

SO YOU'RE  
A TRUSTEE...

*do you really want to be?*



A DISCUSSION PAPER FOR **2020**

 perpetual guardian

*always here*



**HENRY STOKES**  
**General Counsel**  
Perpetual Guardian

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Trusts come in many shapes and sizes.

*It is our duty of care to ensure we do the best by our clients.*



**JOHN MCFETRIDGE**  
**General Manager,**  
**Private Client Services**  
Perpetual Guardian

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# Managing Trust books

A new legislative environment, coupled with the specialist nature of fiduciary services, poses a challenge to those of you who do trustee work for clients as a non-core or adjunct service, or who intend to serve as a trustee alongside your core legal or accounting work.

THE RISKS OF TAKING ON THIS WORK, OR CONTINUING TO PROVIDE TRUSTEE SERVICES ON THE SIDE, MAY BE SUBSTANTIAL IN LIGHT OF THE NEW TRUSTS ACT 2019 AND AML/CFT LEGISLATION, INCREASING REGULATIONS SUCH AS CRS, AND POTENTIALLY REDUCED PROFESSIONAL INDEMNITY COVERAGE SHOULD SOMETHING NOT GO TO PLAN.

No one knows your clients, your qualified area of expertise and your region better than you. As the largest trustee services company in New Zealand, we want to work with you, not against you. We have best-practice solutions we can apply to help you mitigate risk while preserving your long-term business interests.

*We are aware that this is a very different way of thinking in the trustee services industry. However, we firmly believe it is necessary for the industry to be able to provide New Zealanders with the services they need to meet all their estate planning and trustee requirements.*

As a professional, independent and non-conflicted trustee service provider we are well placed to provide this service to both new and established clients, enhancing your existing client relationships as well as the client experience.

## **The options for your trust book and how we can help:**

1. We can evaluate the risk and provide advice for you to implement as part of your practice;

2. We can provide advice and training so you can maintain your trusteeships and upskill with added investment to ensure best practice and compliance standards – manage risks and assess the interests of settlors vs beneficiaries;
3. You can retain your trusteeships while working with an impartial specialist to ensure compliance and reduced risk with specific trustees on a case-by-case basis;
4. You can partner with us and use our knowledge and experience as a trust specialist to provide these services independently and alongside your firm.

In options three and four, many firms with a substantial trust book may find that upon thorough review, it is appropriate to conduct an orderly wind-up of some trusts, re-settlements or variations. This can be done safely and impartially either within the firm or with Perpetual Guardian as your specialist partner.

This is the future for professional trustee providers. With the evolution of the environment, collaboration between trustee services companies and lawyers and accountants who have conducted trustee work as a non-

core service are increasingly common and are now a standard component of our service.

If you are concerned about your liability as a trustee and would like to discuss your trustee circumstances along with some genuine options for collaboration, please feel free to contact one of us.

If more background would be helpful, a comprehensive analysis of how the changing trustee landscape is affecting professional services providers can be found within this document.

# Key questions

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BY WAY OF BACKGROUND TO CONSIDERING THE FUTURE MANAGEMENT OF YOUR TRUSTESHIPS, WE HAVE DEVELOPED A CHECKLIST FOR CONDUCTING A COMPREHENSIVE REVIEW OF AN INDIVIDUAL'S TRUST. THE CHECKLIST HELPS TO ENSURE A TRUST MEETS STATED GOALS AND COMPLIANCE STANDARDS. IT INCLUDES QUESTIONS ON THE TRUST DEED, THE STRUCTURE OF THE TRUST AND HOW IT IS MANAGED. OTHER MATERIAL IS AVAILABLE BY REQUEST.

## The questions

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01. Do you fully understand the content of your trust deed and the obligations it imposes on you, as a trustee?
02. Are you sure all assets owned by the trust are held in the names of the current trustees?
03. Does the trust have its own bank account?
04. Are you sure all trustee decisions have been recorded correctly and reflect the documents executed?
05. Do all the trustees meet at least annually?
06. Do the trustees maintain an up to date minute book?
07. Is there a memorandum of wishes from the settlors? If so, is it up to date and reflective of how they wish the trust to be used in the event you are no longer able to give their opinion?
08. Are Powers of Attorney concerned?

*we have developed a checklist for conducting a comprehensive review of an individual's trust. The checklist helps to ensure a trust meets stated goals and compliance standards*

If the answer to one or more of the questions is 'no', it is likely there are issues with the trust that need to be addressed and considered alongside the intended future role of trustee services in a legal or accounting firm.

We can work with you to conduct a review of trusts, or engage with you subsequently to map out the preferred scenario and solution for the ongoing management of your trust book in a framework that mitigates risk and preserves your business interests.

# The landscape

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## Why trust books require review in the new era of enhanced legislation and compliance...

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### THE TRUSTS ACT 2019

The Trusts Act 2019 was first introduced to Parliament as a bill in August 2017 and makes explicit the responsibilities of trustees, something which has not previously been enshrined in legislation. Some trust experts predict that many trusts will be wound up as trustees shy away from the duties.

