

## TRUSTS ACT 2019 INFORMATION SHEET

Among other things, the Trusts Act 2019 (“the Act”) introduces the following duties and requirements from 30 January 2021:

### ***Requirement to provide information to beneficiaries***

1. The Act requires trustees to provide beneficiaries with sufficient information to enable them to understand and enforce the terms of the trust and the trustees’ duties and, if necessary, to be able to hold the trustees to account.
2. **After January 2021, there will be a presumption that trustees will give all trust beneficiaries the “basic trust information” of the trust on a regular basis. This will involve notifying all trust beneficiaries:**
  - **that they are a beneficiary of the trust;**
  - **the name and contact details of each of the trustees;**
  - **each time an appointment, removal or retirement of trustees occurs and the details of that change; and**
  - **that they have the right, as beneficiary, to request a copy of the trust deed and further information about the trust.**
3. This duty will apply to all discretionary and final beneficiaries of the Trust.
4. The duty to provide the basic trust information to beneficiaries does not require the beneficiaries to request the information first. Trustees are therefore required to be proactive in providing this basic information to all beneficiaries of the trust.
5. The Act also contains the presumption that trustees will provide beneficiaries with additional information about **the terms of the trust; the administration of the trust; or the trust property if any beneficiary requests that information**. The further information that beneficiaries may request could include a copy of the trust deed and any variations to it; trust financial statements and other details of trust assets and liabilities. Trustees are not required to provide reasons for trustee decisions or any record of the settlor’s wishes.
6. Before giving any basic or further information about the trust to any beneficiary, the trustees must consider various factors including:
  - the degree and extent of the beneficiary’s interest in the trust and the likelihood of the beneficiary receiving trust property in the future;
  - whether the information is subject to personal or commercial sensitivity;
  - the expectations and intentions of the settlor at the time the trust was created (if known) as to whether the information would be given to the beneficiaries or to the particular beneficiary who is requesting the information;
  - the age and circumstances of the beneficiary requesting the information and the other beneficiaries of the trust;

- the effect that giving the information will have on the beneficiary, the other trust beneficiaries, third parties and family relationships;
  - where there is a large number of beneficiaries, or some beneficiaries are unascertained, the practicalities of giving the information to all beneficiaries or to a class of beneficiaries;
  - whether it is practical to impose restrictions or safeguards on the use of the information or redact some or all of the information.
7. If, after taking these factors into account, the trustees reasonably consider that the information should not be given to the beneficiary the trustees may withhold the basic information and/or refuse a request for further information. There is scope for trustees to decide that they will not give basic or further trust information to a beneficiary if they consider they have reasonable grounds for withholding some or all of that information. However, in most cases the presumption will be that beneficiaries are entitled to at least receive the basic information about the trust.
8. Any failure or refusal by trustees to give information to any beneficiary could be subject to challenge by the beneficiary and review by the Court. If a Court determined that the trustees' decision to withhold information is unreasonable it could order the trustees to provide the information and consider a costs award against the trustees. There must therefore be good and justifiable reasons for any failure or refusal to provide information.
9. Disclosure to all beneficiaries is an ongoing trustee obligation and trustees will need to consider at reasonable intervals after 30 January 2021 whether they will make the basic trust information, further information or new trust information available to beneficiaries. In addition, trustees will need to ensure beneficiaries are informed when there is any change of trustees or their contact details.

#### ***Mandatory and default trustee duties***

10. The Act specifies mandatory (or compulsory) trustee duties and default duties which will apply unless modified or excluded by the trust deed.
11. The mandatory duties, which cannot be altered by the trust deed, are the duties for each trustee to:
- know the terms of the trust;
  - act in accordance with the terms of the trust;
  - act honestly and in good faith;
  - act for the benefit of the beneficiaries or to further the permitted purpose of the trust;
  - exercise their trustee powers for proper purposes.
12. The default duties, which will apply unless modified or excluded by the trust deed are:
- of general care;
  - to invest prudently;
  - not to exercise any trustee power for their own benefit;
  - to actively and regularly consider whether the trustee(s) should be exercising their powers;
  - not to bind or commit trustees to any future exercise of discretion;
  - to avoid conflict of interest;
  - to act impartially;
  - not to profit and to act for no reward or payment; and

- to act unanimously.
13. Some of these default duties will already be modified or excluded by existing trust deeds. Other trust deeds may be able to be varied to exclude some of the default duties if the trust deed allows amendments.

***Compulsory trustee record keeping***

14. A main principle of the Act is that every trust must be administered in a manner that is consistent with the terms and objectives of the trust deed and the principles of the Act. Trustees have the mandatory duty to know, and act, in accordance with the terms of the trust deed. In accordance with this principle and the mandatory trustee duties, the new Act requires each trustee to keep a copy of the core trust documents which are:
- the trust deed and any deeds varying it;
  - documents appointing and removing any trustee;
  - records of the trust property that identify the trust assets, liabilities, income, and expenses which are appropriate to the value and complexity of the trust property;
  - trustee resolutions; minutes or other records of trustee decisions;
  - written contracts entered into by the trustees;
  - any accounting records and financial statements;
  - any letter or memorandum of wishes from the trust settlor;
  - any other documents necessary for the administration of the trust.
15. The obligation to keep the core trust documents will be met by each trustee holding a copy of the trust deed and any variations to it and at least one of the trustees holding the other core documents, and making those available to the other trustee(s) on request.
16. Trustees will need to ensure that they satisfy these record keeping requirements at all times