no less than 28 day to make that submission. I would also expect that members will be given sufficient comparative information including the amount of any scheme reserves/surplus to enable them to make their own value judgement. I note

that the trustee(s) of the receiving scheme will be required to meet their Securities Act 1978 responsibilities in respect to offer documentation.

### **10. Website Re-launch**

We have re-launched our website at [www.isu.govt.nz](http://www.isu.govt.nz) which contains pdf and html versions of Government Actuary Newsletters and Annual Reports. In due course it will also have available an electronic version of the KS Register and the EES Register. Any feedback on the content and layout of the site would be appreciated.

### **11. Office Closure: Christmas and New Year**

The office will be closed from 25 December 2006 to 2 January 2007 inclusive.

A handwritten signature in black ink, appearing to read 'D Benison', with a long horizontal flourish extending to the right.

David Benison  
Government Actuary

APPENDIX 1

**Checklist for Registration of New KiwiSaver Scheme. [sections 131-134]**

<b>KS Reference</b>	Status - R	_____ (e)
S134(1)(a)(i)	Application received by or on behalf of trustees dated _____ received _____	_____ (a)
	Copy of Trust deed and all Amendments (s116(1)(a)(i)) dated _____	_____ (b)
	Scheme class	_____
<b>Section 116 Eligibility to be a KiwiSaver Scheme</b>		
S134(1)(a)(ii)	Fully funded Defined Contribution Scheme (s116(1)(c)& (d))	_____
	New Scheme post Royal Assent / Independent Trustee (s116(1)(e))	_____
	Individual Trustee NZ Resident (s116(1)(f)(i))	_____
	Corporate Trustee (1 NZ Resident Director) (s116(1)(f)(ii))	_____
<b>2nd Schedule Part 1 (s134(1)(a)(iii))</b>		
(1)	Scheme name	_____
(2)	Scheme commencement date	_____ (c)
(3) (a)	Names of trustees ( or directors if trustee a company )	_____
(b)	Names of Independent Trustees	_____
(c)	Administration manager Investment manager Insurer	_____ _____ _____
(d)	Actuary Auditor Solicitor	_____ _____ _____
(4)	Name and address of NZ resident trustee /Director	_____
(5)	Name and address for correspondence from the GA	_____
(6)	Balance date	_____
(7)	Copy of latest annual report and accounts (if any)	_____
(8)	Copy of investment statement	_____
S134(1)(a)(iv)	(9) Statement of Fees (reviewed by GA and are not unreasonable Sch 1cl 2)	_____
	(10) IR Commissioner's Certificate	_____
	(11) Certificate of compliance with sections 7, 8, 9, and 10 of SSAct & no rules contrary to KiwiSaver Act signed by Trustees / Solicitor	_____
	Registration date (Entry date on KSS Register)	_____ (d)
	The financial accounts of the scheme are to be audited	Yes
	Has fee been paid or charged?	_____

**Checklist for Conversion to a KiwiSaver Scheme. (s135 to 147)**

AS/.....Name of Registered Scheme.....

<b>KS Reference</b>	Status – U or P	_____ (e)
	Conversion Application received by or on behalf of trustees	_____
	dated	_____ (a)
	received	_____
	Copy of Trust deed and all existing Amendments, (s136(a))	_____
	Participating agreements, Proposed amendment and explanatory material.	
	Scheme class	_____

**Section 116 Eligibility to be a KiwiSaver Scheme (s135(2))**

Fully funded Defined Contribution Scheme (s116(1)(c)& (d))	_____
New Scheme post Royal Assent / Independent Trustee (s116(1)(e))	_____
Corporate Trustee (1 NZ Resident Director) (s116(1)(f))	_____

