

How Connectworks helps trust professionals and trustees to meet the Trust Act record-keeping requirements

July 2020

Background

- The Trusts Act comes into force on 30th January 2021
- It acknowledges that trusts are often multi-party entities - commonly one or more settlors/trustees and one or more professional trustees or advisors.
- In order for the trustees to be able to make informed decisions relating to the trust, they should hold, or have access to all relevant trust records.
- It also acknowledges that trusts are long-term arrangements (up to 125 years under the new Act) and that there may be changes of trustees over the life of the trust
- Record-keeping requirements have therefore been prescribed in sections [45-48](#) of the Act.
- These obligations apply with retrospective effect. So they apply to all documents created since the trust was settled, not just new ones added after the Act comes into force.

Background (continued)

- The provisions of the Contract and Commercial Law Act 2017 permit that all records and documents can be held electronically which would apply to all core documents.

What does the Act say?

- **Section 45**

- *Each trustee of a trust must keep, so far as is reasonable, the following documents relating to the trust.*
- *The trust deed and any other document that contains terms of the trust.*
- *Any variations made to the trust deed or trust.*
- *Records of the trust property that identify the assets, liabilities, income, and expenses of the trust and that are appropriate to the value and complexity of the trust property.*
- *Any records of trustee decisions made during the trustee's trusteeship.*
- *Any written contracts entered into during that trustee's trusteeship.*
- *Any accounting records and financial statements prepared during that trustee's trusteeship.*
- *Documents of appointment, removal, and discharge of trustees (including any court orders appointing or removing trustees).*
- *Any letter or memorandum of wishes from the settlor.*
- *Any other documents necessary for the administration of the trust.*
- *Any documents referred to in the paragraphs above that were kept by a former trustee during that person's trusteeship and passed on to the current trustee.*

What does the Act say?

- **Section 46**
- ***Keeping documents where there is more than 1 trustee***
- *If there is more than 1 trustee of a trust, each trustee must comply with the obligation in section 45 by*
- *(a) holding the documents specified in section 45(a) and (b) or copies of those documents; and*
- *(b) being satisfied that at least 1 of the trustees holds the other documents specified in section 45 and that those documents or copies of them will be made available to the other trustee or trustees on request.*

Three options to comply:

- **Option 1 (s45)**
- All trustees are given all documents and records that they keep in their own way somewhere secure and accessible. Each new or updated document or record is required to be distributed to all other trustees for them to save.
- **Option 2 (s46 b)**
- One trustee (the record-keeper) gathers and holds all records and documents of the trust (in Connectworks or elsewhere). They create a list of them that they distribute to the other trustees (letting them know they exist and are available) When another trustee requires one, they request it from the record-keeper who finds it and supplies it. When another trustee creates new documents or updates records, they either advise the other trustees that they exist, (and record are held in two places) or sends them to the record-keeper to keep, who then advises the other parties of its existence and supplies them with it when/if requested.
- **Option 3**
- The trust uses Connectworks on a subscription plan giving all trustees access. All trustees have ready access to all of the trusts documents and records. They are held securely and are easy to find from anywhere in the world (with internet access) at any time.
- Any document or record that is added or updated by any party is automatically, and instantly accessible to all other trustees.

What does the Act say?

- **Section 47**
- *“A trustee must keep, so far as is reasonable, the documents for the duration of the trustee’s trusteeship”*
- **Connectworks**
- Maintaining a Connectworks subscription for the trust delivers this (and much more).
- Unless otherwise selected, Connectworks converts trust documents to the PDF/A format.
- The ‘A’ stands for Archive. It identifies a "profile" for electronic documents that ensures the documents can be reproduced exactly the same way using various software in years to come, as defined under the [ISO standard 19 005](#) it meets.

What does the Act say?

