

# Establishing and Structuring a New Zealand Trust



# Contents

What is a Trust?	01
What does it look like	02
Should I set up a trust?	03
Establishing the trust?	04
Transferring assets to the trust	05
Changes to the trust	06
Winding up the trust	07
Ongoing obligations and running the trust	08
Glossary	09
Lowndes Jordan Charges - Confidential	10

# An example page title set in heading style one (H1)

---



Example of heading style two (H2) used in the main text column. Expertise of Lowndes Jordan relating to legal aspects of pharmaceuticals and drug development.

### Heading style three (H3)

Large body copy<sup>1</sup>, can be used for introductions and pullquotes. A trust is a legal relationship where someone (a trustee) holds property such as cash, land and other assets (the trust fund) on behalf of, and for the benefit of, other people (the beneficiaries). Although trusts can arise in other situations, for our purposes, a trust is created when a person (the settlor) signs a trust deed declaring that named trustees (who also sign the trust deed) hold assets transferred to the trust, then and later, for the beneficiaries.

Main body copy style<sup>2</sup>. Any of the discretionary beneficiaries may receive income or capital (including capital assets like a house) the trust fund during the term of the trust, but they cannot compel the trustees to make any distribution. They have a mere hope or expectation that the trustees may exercise their discretion to distribute trust property to them. On the eventual winding up of the trust the trust fund is distributed to the final beneficiaries in accordance with the terms of the trust deed, or any other directions that the settlor may have given to the trustees. The trust deed will deal with various aspects of the trust and the strict fiduciary obligations of the trustees.

### Heading style four (H4). Lowndes Jordan has sound expertise in advising on the legal aspects of pharmaceuticals and drug development, including:

- Level 1 bullet point style. Work completed for Caldera Health, including:
  - Level 2 bullet point style. Research agreements relating to production of new molecules incorporating new functionality with the objective of developing non-invasive cancer diagnostic tools.
  - Joint venture for development and use of microfluidic devices to capture and analyse human cells for diagnostic purposes.
    - Level 3 bullet point style
    - Level 3 bullet point style
    - Level 3 bullet point style
- Work completed as principal legal adviser to Genesis Research and Development Corporation Ltd (Genesis), New Zealand's first listed biotech company, including:
  - Establishment of a joint venture with a Japanese investor to pursue a RNAi (RNA interference) research project.
  - Collaboration agreements for use of expressed sequence tags for application in food, agriculture and pharmaceuticals.
  - International collaborations relating to development and use of M Vaccae for application for treatment of psoriasis and asthma.

1. Lorem ipsum dolor sit amet  
2. Lorem ipsum dolor sit amet, consectetur adipiscing elit.

---

## 3.0 Should I set up a trust? (H2)

There are advantages in setting up trusts, but they do come with added responsibilities for the trustees and ongoing administrative requirements and costs.

### Benefits include (H4):

- 3.1 Asset protection (numbering level 1 in H4).** Family trusts are commonly utilised to protect the settlor's and their spouse's lifestyle assets against potential future personal liability of some kind (whether arising due to business failure, director liability or for some other reason). It is important to place such assets in trust well before such protection is needed as, once the liabilities have arisen, dispositions of assets to a trust may be vulnerable to attack by creditors.
- 3.2 Flexible family support.** Since distributions from the trust fund are discretionary, the trustees are able to take into account changing circumstances of the beneficiaries over time rather than having to make irretrievable decisions now to gift property or leave it in a will, with the eventual fragmentation and dissipation of family wealth that this can lead to. For example, the funding of children's education may give way to beneficiaries using trust property to live in, and support for beneficiaries starting out in businesses. Beneficiaries can also be added or removed to take account of changing family relationships, although care must be taken to treat beneficiaries fairly.
- 3.3 Estate planning and continuity.** The establishment of a family trust can greatly simplify the administration of an estate and the complexity of wills. Since the trust is already in existence at the time of death of the settlor/trustee, this has no impact on asset ownership, bank accounts, tax registration, etc, other than any need to transfer legal owner registrations to new trustees (which can also be avoided by having a company trustee or trustees).

---

## Testimonials



Rick is the person I direct every single one of my customers to when they ask the inevitable "do you know a good lawyer?" question. His domain expertise with regard to IP, the internet and all of the things in-between is legendary and his ability to explain often complex legal "stuff" in plain English is just one of the things that sets him apart in his field. I have had the good fortune to work with Rick on a number of projects and very much look forward to this continuing into the future.

