



# NZTS *update*

August 2018



Bryan Ivamy (left) with Jonathan Cron. With four decades of trustee experience, Bryan is well equipped to ensure NZTS' future success.

## *Bryan Ivamy welcomed as NZTS General Manager*

We are delighted to announce that Bryan Ivamy has been appointed as General Manager of New Zealand Trustee Services. Through the vision and effort of Jonathan and Penny Cron, NZTS has developed a strong reputation as a leader in trustee services. Bryan is determined to build upon these achievements and ensure the company's continuing success and progress.

With almost 40 years of trustee industry experience, Bryan brings with him a wealth of expertise. Over the course of his career, he has worked closely with personal and corporate clients and understands how crucial it is for everyone to have a secure estate plan.

In his previous role as Senior Manager for National Partnerships and Business at Perpetual Guardian, Bryan was responsible for educating business partners on the benefits of good estate planning and ensuring they were properly protected.

Education and honest, open discussions are a key part of Bryan's approach. With many people unaware of the benefits and requirements of estate planning, Bryan has made this his mission to resolve. He is a strong advocate for clients, taking the time to understand their situation and providing a perfectly-tailored solution.

*"The business has good foundations and my work will reinforce and grow what Jonathan and Penny built. We are here for the long haul and the Crons' ethic and values will be maintained," says Bryan.*

We would like to thank Jonathan and Penny Cron for their fantastic work building the company to where it is today. With his client-focus and trustee acumen, Bryan is well-placed to take continue their good work and take NZTS to the next stage of its growth.

## *Legal update on trusts*

We'd like to bring you up to speed with our thinking on recent developments around trust law in New Zealand, particularly the Trusts Bill which is progressing through Parliament.

This new bill will replace the existing Trustee Act 1956 and is set to be the first notable change to New Zealand's trust law in over 60 years. It aims to make trust law more accessible, defining core trust principles as well as essential obligations for trustees.

When enacted, the bill will apply to all express trusts (i.e. everyday trusts), including those already in existence, meaning significant implications for all trusts and trustees. By improving the public's understanding of the trust law, the need for proper administration of trusts becomes clear.

The bill introduces mandatory trustee duties to ensure the effective and professional management of trusts. If trustees do not comply with these duties, the integrity of the trust is likely to be undermined and the trustees may be exposed to liability.

We believe many trustees may need assistance in managing their future obligations and understanding their responsibilities.

The proposed mandatory duties of trustees are:

- To know the terms of the trust;
- To act in accordance with the terms of the trust;
- To act honestly and in good faith;
- To hold or deal with trust property, and otherwise act for the benefit of the beneficiaries of the trust or to further the permitted purpose of the trust; and,
- To exercise the trustee's powers for a proper purpose.

The bill also includes requirements for managing trust information and disclosing it to beneficiaries where appropriate. This ensures the beneficiaries are aware of their position and have sufficient information to affirm trustees are fulfilling their duties. The Bill includes clarification of the specific powers of the High Court when dealing with trusts to assist with enforcement against trustees where necessary.

While the High Court maintains its inherent jurisdiction to ensure the proper administration of trusts, the clarification provided by the bill places more emphasis on trustees to manage trusts to a higher standard.

Some of us are referencing these changes as a lifting of the bar in trusteeship and trust advice while some of us believe that these changes will simply make the bar visible and hold to account those that can't reach it.

At NZTS, we are seeing a real shift with trusteeships – accountability is becoming more apparent so there is no room to be passive. Many trust practitioners who aren't quite on their game are either schooling up or looking to exit their trusts.

We can either independently review an existing trust and offer advice as to whether it will stand the test of time, or alternatively work with legal and accounting firms on solutions for books of trusts. We will continue to keep you informed of changes in this important area in the coming months as the bill transitions through Parliament.

## *AML requests*

Requests for AML (anti-money laundering) information have increased drastically over the last few months. From 1 July, legal firms are required to complete full AML due diligence on all new and existing clients before undertaking any further work.

This means we will need additional information from you for any trust transactions. We will work with you and your solicitors to ensure this is done in an easy and quick way to avoid any delays.

Please be prepared to provide current proof of address, ID, source of wealth, and a certified copy of the trust deed.

NZTS is required by law to hold these documents on file for all our clients. If you are a current client and you have not yet supplied these documents, please bring them along to your next annual review.



## *Are you an overseas tax resident?*

The Foreign Account Tax Compliance Act (FATCA) is a United States federal law requiring United States persons (including those living outside the US) to report their worldwide income to the Internal Revenue Service. New Zealand financial institutions must report on US citizens, residents and entities controlled by US citizens and residents.

The Income Tax Act 2007 and Tax Administration Act 1994 have been amended to implement the OECD Common Reporting Standard (CRS). This requires us to collect and report certain information about an account holder's tax residency. If an account holder's residence is located outside New Zealand, we may be legally obliged to pass on information regarding their financial accounts to the IRD.

If you are an overseas tax resident or US citizen, please get in touch with us for more information.