**2<sup>nd</sup> Schedule Part 2 (s136(b))**

- (1) Proposed KiwiSaver scheme name \_\_\_\_\_
- (2) Proposed scheme commencement date \_\_\_\_\_ (c)
- (3) (a) Names of trustees ( or directors if trustee a company ) \_\_\_\_\_
- (b) Administration manager \_\_\_\_\_
- Investment manager \_\_\_\_\_
- Insurer \_\_\_\_\_
- (c) Actuary \_\_\_\_\_
- Auditor \_\_\_\_\_
- Solicitor \_\_\_\_\_
- (d) Name and address of NZ resident trustee /Director \_\_\_\_\_
- (e) Name and address for correspondence from the GA \_\_\_\_\_
- (f) Balance date \_\_\_\_\_
- (g) Statement of Fees (reviewed by GA and are not unreasonable) \_\_\_\_\_
- (4) Names of Independent Trustee unless s116(2) applies \_\_\_\_\_
- (5) IR Commissioner’s Certificate \_\_\_\_\_
- (6) Certificate of compliance with sections 7, 8, 9, and 10 of SSAct & no rules contrary to KiwiSaver Act signed by Trustees / Solicitor \_\_\_\_\_

Provisional Registration date (entry date on KSS register) \_\_\_\_\_ (d)

The financial accounts of the scheme are to be audited Yes

**See page 2 for final registration processes**

**Final Registration process as KiwiSaver Scheme (s141)**

Receipt of confirmation from Trustees that all members have consented \_\_\_\_\_

Advice from IR Commissioner that Trustees have provided all required info specified in s138(4). \_\_\_\_\_

Copy of executed trust deed amendment and lodgement fee (\$50.00) \_\_\_\_\_

GA Satisfied that -  
the trust deed has not been amended since the time of making the proposal; and  
there is no material change in facts or circumstances since the time the scheme was provisionally registered as a KiwiSaver scheme that would, had those facts or circumstances applied and been known to the Government Actuary at that time, have resulted in the Government Actuary failing to be satisfied of the matters set out in section 137(1)(a)  
\_\_\_\_\_

If GA so satisfied,— \_\_\_\_\_

Change Provisional registration status to R \_\_\_\_\_

Effective date of KiwiSaver registration (1 July 2007 or later) \_\_\_\_\_

Cancel registration under the SSA 1989 effective the same day \_\_\_\_\_

**Checklist for Bolt on Section to a KiwiSaver Scheme. (s148 to 155)**

AS/.....Name of Registered Scheme.....

<b>KS Reference</b>	Status - R	_____ (e)
	Application received by or on behalf of trustees dated received	_____ _____ (a) _____
	Copy of Trust deed and all Amendments (s149 (a)) Participating agreements, Proposed amendment.	_____ _____ (b)
	Scheme class	_____

**Section 116 Eligibility to be a KiwiSaver Scheme**

Fully funded Defined Contribution Scheme (s116(1)(c)& (d))	_____
New Scheme post Royal Assent / Independent Trustee (s116(1)(e))	_____
Corporate Trustee (1 NZ Resident Director) (s116(1)(f))	_____

**2nd Schedule Part 3**

(1)	Proposed KiwiSaver and RSS Scheme name s	_____
(2)	Proposed KiwiSaver Scheme commencement date	_____ (c)
(3) (a)	Names of trustees ( or directors if trustee a company )	_____
(b)	Administration manager	_____
	Investment manager	_____
	Insurer	_____
(c)	Actuary	_____
	Auditor	_____
	Solicitor	_____
(d)	Name and address of NZ resident trustee /Director	_____
(e)	Name and address for correspondence from the GA	_____
(f)	Balance date	_____
(g)	Statement of Fees (reviewed by GA and are not unreasonable)	_____
(4)	Names of Independent Trustee unless s116(2) applies	_____
(5)	IR Commissioner's Certificate	_____
(6)	Certificate of compliance with sections 7, 8, 9, and 10 of SSAct & no rules contrary to KiwiSaver Act signed by Trustees / Solicitor/Admin Manager	_____
(7)	Certificate of compliance with sections 7, 8, 9, and 10 of SSAct (s9 explicit cert) signed by Trustees / Solicitor/Admin Manager	_____
	Registration date (entry date on KSS register)	_____ (d)
	The financial accounts of the scheme are to be audited	Yes

Note File to check next annual report re KiwiSaver transfer offer to members (s154) \_\_\_\_\_

Executed amendment lodged and \$50.00 lodgement fee paid \_\_\_\_\_

## APPENDIX 2

### Employer exemption from KiwiSaver

Office use only

Approved by:	<input type="text"/>
Date:	<input type="text"/>

#### EMPLOYER TO COMPLETE

This form can be completed by employers seeking an exemption from the automatic enrolment rules of the KiwiSaver scheme under KiwiSaver Act 2006 and KiwiSaver Regulation 5(b).

