



Is a Family Trust still a useful financial management tool in 2020?

Did you know that the trust landscape in New Zealand is changing? New trust law is coming into effect in January next year which means that trustees have new obligations in their roles? The changes matter to anyone who is involved in or affected by a family trust, whether a settlor (creator of a trust), trustee or beneficiary.

We have listed the key questions to ask yourself if you are connected to a trust:

1. What is the status of your trust?

Have you been actively administering the trust, or has it been sitting in the bottom drawer?

2. What was the reason for establishing the trust?

This is a crucial question to consider. The reason could be anything from asset protection in the event of a relationship split; to looking out for the financial welfare of children, grandchildren, or other beneficiaries; or potentially to avoid death duties, which do not currently apply in New Zealand.

Remember that whatever your reason/s, trust law is changing, and new case law is constantly being made, so that original reason may no longer apply.

3. Does that reason still exist?

Make an informed decision about what is right for you and for the trust. This needs to be worked through with a professional who can advise you regarding the changes in the law, how they will affect you and the trust, and the options which best suit your situation.

4. What is in the trust?

This goes to a cost-benefit analysis of running a trust, which under the Trustee Act 1956, is different from what it will be from January next year, under the new Trusts Act 2019.

The work – and therefore the cost of maintaining a trust will increase, and if you have the family home in the trust and nothing else, the cost could outweigh the benefits of having the trust.

5. Are you happy to have trust information shared with beneficiaries?

From January, the trustees of a trust are required by law to share information about the trust with beneficiaries.

Are you comfortable with the beneficiaries of the trust having all that information, and with the effect releasing it might have on the family? A lot of people have a vague idea of how much their parents are worth, and under the new law those family trusts will go from a vague idea to a spot-on-idea – with the risk, in some cases, of family conflict over money and issues of fairness, pressure, obligation and possibly resentment arising.

You should make sure the group of beneficiaries comprise only those who it is intended will actually benefit from the trust. If the list of beneficiaries is wider than that, you may be able to amend the group to make it smaller if the power to do that exists in the trust deed.

6. If you are a trustee, do you know what is expected of you?

The Trusts Act 2019 also changes matters for trustees. You need to become fully aware of your obligations and duties under the law.

Trustees have no excuse for not knowing what their obligations are. Once you are fully aware, are you still comfortable with your role?

7. What are your options for the future of your trust?

Once you have worked through questions one to six, this is the most interesting.

Option One: Having looked at the family trust and the reasons for setting it up and determined that it is still relevant, and everything is fine, the first option is simply to make sure that everything is compliant. You may wish to seek expert advice to ensure you are doing everything by the book under the new law, but this is the easiest case.

Option Two: If, having looked at the trust and the reason for setting it up, you have determined that the reason doesn't apply any more and there is no alternative reason and/or the cost of keeping it outweighs the benefits, then winding up the trust may be the best decision. Again, this can be an unnecessary risk or cost.

Option Three: If, having reviewed the trust, you determine that retaining it is desirable but the trust deed includes nearly everyone under the sun as a beneficiary, and you want to provide information to a much smaller pool of people who will actually be receiving (or are intended to in the future) benefit from the trust, as long as the trust deed give powers to do so, it is possible to do a variation which changes the list of beneficiaries, or even resettlement the existing trust to a new one that takes advantage of the changes.

With the proposed change in the marginal tax rate to 39%, there may still be a role for Trusts in asset protection and tax planning.

8. I don't know what to do! Who can I talk to?

Contact your Manager at Lay Dodd Partners and your lawyer to review arrangements for your trust as changing those arrangements could have unexpected consequences.

Disclaimer

This publication has been carefully prepared, but it is written in general terms only. The publication should not be relied upon to provide specific information without also obtaining appropriate professional advice after detailed examination of your particular situation.