

## About Southpac Trust

Southpac Trust are an independent professional trustee company providing premium services since 1982. It has offices in New Zealand, Nevis and the Cook Islands. The very fact that it is independent, means that it can offer its clients the scope and flexibility of ensuring that the products and services provided by Southpac Trust is always bespoke, while taking the utmost care of privacy and confidentiality.

Southpac's New Zealand trustee company Secure NZ Trustee Limited is registered with the New Zealand Department of Internal Affairs, having reporting obligations to it under the Anti-Money Laundering and Counter Financing of Terrorism Act 2009. The trustee company only acts as trustee of New Zealand foreign trusts and is not in any way part of the operating companies of the Southpac Trust Group.

## The Country

New Zealand is located in the Southern Hemisphere and is close to the Antarctic. In terms of size, the country is slightly larger than Great Britain, but only has a population of 4.4 million. The weather and geographical terrain is diverse throughout the country from glaciers, mountains, fiords and sub tropical forests and beaches. The country is famous for its rugby and sailing teams and outdoor activity, and as the go to destination for film locations that require spectacular scenery, the Lord of the Rings and Hobbit movies being the most well-known.



## Its Reputation

New Zealand is recognised as one of the least corrupt countries in the world, ranking behind Denmark, Finland and Sweden. It is an active member of a number world organisations such as the OECD, WTO, World Bank, UN and FAFT. The country is therefore considered a reliable and safe country for a HNWI wanting to establish a New Zealand foreign trust as part of their wealth planning.

## System of Government

New Zealand's Head of State is the Sovereign, Queen Elizabeth II. The Governor General is the Queen's Representative who carries out formal constitutional functions. The Executive and Judicial branches of the Government are separate and independent from each other, and is based on the Westminster model and is a self-governing member of the Commonwealth. New Zealand is a politically stable country with the rule of law being paramount. It is a common law country whereby the Judiciary interprets the law through the courts, and because of its remoteness and independence, it is less influenced by the decisions of the EU and/or other countries.

## Tax

New Zealand imposes no capital gains tax, wealth tax, inheritance tax, or stamp duty. Its residents are subject to tax on world wide income and double tax treaties apply where applicable.

The following is a summary of taxation rates on individual persons residing in New Zealand.

<b>Taxable Income Ranges (NZ\$)</b>	<b>Marginal Rate of Taxation</b>
0 – 14,000	10.5%
14,001 – 48,000	17.5%
48,001 – 70,000	30%
70,001 – and over	33%

New Zealand is not perceived as a harmful tax jurisdiction by the OECD, nor a preferential tax regime or tax haven by other countries, but at the same time it offers a favourable tax position for its New Zealand foreign trusts.

Unlike other jurisdictions, New Zealand foreign trusts are taxed by residence of the settlor rather than through the residency of the trustee. Therefore this means that so long as the settlor and assets of the trust are located outside of New Zealand, the trust will not be subject to New Zealand tax. The trust will only be subject to tax in the country within which the assets are based, or when capital or income distributions are made to a beneficiary where they reside and/or are domiciled. With zero tax liability in New Zealand, this ensures that the trust or beneficiaries are not taxed twice.

New Zealand's tax authority, the Inland Revenue Department (IRD), holds information on all New Zealand foreign trusts however this information is not publically available. However, where a tax treaty partner makes a request for information, the IRD will not entertain general 'fishing expeditions' on information about a trust unless there is just cause.

## Qualifying Trustee

In order to ensure that New Zealand foreign trusts are not subject to world wide income, at least one trustee must be a Qualifying Trustee. This means that the directors of the corporate trustee must be registered either with the New Zealand Law Society, Institute of Chartered Accountants or The Society of Trust and Estate Practitioners (New Zealand Branch). This ensures that anyone offering trustee services in New Zealand are technically competent and of high professional calibre.

## Regulatory Requirements - AML/CFT, CRS and FATCA

New Zealand is an economically safe and stable country. It became a member of the OECD in 1973 along with 34 other member countries. As a member, it has adopted a number of policies and practices recommended by this intergovernmental organisation. It will be adopting the Common Reporting Standard (CRS) in early 2017. It has also passed legislation to combat money laundering and counter terrorism (Anti-Money Laundering and Countering Financing of Terrorism Act 2009), and has signed an Intergovernmental Agreement with the US Government assisting New Zealand financial institutions to comply with FATCA.



## Uses of a New Zealand Trust

### Wealth planning

As one should diversify their investment portfolio, the same applies to wealth planning which should not be limited to the person's home country. The settlor may envisage a different purpose for his/her wealth that cannot be provided for in their home country or in other jurisdictions. Trusts can be used as an independent and safe vehicle for wealth planning.

### Asset Protection

Placing the ownership of assets outside the home country of the settlor, ensures that the assets are safe from unforeseen circumstances such as an unstable government and/or risk of confiscation of assets, kidnapping or extortion, or potential settlor liability. A foreign judgment will only be recognised if that jurisdiction has a reciprocal agreement with New Zealand, and it has obtained registration of the foreign judgment from a New Zealand Court which will involve issuing court proceedings in New Zealand.

### Succession Planning

Reasons for a HNWI's succession planning will differ for each person and will reflect their own family circumstances.

- Assets held within the trust can preserve inter generational wealth ensuring continuity of ownership after the settlor's death.
- A trust will ensure that there is a plan in place for vulnerable members of the settlor's family.
- A New Zealand foreign trust allows the settlor to avoid forced heirship in their home country. A trust gives a person the

freedom to dispose their assets in accordance with their own wishes that may differ to foreign heirship rules governing the settlor.