Please return completed form to: Government Actuary  
33 Bowen Street  
PO Box 10867  
Wellington

Employer name: Employer IRD number	<input type="text"/>
Superannuation scheme full name:	<input type="text"/>
Superannuation scheme registration number:	<b>AS/</b> <input type="text"/>
Date of application:	<input type="text"/>

Please provide details of the contact person for the MED to address any questions to regarding this application form.

Title	First name	Surname
<input type="text"/>	<input type="text"/>	<input type="text"/>

Postal address for correspondence

<input type="text"/>
<input type="text"/>
<input type="text"/>
<input type="text"/>

Phone – business	Phone – mobile	Email
<input type="text"/>	<input type="text"/>	<input type="text"/>

**Employer exemption from KiwiSaver**

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The left column shows the requirements for employers under the KiwiSaver Act, Section 25.

To gain exemption from the scheme, please provide the corresponding clause/page reference number in your current Trust Deed and/or Employer Participation Agreement.

*Please enclose your Trust Deed and/or Employer Participation Agreement with this form*

Requirements of the KiwiSaver Act, Section 25	Corresponding clause/page reference of your Trust Deed and/or Employer Participation Agreement. Add any explanatory notes as deemed necessary.
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<p><b>Membership of scheme</b></p> <p>Evidence that the Trust Deed of the scheme enables <u>any person who becomes a permanent full or part-time employee</u> (aged 18 or over but less than New Zealand superannuation qualification age) <u>to become a member of the scheme</u> and <u>that the trust deed permits the transfer to the scheme of the member's interest in relation to other superannuation schemes</u></p>	
<p><b>Transfer out provisions</b></p> <p>Evidence that the Trust Deed of the scheme has the effect that each withdrawing member <u>may transfer the member's interest</u> to another registered superannuation scheme or KiwiSaver scheme</p>	
<p><b>Contribution rates</b></p> <p>Evidence that the minimum prescribed amount that the employee must contribute, when combined with the maximum amount the employer must or does contribute in respect of each employee (before any specified superannuation contribution withholding tax payable under the SSCWT rules as defined in section OB 1 of the Income Tax Act 2004 is deducted (if any), must be, for all employees, <u>at least 4%</u> of the employee's gross base salary or wages.</p>	<p>Member contribution <input style="width: 60px; height: 25px;" type="text"/></p> <p>Employer contribution <input style="width: 60px; height: 25px;" type="text"/></p>
<p><b>Vesting rules (if applicable)</b></p> <p>Evidence that the Trust Deed of the scheme provides for any necessary employer contribution to <u>vest completely in the employee within 5 complete years</u> of the employee becoming a member of the scheme</p>	

## APPENDIX 2

### Employer exemption from KiwiSaver

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#### Defined Benefit Schemes

If applicable for defined benefit schemes the Actuary's certification.

#### Declaration

I/we have understood the requirements contained in the KiwiSaver Act in respect of seeking approval as an exempt employer.

I/we acknowledge that our employer name will be entered into the on-line KiwiSaver Register if approved as an exempt employer. {Privacy Act 1993 implications }

I/we have attached a copy of the relevant Trust Deed/Participation Agreement/Investment Statement/Deed of Participation for an Associated Employer.

Signature of Director of Company

Date

Print name

**Privacy Statement:** Any personal information submitted on this application form will be kept and maintained by the Government Actuary in accordance with the Privacy Act 1993. Personal information will be used by the Government Actuary for determining whether applications for exempt employer status under the KiwiSaver Act 2006 will be granted, and for the maintenance and administration of the KiwiSaver Register. In particular, section 142(1) of the KiwiSaver Act 2006 requires the KiwiSaver Register to contain the names of employers who are exempt employers. You may request access to see any information held about you, and where that information is inaccurate, ask for it to be corrected.