- **Section 48**
- *“At the time that the trusteeship of a trustee ends, if the trust continues, the trustee must give at least 1 replacement trustee or continuing trustee the documents that the trustee holds at that time”*
- Over the (up to) 125 year life of a trust available under the new Act, it is likely that there will be a change of a trustee several times. If the trust chooses to have documents and records centrally-located and that record-keeper dies, is divorced, or otherwise disassociated with the other trustees this could become problematic.
- **Connectworks**
- If one party is to change/has changed, simply assign access rights to the new party. The new party instantly has access to all of the trusts records and documents uploaded by all parties since it was settled (if saved in Connectworks).

Disclosure of information to beneficiaries

- Sections [49-55](#) of the Act outline requirements around the disclosure of certain trust information to beneficiaries.
- This presentation isn't designed to deal with the decision-making process around what is disclosed and to whom. We have produced a beneficiary-disclosure workflow and draft letter to beneficiaries to address this.
- However, we can address, in practical sense, how information can be shared with beneficiaries using Connectworks.

Disclosure of information to beneficiaries

- Option (1) Email documents directly from Connectworks

The screenshot displays the Connectworks interface with a list of documents on the left and a detailed view of a document on the right. A context menu is open over the document titled "A Resolution to Register for Income Tax for signing".

Document List (Left):

- Deed of Gift - Grandparents home inherited from estate. (19 DEC 2019, Gifting, Minute)
- Major Transaction (4) (22 SEP 2019, 12 Fake Street, Minute)
- Document signed 4 ways in Connectworks (6 SEP 2019, Example)
- Deed of Appointment of Beneficiary by Protector Jason (1 APR 2019, AWAITING SIGNING)
- A Resolution to Register for Income Tax for signing (18 APR 2016, PLEASE SIGN, Legal, Resolution)

Document Detail (Right):

- A Resolution to Register for Income Tax for signing** (PDF, 18 Apr 2016)
- Deed of Appointment of Beneficiary by Protector Jason** (PDF, 1 Apr 2019)
- Document signed 4 ways in Connectworks** (PDF, 6 Sep 2019)

Context Menu (Right):

- download
- email (highlighted with a red circle)
- edit
- remove
- retry failed document
- publish document
- make draft
- make historical
- distribute for signing
- retract for signing
- amend signatories
- complete signing
- sign
- upload signatures

Disclosure of information to beneficiaries

- Option (2) Download documents from Connectworks. Include in another email or print.

The screenshot displays the Connectworks interface with a list of documents on the left and a detailed view of a document on the right. A context menu is open over the document view, with the 'download' option highlighted by a red circle. The document list includes:

- Deed of Gift - Grandparents home inherited from estate. (19 DEC 2019, Gifting, Minute)
- Major Transaction (4) (22 SEP 2019, 12 Fake Street, Minute)
- Document signed 4 ways in Connectworks (6 SEP 2019, Example)
- Deed of Appointment of Beneficiary by Protector Jason (1 APR 2019, AWAITING SIGNING)
- A Resolution to Register for Income Tax for signing (18 APR 2016, PLEASE SIGN, Legal, Resolution)

The document view on the right shows details for 'A Resolution to Register for Income Tax for signing', including its PDF format and upload date (18 Apr 2016). The context menu options are:

- download (highlighted)
- email
- edit
- remove
- retry failed document
- publish document
- make draft
- make historical
- distribute for signing
- retract for signing
- amend signatories
- complete signing
- sign
- upload signatures

Disclosure of information to beneficiaries

- Option (2) continued. Other reports can be produced and downloaded

Organisation Summary Report

Brown Family Trust

| | |
|-------------------------------------|---|
| Matter number | 12345.1 |
| Type | Family |
| Balance date | 31 Mar |
| Settlement date | 10 Jul 2010 |
| Gifting date | 17 Feb |
| Vesting date | 01 Jul 2090 |
| AGM date | 27 May |
| Vesting event | |
| Power of appointment | Basil Brown and Barbara Brown |
| Settlors | Basil Brown, Barbara Brown |
| Trustees | Smith & Smith Ltd, Corporate Trustee & Demo Company Ltd, Basil Brown, Barbara Brown, ACME Professionals Limited |
| Beneficiaries | Grandchildren of Basil Brown and Barbara Brown, Children of Basil Brown and Barbara Brown, Basil Brown, Barbara Brown |
| IRD/Taxpayer Identification Number | 127 850 414 |
| Tax residency country | New Zealand |
| GST number | ~27 850 414 |
| Subject to FATCA reporting | Yes |
| Subject to CRS reporting | Yes |
| GIIN number | 365687-68711-22-305 |
| Financial Classification | Passive Non-Financial Entity |
| Subject to foreign tax requirements | Yes |