**Brett Roberts**  
Callaghan Innovation

3. Note that an advance directive cannot give any instructions under the End of Life Choice Act 2019, which must be given by a person themselves (and may not be taken by an attorney under an EPOA)  
Establishing and Structuring a New Zealand Trust 7

An example of a longer testimonial or information block that sits across two pages. Lorem ipsum dolor sit amet, consectetur adipiscing elit. Praesent justo purus, ultrices suscipit blandit sed, pharetra non metus. Donec auctor interdum ornare. Proin tristique iaculis luctus. Mauris vel felis id velit laoreet sollicitudin sit amet in nunc. Donec urna sem, tristique quis diam at, vehicula

egestas erat. Sed cursus accumsan massa, sed scelerisque ligula rutrum ac. Pellentesque eget venenatis lacus, id ullamcorper ex. Nam elementum egestas mauris. Proin congue, risus in euismod rutrum, risus felis pulvinar dolor, eget feugiat ante purus nec est. Suspendisse potenti. Sed in elit in dolor gravida faucibus. Nullam ultrices, nibh at volutpat porta, enim sem tristique diam, vitae bibendum eros lacus in orci. Morbi mollis urna diam.

**Brett Roberts**  
Callaghan Innovation

## 4.0 Transferring assets to the trust

### 4.1 Sale of assets to a trust (numbering level 1 H3)

- 4.1.1 There are very few limits on the types of assets that can put into a trust. Land, shares in family businesses, and investment assets such as fine art, are commonly transferred. It is common to retain personal ownership of amenity assets that are not held for investment purposes or are likely to decrease in value, such as:
- (a) household chattels;
  - (b) personal jewellery (unless of very significant value); or
  - (c) other personal items, including vehicles and boats unless they are of significant value and need to be protected from creditors or are likely to be retained and used by future generations.
- 4.1.2 Where the trust does not have funds to purchase assets from the settlor, the trust can borrow from that person and acknowledge a debt for the value of the assets purchased. The assets transferred to the trust are in effect exchanged for a debt back.

### 4.2 Gifting<sup>3</sup>

While the trust owes a debt to a settlor, the value of the debt will remain part of the settlor's personal estate potentially available to creditors. However, there is no longer gift duty on gifts to family trusts, so the full transfer of assets can be effected without delay by immediately forgiving the debt back. Debts owed by the trust are usually also forgiven in a settlor's will.

3. Note that an advance directive cannot give any instructions under the End of Life Choice Act 2019, which must be given by a person themselves (and may not be taken by an attorney under an EPOA)  
Establishing and Structuring a New Zealand Trust 7



# Changes to the Trust

---

Sometimes it is necessary to make changes to the trust deed to cater for changes in the law or to change the way in which the trust is administered. The trust deed will generally allow the trustees or appointor to do this by executing a deed to vary specific clauses or even by replacing the entire trust deed with a new one. The terms of the trust deed must be strictly complied with. For example, sometimes the trustees may vary the trust deed but only with the approval of the appointor or the settlor and sometimes the power is limited only to certain specific aspects or is exercised by the appointor alone. Care must also be taken not to create a resettlement of the trust inadvertently since this can have adverse legal, tax and accounting consequences.

## **Changing the trustees.**

The power of appointment (and removal) of trustees is usually vested in an appointor named in the trust deed.

## **Changing the appointor.**

The trust deed will generally provide that the appointor can appoint their successor by deed to take effect at a certain time or in their will. It may also provide for an attorney under an enduring power of attorney to take over the power of appointment if the appointor becomes mentally incapacitated.

## **Changing the beneficiaries.**

The trust deed will generally allow beneficiaries to be added or removed, either permanently or temporarily. Sometimes this power is held by the trustees, with or without the approval of the appointor, and sometimes the power is held by the appointor alone. Again, care must be taken not to alter the trust so dramatically that a change of beneficiaries is effectively a resettlement and that their exercise of this power is consistent with the fiduciary obligations of the trustees.



3. Note that an advance directive cannot give any instructions under the End of Life Choice Act 2019, which must be given by a person themselves (and may not be taken by an attorney under an EPOA)  
Establishing and Structuring a New Zealand Trust 7

# Contact our experts

---

**Office address**

Level 15  
HSBC Tower  
188 Quay Street  
Auckland 1010

**lojo.co.nz**



Firstname Lastname  
[Position](#) | [Qualifications](#)  
emailaddress@lojo.co.nz  
+64 021 000 000



Firstname Lastname  
[Position](#) | [Qualifications](#)  
emailaddress@lojo.co.nz  
+64 021 000 000



Firstname Lastname  
[Position](#) | [Qualifications](#)  
emailaddress@lojo.co.nz  
+64 021 000 000

Disclaimer: This information is current as of September 2022 and is of a general nature only. There may have been changes since that date. This information only applies to New Zealand residents and to New Zealand assets. Specific advice must be sought before relying on any of this information in a particular circumstance. Specialist tax, accounting and financial advice should also be obtained.