

### A NEW TRUSTS ACT

The Trusts Act 2019 (**Act**) received Royal Assent on 30 July 2019. The Act will come into force from 30 January 2021 and is the most extensive revision and modernisation of New Zealand's law relating to trusts and trust administration in over 60 years. The Act will replace the Trustee Act 1956 and the Perpetuities Act 1964. If you have a family trust or are a trustee of a family trust, you should be aware of these key changes to the law and seek legal advice where appropriate.

### WHAT ARE THE CHANGES?

While there are a range of changes across a number of areas of trust law, there are some key changes that you should review this year before the new rules come into force.

#### Disclosure of information to beneficiaries

The Act provides that generally a trustee will have a positive duty to write to beneficiaries to tell them they are beneficiaries of the trust and advise them that they are entitled to request further trust information and documents.

This is a significant change that makes the rules relating to the disclosure of information to beneficiaries more prescriptive. The new rules increase the likelihood that beneficiaries will seek detailed information from trustees. It is important that trustees seek advice on how they will comply with the new disclosure of information requirements.

You may also want to consider the list of persons who are discretionary beneficiaries of your trust. It may be appropriate to amend the trust deed to remove discretionary beneficiaries who are unlikely to benefit.

#### New record keeping requirements

Under the Act, trustees are required to keep core trust documents for the duration of the trustee's trusteeship and must pass on the documents to replacement trustees to ensure trust records are retained for the lifetime of the trust.

The Act has a specific list of documents that trustees must retain. It is advisable for trustees to review their trust records carefully to ensure they are complete. Trustees should also obtain advice on the records that they must retain to comply with the Act.

#### Indemnity/Exemption clauses

The Act will prevent trustees from taking advantage of an indemnity under the trust deed in certain circumstances. A trustee will not be protected from liability if they operate the trust in a manner that is grossly negligent. The consequence of this change is that trustees will need to take more care when administering trusts. They cannot rely on the usual blanket indemnity in the trust deed to protect them against claims made by beneficiaries. Trustees will need to spend greater time and effort on trust administration. It is, therefore, a good time to seek advice on whether your trust is being administered properly.

#### Perpetuity period

The common law rule known as the rule against perpetuities is abolished by the Act and the Perpetuities Act 1964 is repealed. Trusts (other than charitable trusts) currently can only specify a maximum period of 80 years. Under the Act, the maximum duration of a trust will be extended to 125 years. The effect of this change is that family trusts will be able to continue for longer and used as a succession planning vehicle for more generations. If you want your trust to be able to take advantage of these new rules then you should seek further advice on these changes.

### HOW WE CAN HELP

These are some of the changes that will be introduced in the new Act. Trustees will become more accountable to beneficiaries for their actions. As the Act will come into force on 30 January 2021, we recommend that clients use the next 18 months to review their existing trusts in light of these changes and seek advice on how to deal with these changes. We can assist you to review your family trust to ensure that it remains compliant and fit for purpose under the new Act.

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