

THINGS TO CHECK BEFORE BECOMING A TRUSTEE

This checklist is a guide to highlight some of the things to be checked before taking on a role as trustee of a trust. As the specific circumstances for each trust will be different, this form should not replace the need for proper advice from a suitably qualified person.

1. Governing documents:

- **Trust purpose:** Identify the purpose of the trust & the Settlor/s aims or objectives for the trust.
- **Trust Deed:** Read & understand the trust deed (& any variations to the deed); clarify any points which are unclear.
- **Settlor wishes:** Review any wishes made known by the settlor to the trustees; check they are comprehensive up to date.
- **Contracts/service agreements:** Review the terms of any contractual obligations or service agreements.

2. Relationships:

- **Trustees:** Identify & meet trustees; determine skill levels & fit; check trustees have been validly appointed by deed.
- **Settlors:** Identify all settlors to the trust (nominal & actual); check whether they are also trustees &/or beneficiaries.
- **Beneficiaries:** Identify names, location, nationality, tax residency, ages & dates of birth, needs, circumstances, abilities & disabilities; confirm entitlements and who knows they are a beneficiary; review the expectations of beneficiaries; review communication & reporting protocols; check quality of trustee/beneficiary relationships & if any education is needed.
- **Professional advisers:** Confirm who are professional advisers to the trust; clarify how they are involved & used.

3. Trust management & administration:

- **Policy, protocols, systems & procedures:** Understand the processes or systems are used to manage the trust (e.g. to maintain centralised records, to manage record-keeping, to collate accounting records, to communicate or share information, to initiate regular reviews or meetings, to manage conflicts of interest, to record beneficiary information, to record assets purchased, held or sold by the trust, to ensure important trust events or dates are not missed).
- **Trust Minute Book:** Review historic trustee decisions; check trustee decisions correctly documented, dated & signed.
- **Trust file/records:** Check quality of record keeping & that required information is held (contact details, birth dates, etc).
- **Decision-making:** Check if trustee decisions are to be unanimous, or by majority; clarify the protocols between trustees for making decisions; check trust deed for any restrictions for trustee/beneficiary making decisions in their own favour.
- **Risks & issues:** Establish what potential risks or issues exist; determine how they are being managed or mitigated.
- **Legislation:** Check the implications of FATCA, CRS, AML/CFT, RLWT, RMA, Health & Safety, or any other Acts/Regulations.

4. Trust property (assets & liabilities):

- **Trust property:** Identify all assets & liabilities; confirm assets held in trustees' names; check custody is secure; identify the condition (inspect if possible); review terms of tenancies/leases, occupancy or use; ensure up-to-date asset register held; review financial accounts/director reports for businesses assets; review terms of loans made & if documented.
- **Insurance:** Confirm all trust assets are appropriately insured in the names of the trustees.
- **Liabilities/guarantees:** Clarify the nature, terms & current position for all liabilities & guarantees entered into by trustees.
- **Original trust documents:** Confirm trust deeds, Settlor wishes, transaction documents & important papers are secure.
- **Gifting:** Confirm who has made settlements on the trust & the status of any continuing gifting programmes.

5. Finance & tax:

- **Financial Statements:** Confirm that financial statements are being prepared annually; review recent financial statements.
- **Tax/GST:** Check trust IRD number, if trust has tax/GST obligations & if so, controls to file returns/pay tax/GST by due date.
- **Bank account:** Confirm the trust has a bank account; check controls to operate & oversee bank account & cheque book.

6. Investment:

- **Policy:** Confirm the investment strategy & if it is documented; check it complies with the trust deed & beneficiary needs; confirm trustee processes to take advice, to undertake investment reviews & to monitor investment fees & performance.
- **Investment performance & costs:** Determine the process used to review investment performance & costs.

7. Distributions:

- **Policy:** Review distribution policy; how historical distributions are tracked & if distributions are to be adjusted on wind up.
- **Process:** Check process for making fixed/discretionary income or capital distributions, or for final distributions on wind up.
- **Timing:** Check timing for income distribution, retention or capitalisation (e.g. 6 or months of balance date).

8. Trustee appointment/removal:

- **Process:** Confirm who is authorised to appoint/remove trustees & the process for trustees to resign, retire or be removed.
- **Trustee advice & capability:** Determine if advice, indemnities, training or support needed before accepting trustee role.
- **Professional trustees:** Check deed allows charging; consider conflicts with other advisory roles, agree terms of engagement.