Although the Act has become law, it will not come into effect until 30 January 2021. There are many changes in the Act which will make trustees' jobs more onerous.

### THE AML/CFT ACT 2009

A second key piece of legislation with major implications for trustee services providers is the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT), which places obligations on New Zealand's financial institutions and casinos to detect and deter money laundering and terrorism financing.

Phase 1 of the AML/CFT Act has been in force since 2013, and Phase 2 extends the current regime to lawyers and accountants, among others. Lawyers have been required to comply with AML/CFT Act regulations since 1 July 2018, and accountants since 1 October 2018.

### CRS AND FATCA

Other reporting requirements such as Common Reporting Standard (CRS) and Foreign Account Tax Compliance Act (FATCA) may apply.



# The implications for professional services providers

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BASED ON TRUST REVIEWS CONDUCTED BY PERPETUAL GUARDIAN, TRUST MANAGEMENT INCONSISTENCIES AND NON-COMPLIANCE ARE WIDESPREAD.

FOR LAWYERS AND ACCOUNTANTS PROVIDING TRUSTEE SERVICES AS A NON-CORE PROFESSIONAL SERVICE, THE CHANGES OCCURRING WITHIN AND AROUND THE TRUST INDUSTRY POSE SEVERAL CHALLENGES AND POTENTIAL RISKS:

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## MEETING NEW OBLIGATIONS DEMANDS ADDITIONAL RESOURCES

To ensure compliance with both AML/CFT and the new responsibilities which arise from the Trusts Act 2019, legal and accounting firms will have to adjust their structures by either outsourcing trustee compliance services or adding to the internal head count with a specialist compliance officer.

## NEW POTENTIAL FOR CONFLICTS OF INTEREST

Legal and accounting firms which are providing core trustee services and/or estate planning and management may be seen by the law or by the client to be conflicted, and this may have implications for the validity of trustees' actions and the provider's ongoing practice.

## TAX IMPLICATIONS FOR TRUSTEES

The more onerous reporting obligations arising from the AML/CFT Act, and the potentially global reach the Act implies, makes it imperative for New Zealand-based lawyers and accountants to have an understanding of taxation and reporting requirements in the various territories and jurisdictions in which their clients have interests. As with the other obligations, non-compliance can have serious ramifications.

## SUCCESSION PLANNING ISSUES

At any time, there are hundreds of lawyers and accountants who are looking to retire and / or sell their firm or shareholding within the next decade, and many have not resolved the question of what to do with their existing trust book.

## NEW RISK TO PROFESSIONAL INDEMNITY INSURANCE

A small detail in the insurance landscape, but one with significant ramifications for lawyers and accountants, is the fine print of many professional indemnity insurance policies, which commonly state that no professional trustee is indemnified against anything that goes wrong with a trust unless they have issued an invoice specifically for their services as trustee.

## BENEFICIARY CONSIDERATIONS

One of the trustee's core concerns must be those of the trust's beneficiaries – their duties to whom, in addition to the law, will be set out in the trust deed. Trustees must apply Know Your Customer guidelines to beneficiaries even if they are not direct clients, and if there are conflicts, have a plan to manage them and, if necessary, step away all together.



# Potential solutions – how we can help protect your practice

## LEGAL AND ACCOUNTANCY SERVICES PROVIDERS HAVE FOUR OPTIONS:

01. You can evaluate the risk and maintain the status quo;
02. You can maintain your trusteeships and upskill with added investment to ensure best practice and compliance standards – manage risks and assess the interests of settlors vs beneficiaries;
03. You can retain your trusteeships while working with us as an impartial specialist to ensure compliance and reduced risk with specific trusts on a case-by-case basis;
04. You can partner with us and use our knowledge and experience as a trust specialist to provide these services independently and alongside your firm.

*(In options three and four, many firms with a substantial trust book may find that upon thorough review, it is appropriate to conduct an orderly wind-up of some trusts.)*

### *Disclaimer*

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It is not intended to provide comprehensive or specific advice. Nobody should solely rely on the information contained in this material when making decisions.

We strongly recommend that you obtain professional advice on your individual requirements before making a decision.

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For the most comprehensive analysis of how the changing legal landscape is affecting professional services providers, contact us for more information.

# Contact

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THIS DISCUSSION PAPER HAS  
BEEN PREPARED BY PERPETUAL  
GUARDIAN, A MEMBER  
COMPANY OF THE COMPLECTUS  
GROUP OF TRUSTEE  
SPECIALISTS. PROFESSIONAL  
SERVICES PROVIDERS SEEKING  
ADVICE ON THEIR TRUST  
BOOKS CAN CONTACT:

**HENRY STOKES**

General Counsel - Perpetual Guardian

DDI 09 909 5179 M 027 605 6776 E [Henry.Stokes@pgtrust.co.nz](mailto:Henry.Stokes@pgtrust.co.nz)

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**JOHN MCFETRIDGE**

General Manager, Private Client Services - Perpetual Guardian

DDI 09 927 9401 M 027 271 7960 E [John.McFetridge@pgtrust.co.nz](mailto:John.McFetridge@pgtrust.co.nz)

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