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Newsletter, March 2021

Trust Changes

As of 30th January 2021, the new Trusts Act 2019 came into force. This is the first major trust law reform in New Zealand in 70 years. Changes to the Act are aimed at making trust law more accessible to both lawyers and the public, and strengthening the ability of beneficiaries to hold trustees to account. This would have brought many lawyers to review their trust deeds and their practices to ensure they are fit for purpose with the new Act.

Application and Guiding Principles:

Trust Act will apply to all trusts that are governed by New Zealand law. The Act sets out principles that apply to those powers or performing functions or duties under the Act including the courts, trustees and lawyers. A trust should be administered in a way that is consistent with its terms and objectives and avoids unnecessary cost and complexity. The duty is to have high regard to these principles.

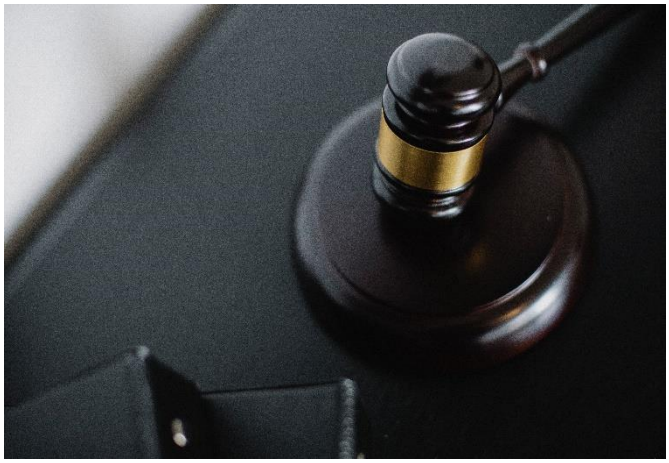
Mandatory and Default Trustee Duties:

The Act specifies the core trustee duties that were already part of the law. It incorporates a new concept by classifying these duties as either mandatory or default.

Mandatory duties must be performed by the trustee and may not be modified or excluded by the terms of the trust. Exclusion of mandatory duties within a trust may be evidence that there is no intention to create a trust in the first place and therefore undermine the asset protection strategy if the trust is ever challenged.

Default duties may be modified or excluded by the terms of the trust but are subject to certain limits.

Special Trust Advisors, Delegates and Nominees



Here the Act has opened up the ability to appoint a special trust advisor to advise the trustees. Such advisor could be a financial analyst, a property expert or valuer. A special advisor will not have the power of a trustee and the trustee will not be bound to follow their advice.

Retention of Information.

The Act requires trustees to keep core trust documents including documents setting out the terms of the trust or any variations of those terms, property records, contracts, accounting and financial statements. The appointment, removal and discharge letters associated with trustees, and letters of wishes by the settlor and other documents which are necessary for the administration of the trust. It is permitted for one trustee to hold most documents but each trustee must hold at least a copy of the terms of the trust and any variation of those terms, ie. the trust deed.

The Trust Act creates a presumption that a trustee must make basic trust information available to every beneficiary and trust information available to beneficiaries who request it. However, before providing information, trustees must consider a range of factors and if the trustee reasonably considers the information should not be disclosed then it may be withheld.

Trust information is information that is reasonably necessary for a beneficiary to have to enable the trust to be enforced. It is important for trustees to develop a robust practice of decision making around the provision or withholding of trust information.

Exemption and Indemnity clauses.

The Act makes it clear that trust deeds must not limit a trustees liability or provide an indemnity for dishonesty, wilful misconduct or gross negligence. Any terms in a trust deed that purports to limit the liability of the trustee or to indemnify them in breach of these provisions is invalid.

Appointment and Removal of Trustees

The Statutory powers for the appointment and removal of trustees has been modernised and broadened to minimise the need to apply to the court. The Act confirmed that a person with the power of appointment or removal of trustees must exercise that honestly and in good faith and for proper purpose. For retiring trustees, their discharge must be given in writing.

Other Changes Include:

- Reduction of age of minority from 20 to 18.
- Changes to the grounds for which court may review trustee decisions.
- New alternative dispute resolution procedures.
- Trusts traditionally had an 80 year life cycle. This can now be extended to 125 years.

GST on Private Homes

For decades the standard GST treatment applying to the sale of a farm has been to split it into two components.

1. the working farmland is treated as a sale of an asset that its subject to GST and as long as both parties are registered it is a zero rated transaction.

2. the farmhouse is treated as a separate supply that is exempt from GST because it had been used as the farmers private family home, (or as the supply of exempt residential property if it is used by a farm worker).

The above approach is now considered by the IRD to be oversimplification. Instead, the IRD is of the view that the GST should apply if the house has been used as part of the farming activity.

The IRD view lies in a longstanding tradition which the farmers could claim income tax deductions in relation to a portion of the farmhouse expenditure. This was formalised where an automatic deduction for 20% of expenditure related to the farmhouse is allowed, as it effectively acts as the farm office from which the farm operation is managed. By claiming the deduction, the IRD considers the farm house has been used to make taxable supplies and therefore the sale of the farm house is also subject to GST. Here in itself is the issue as the farmhouse is treated as a separate supply and is typically used as a residence by purchaser. It does not qualify for zero rating and the GST becomes payable at 15% which creates a significant GST liability on the dwelling.

This approach differs markedly to the current practice and could certainly trigger pricing disputes when looking at the value of the dwelling. We hope that in time a reasonable solution can be remedied but, in the meantime, we are left in a position of uncertainty. For first time farming clients the position we will take will be fairly obvious. We will not be claiming deductions associated with the farmhouse, as to not trigger a GST liability to the future. For farmers that we have been claiming deductions for over a number of years, we are really waiting to see what the result of submissions to the IRD are and whether they result in a change in their position on this.

Interest Rates

I would first like to clarify my comments on this subject as this is a view of the writer alone, not necessarily the view of RJ Preston Ltd.

Interest rates are always a hard thing to comment on, but I believe it is quite a timely time to make comment.

Currently in New Zealand and the developed world we are seeing some of the lowest interest rates that we have ever seen. Many pundits believe that there is still a further reduction possible to our interest rates. It looks as though the reserve bank is now looking at holding the official cash rate rather than reducing it. While I believe there will be some interest rate outliers where you will see targeted lower rates by various banks. I think in general it's fair to say that we are either at the bottom or very close to the bottom of this interest rate cycle.

Central banks throughout the world are in a difficult position as COVID-19 has ravished the world both medically and financially. It is the low interest rates that have provided the stimulus to keep these economies going rather than collapsing. New Zealand is no different with the current property market and building boom that we are seeing. Publicly the banks have avoided the comment on the effects on potential inflation. I believe we must see inflationary pressure, partly due to the property boom but also the supply chains in getting product both to and from New Zealand. It has become a lot more expensive and this in itself will lead to increased prices for goods and services throughout New Zealand. I also believe the current carbon emission requirements as recently set by the government will also increase costs not only to farmers, but nationwide and hence in itself will be an inflationary piece of legislation. So, it might well be time to be talking to your financiers and even fixing a portion of your mortgage at what are historical low rates to ensure there is some certainty in your business.

Final Thoughts

In reading an agricultural magazine out of the US in the weekend, it had a heading which said, Challenges for Farmer for the 2021 year and listed those challengers. They are as follows:

- Dealing with COVID 19
- Trade Policies
- Climate Change
- Renewable Energy
- Rural Health Care
- Broadband Access
- Immigration reform

Don’t they sound very familiar.