



Trusts Act 2019: key features for trustees and settlors

What you need to know

- The Trust Act codifies the obligations of trustees and the rights of beneficiaries with the aim of making trustees more accountable and trust law more understandable.
- The key features are:
 - the extension of the trust period;
 - greater certainty around appointment and removal of trustees
 - detailing mandatory and default duties of trustees;
 - restrictions on trustee exemptions and indemnities;
 - clarification of trustee powers; and
 - prescribing trustee obligations to keep and disclose information.

Key features of the Trusts Act

TRUST PERIOD

The Act allows a trust to continue for 125 years. Property held on trust must be finally distributed after 125 years from first being settled, even if resettled on another trust in the interim. It may be possible for some existing trusts to have their maximum duration extended to 125 years.

APPOINTMENT AND REMOVAL OF TRUSTEES

The Act sets out who holds the power to remove or appoint a trustee (subject to the terms of the trust).

The Act specifies circumstances in which a trustee may or must be removed from office.

Some people are disqualified from being appointed as a trustee, eg an undischarged bankrupt.

A trustee may retire but only certain persons can properly discharge the retiring trustee.

MANDATORY AND DEFAULT DUTIES OF TRUSTEES

Mandatory duties – must be performed by trustees and cannot be modified or excluded by the terms of the trust:

- (a) Know and act in accordance with the terms of the trust
- (b) Act honestly and in good faith
- (c) Act for the benefit of beneficiaries or to further the permitted purpose of the trust
- (d) Exercise powers for a proper purpose

Default duties – must be performed by the trustee unless modified or excluded by the terms of the trust:

- (a) General duty of care
- (b) Invest prudently
- (c) Not to exercise power for own benefit
- (d) Consider exercise of power
- (e) Not to bind future exercise of discretion
- (f) Avoid conflict of interest
- (g) Impartiality
- (h) Not to profit
- (i) Act for no reward
- (j) Act unanimously

Trustee exemptions and indemnities

EXEMPTION AND INDEMNITY CLAUSES

The terms of a trust must not limit or exclude a trustee's liability nor give any indemnity for any breach of trust involving trustee's dishonesty, wilful misconduct or gross negligence.

TRUSTEES' INDEMNITIES

A trustee may be indemnified from the trust property for some breaches of trust if all of the beneficiaries agree or, in some cases, with the aid of the High Court.

A trustee is personally liable for an expense or liability incurred when acting as trustee but, if acting reasonably when incurring the expense, is entitled to reimbursement from the trust property.

TRUSTEES' POWERS

The Act confirms that a trustee has all the powers necessary to carry out the trust and to manage the trust property as if the trustee were the absolute owner of the property (subject to the terms of the trust).

The Act includes a list of matters that a trustee may have regard to in exercising any power to invest.

TRUSTEES' OBLIGATIONS TO GIVE INFORMATION TO BENEFICIARIES

The Act confers on beneficiaries rights to receive and request trust information from trustees. It is an essential part of the 'trust information' rationale that the trustees are obliged to keep certain information so the trust can be enforced and trustees made accountable.

RECORD RETENTION AND DISCLOSURE

The Act sets out what information a trustee must keep.

1. An outgoing trustee has an obligation to hand over the trust documents to a continuing or replacement trustee as the case may be.
2. Where there are multiple trustees, there is an obligation on every trustee to keep the trust deed and variations but all the other documents may be kept by only one of the trustees.
3. The documents must be kept for the duration of the trusteeship. Original documents should be kept but it is permissible for trust records to be kept electronically.

4. There is a presumption that a trustee must make available to every beneficiary "basic trust information".
5. There is a presumption that a trustee must within a reasonable period of time give the beneficiary trust information that has been requested.
6. A trustee is required to consider at reasonable intervals if basic trust information should be made available to beneficiaries.
7. When faced with a request for information or an obligation to make basic information available, the trustees must, before giving the information, consider certain factors as set out in the Act.

Note: Trust information does not include reasons for trustee's decisions.

[Click here](#) for more detail on trustee obligations to keep and disclose information.

AGE OF MAJORITY

For trust purposes an adult is defined as a person 18 years or older.

TERMINATION AND VARIATION OF TRUSTS

Even though there are usually certain powers contained within the trust terms as to winding up the trust, the Act provides that in certain circumstances a trustee must terminate the trust and distribute the trust property on being required to do so by the beneficiaries. The beneficiaries can, subject to certain conditions, require a trustee to vary or resettle the trust.

COURT POWERS

The High Court has wide powers under the Act including the power to review a trustee's conduct. The Court can appoint a receiver to administer a trust and can order an ADR process be undertaken.

Up to date?

Trustees and settlors need to be familiar with the Trusts Act and be confident that any trust they are involved with is compliant and up to date.

[Click here](#) for our discussion of key actions for trustees and settlors.

Get in touch

Please get in touch with our contacts if you require further information or wish to discuss any aspect of the Trusts Act.

Contacts



Richard Broad, Senior Associate
P: +64 9 977 5024 M: 021 469 046
E: richard.broad@simpsongrierson.com



Barney Cumberland, Partner
P: +64 9 977 5155 M: 021 497 462
E: barney.cumberland@simpsongrierson.com



Hugh Lindo, Partner
P: +64 3 968 4010 M: 027 711 7171
E: hugh.lindo@simpsongrierson.com



Paul Windeatt, Senior Associate
P: +64 9 977 5024 M: 021 240 9240
E: paul.windeatt@simpsongrierson.com



Joanna Lim, Senior Associate
P: +64 3 968 4017 M: 027 359 407
E: joanna.lim@simpsongrierson.com



Nicholas Bland, Senior Associate
P: +64 9 977 5313 M: 021 241 4504
E: nicholas.bland@simpsongrierson.com

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