

New Trust Act 2019

Coming into force 30 January 2021



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For many years New Zealanders have had an affinity with Trusts as an ownership structure.

Reasons have included protection from business activity (creditors, business compliance risk etc.), government (taxes or means testing), relationship matters or simply management of wealth to future beneficiaries.

There is limited information on the exact number of trusts in New Zealand as there is no formal requirement to record in a register like companies. However the Inland Revenue is gathering more information with all property owning trusts now requiring an IRD number to register the purchase or sale of a property.

We see more compliance and monitoring required going forward for Trust Management.

Up to now there has been limited formal legislation to govern the operation of trusts, instead previously relying more on case law decided through court cases. The new Trusts Act 2019, coming into force 30 January 2021, aims to provide legislative guidance for all parties involved with Trusts.

With the introduction on the Trusts Act 2019, it is an important reminder for everyone who has set up a Trust to review the;

- Original Trust deed and any later updates,

- Trustees,
- Beneficiaries of the Trust, their classes and rights,
- Property held by the Trust,
- Current operation of the Trust in relation to original intentions and in relation to settlors wishes who have/will settle property on the Trust.

Are the above points still applicable and relevant?

The New Act brings in the concept on Mandatory Trustee Duties and Default Trustee Duties, as well as allowing the potential extension of the Trusts life span.

Mandatory Duties will be imposed on all trustee under the legislation and can't be contracted out of. In broad terms the Mandatory Duties require Trustees;

- to know the terms of the Trust,
- act in accordance with these terms,
- act honestly and in good faith,
- act for the benefit of the Trusts beneficiaries, or to further the purpose of the Trust
- exercise powers for proper purpose

In discussing Mandatory Duties with clients, common sense prevails with the comment, "That's what the Trust was set up to achieve."

Default Trustee Duties within the legislation prescribe best practice, however allow the Trustees to contract out of (allow the deed to contain terms

contrary to the legislation). Trustees should address their minds to the Default Duties and where necessary expressly modify/exclude these. Examples include;

- to invest prudently,
- trustees to act of no reward,
- to act unanimously,
- avoid conflict of interest,
- trustees not to exercise power for self-benefit.

In reviewing Trusts with clients, the Default duties often need to be modified to achieve the Trusts original intention. The Life of the Trust (previously the Trust perpetuity period) can potentially be extended from 80 years to 125 years. In client discussions, this may not be a concern of the current trustees, however thought should be given about extending the life of the trust if it is intended to hold equity longer term for multi-generational asset management, or the wish to transfer wealth to the next generation via the Trust.

In summary, it is important that a review of your Trust is completed to ensure the Trust is still fit for purpose and achieves its goals within the new legislative framework.

If anyone requires assistance with Trust matters, CooperAitken have a specialist in house team focusing on Trust Administration, Trust management and recommendations for updating your trust in regard to the new legislation. We are happy to discuss Trusts with our clients and non-clients, for a set fee.

Please contact us on
Trustsact@cooperaitken.co.nz