Financial Position Report

Brown Family Trust

| | 04 Jun 2020 | 04 Jun 2019 |
|---------------------------------|------------------------|------------------------|
| Non-Current Assets | | |
| 100 Te Kowai Drive, Wellington | \$ 894,000.00 | \$ 894,000.00 |
| Bobby Brown | \$ 24,087.51 | \$ 24,087.51 |
| Air New Zealand shares | \$ 9,776.00 | \$ 9,776.00 |
| Grandparents Home | \$ 400,000.00 | \$.00 |
| Total Non-Current Assets | \$ 1,327,863.51 | \$ 927,863.51 |
| Total Assets | \$ 1,327,863.51 | \$ 927,863.51 |
| Liabilities | | |
| Brown Family Trust | (\$ 15,925.15) | (\$ 165,925.15) |
| The Settlers | (\$ 159,000.00) | (\$ 9,000.00) |
| Total Liabilities | (\$ 174,925.15) | (\$ 174,925.15) |
| Net Assets | \$ 1,152,938.36 | \$ 752,938.36 |

Assets Bought & Sold

Non-Current Assets

| Name | Acquired/Opening Date | Disposed/Closing Date | Acquired/Opening Value | Sale Value | Current Value | Gain (Loss) |
|--------------------------------|-----------------------|-----------------------|------------------------|---------------|-----------------------|---------------------|
| 100 Te Kowai Drive, Wellington | 10 Jul 2010 | | \$423,500.00 | - | \$894,000.00 | \$470,500.00 |
| Air New Zealand shares | 16 May 2016 | | \$10,001.00 | - | \$9,776.00 | (\$225.00) |
| Bobby Brown | | | \$0.00 | - | \$24,087.51 | \$24,087.51 |
| Grandparents Home | 1 Dec 2019 | | \$400,000.00 | - | \$400,000.00 | \$0.00 |
| Total | | | | \$0.00 | \$1,327,863.51 | \$494,362.51 |

Disclosure of information to beneficiaries

- Option (3)
- We will be implementing a beneficiary access option if there is demand.
- This would include no access to the trusts minute book as beneficiaries don't have the right to see this.
- It would also be 'read-only'.
- The opportunity is to make it easier and more cost-effective to give required beneficiaries access to information directly, rather than downloading all relevant information when required and sending it to each beneficiary.

What next?

- Given these very detailed but simple requirements the onus will now be on trustees to develop systems and arrangements to ensure effective compliance.
- As a cloud-based system that can connect all the people involved in the trust and all their information, we think Connectworks can help with this.
- And much more...

Additional Trusts Act content being produced for Connectworks users

- Trust review workflow **completed**
- Draft letters to lay trustees advising them of the changes (short and long-versions) **completed**
- Draft discussion points for a trust review meeting between professionals and lay trustees. This will include updated information regarding how Connectworks can be used to efficiently meet the new record-keeping and beneficiary disclosure requirements. **completed**
- A workflow to deal with the process for disclosure of basic trust information to beneficiaries. **completed**
- Draft letter to beneficiaries. **completed**
- Trust record-keeping requirements **completed**
- A deed to vary the trust to include options to deal with opting out of, or varying the default duties and to vary the vesting date.
- Updated trust resolutions to include that they are signed in accordance with the Act.
- Updating all 6 versions of our Trust Deeds for trusts settled under the new Act.
- Closer to the implementation of the Act, we will also be adding a beneficiary access rights option to Connectworks. This will offer read-only access and no access to the trusts' minute book.

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