

KEY FACTS TRUSTS

NEW ZEALAND FOREIGN TRUSTS (NZFT) ARE UNIQUE AND POPULAR AS INTERNATIONAL INVESTMENT AND ESTATE VEHICLES. NEW ZEALAND TRUST LAW IS MODELLED ON UK TRUST LEGISLATION.

TAXATION REGIME

A properly established NZFT can provide non-New Zealand residents with a structure that is not subject to New Zealand tax, provided the following three requirements are met:

- > The settlor must not be a New Zealand resident for tax purposes
- > Beneficiaries cannot be New Zealand residents for tax purposes
- > All income earned by the trust must be from non-New Zealand sources

TRUST STRUCTURING FLEXIBILITY

The New Zealand Trustee Act 1956 provides trustees and settlors with a unique ability to delegate certain roles within the trust – this means key roles, typically fulfilled by a single trustee (i.e., the standard trust arrangement), may be delegated to different persons where such structuring better serves a client's estate planning objectives.

The following structuring arrangements are possible in New Zealand:

- > A New Zealand trustee as the sole trustee with administration exclusively in New Zealand.
- > A New Zealand trustee as the sole trustee with trust administration services provided by another Trident office.
- > Custodian and managing trustee arrangement where a New Zealand custodian trustee holds the assets of the trust as if it were a sole trustee but delegates the management of the trust assets to a second trustee, the managing trustee. The managing trustee manages the trust via binding instructions to the custodian. The settlor may provide for an investment advisor or a committee of advisors to direct the custodian on the investment of the trust's assets. The managing trustee has the usual trustee and fiduciary duties to the trust.
- > Custodian and advisory trustee where an advisory trustee is appointed to advise the custodian (or managing) trustee through non-binding advice on any aspect of the administration and management of the trust, including matters concerning the distribution of the assets. The advisory trustee is deemed not to be a trustee, but merely an advisor. The areas requiring advice are usually specified in the trust deed. The advisory trustee may be the settlor or his nominee.

Where a settlor intends to change his existing trust to a New Zealand trust it is permissible for the existing trustee to continue providing fiduciary services. A New Zealand trustee is appointed, to satisfy legislative requirements, and then the delegation of trustee powers legislation is used to allocate responsibilities between the trustees.

The custodian trustee needs to be a New Zealand registered company and, for sound overall administration, should be a New Zealand trust company. However, the managing and advisory trustee may be companies, committees or individuals situated outside New Zealand and none require a licence under New Zealand law to act in these capacities.

DISCLOSURE

Each New Zealand trust must only disclose its name and details of its trustee to the New Zealand tax authorities.

Records of the trust's financial position must be maintained by the trust company in New Zealand even if the New Zealand trustee has not had formal financial statements prepared. The financial records are not filed with the New Zealand authorities.

DOCUMENTATION

To assist clients new to the New Zealand trust regime, we have standard trust documentation available for their use which have been developed by New Zealand lawyers.

Clients are welcome to appoint their own legal advisor to draft their own trust deed or to amend our standard trust deed.

Please do not hesitate to contact us if you would like to discuss the establishment of bespoke trust arrangements for your wealth and estate planning needs.

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