- The assets held in the trust will not be subject to probate laws or inheritance tax after the settlor's death.

## Commercial Use of Trusts

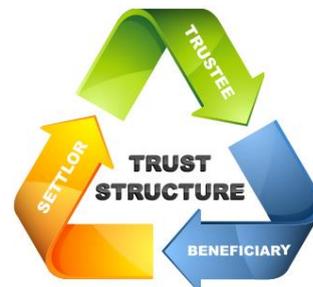
A trust is a very useful and flexible device in the commercial world. For example, trusts can be used for revolving loans, commercial security, project financing, syndicated loans, debenture holdings, bills of lading, subordination trusts for segregated creditors, trading trusts or as special purpose vehicles. With a bit of creative thinking uses of a trust are unlimited.

## Mechanisms of a Trust

### The Settlor

The settlor (grantor) is the person who settles assets upon the trust. Once assets have been transferred, the settlor divests all legal interest, which is now transferred to the trustee.

The trustee will just hold the legal interest of the assets while the beneficial interest remains with the beneficiaries.



Whilst the settlor will no longer have legal interest of the assets, they may still participate in the trust by being given reserved powers or be appointed as the protector of the trust under the terms of the trust deed. To what

extent the settlor should have such powers will depend on a number of issues, namely CRS reporting; tax consequences affecting the settlor; the risk of the settlor being sued in the jurisdiction of their home country if the court can access the trust through the settlor, because they cannot sue the trustee; or the settlor being held in contempt of court despite the trust being offshore.

### The Trustee

The trustee owes a fiduciary duty to the beneficiaries of the trust which is the highest duty of its kind. The trust and trustee's power are governed by the terms of the trust deed, statute law and case law. The trustee must manage the trust property solely for the benefit of the beneficiaries which cannot form part of the trustee's personal property. At least one trustee must be resident in New Zealand where the management and control of the trust remains. Southpac Trust's corporate trustee's directors are resident in New Zealand and are 'Qualifying Persons'. All management and control of New Zealand foreign trusts are managed out of the New Zealand office.

### The Beneficiaries

The beneficiaries named in the trust deed are the persons entitled to the beneficial interest of the trust assets. The settlor can be a beneficiary of their own trust. There is an express provision within the trust deed allowing for the exclusion or removal and appointment of beneficiaries during the life of the trust.



### The Trust Fund

The trust can hold any form of assets movable or immovable, in any part of the world. Assets can be added at any time but for speed of establishment, the trust is initially settled with a nominal amount of USD10.00, with the substantial asset being transferred at a later date.

### Protector

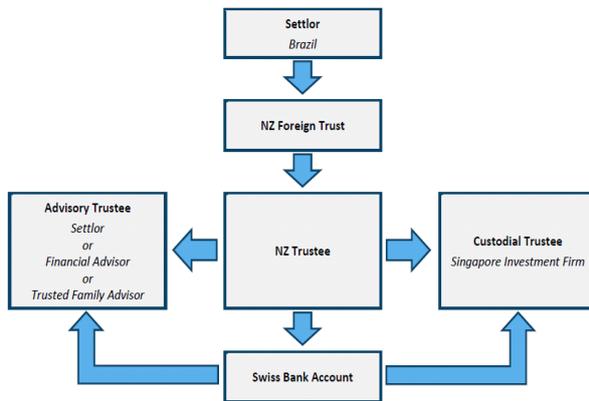
A protector may be appointed by the settlor when the trust is established. The protector may have negative or affirmative veto powers over some of the trustee's powers. Depending on the home country of the protector, negative veto powers can have unintended tax consequences on the protector and/or they may be compelled by a court in their home country to submit assets to its control or furnish it with information.

### Custodial or Advisory Trustee

Under the Trustee Act 1956, the trustee may appoint a custodial or advisory trustee and they are not required to reside in New Zealand. If a custodial trustee is appointed, the trust property may be vested with them however all discretions and management relating to that trust remains with the original trustee (managing trustee). The custodial trustee simply holds the trust property and shall not be held liable for the execution of directions issued by the managing trustee or for any act or default on their part.

An advisory trustee may be appointed whereby the assets remain vested with the original trustee (responsible trustee), the responsible trustee may consult with the advisory trustee on any matter relating to the trust. However, the responsible trustee is not obliged to follow the advice of the advisory trustee if it feels that it conflicts with the trust or any rule of law. In following the advice, the responsible trustee will not be held liable for anything done or omitted by them.

In practical terms, a custodial and/or advisory trustee can be used in any wealth planning structure and may be useful when dealing with several jurisdictions across several time zones or if the settlor is uncomfortable with the concept of the trustee having complete power of the trust property. An example may look like:



## Revocable or Irrevocable Trust

Unless specified by the settlor, the trust should be irrevocable. The trust should only be revocable if the settlor wishes to retain power over the assets to make a call to have them returned to him/her at a later date whereby the trust will be terminated. This option can have tax consequences on the settlor and may in some instances, negate the purpose of having a trust compared to other forms of entities as a tax authority may view the settlor as having retained control over the asset.

## Fixed or Discretionary Trust

A discretionary trust is where the trustee has wide discretionary powers with regard to the distribution of trust assets. The beneficiary has no absolute right to direct a trustee on distribution of the trust assets, and will only receive income or capital when the trustee decides to make a distribution to one or more beneficiaries to the exclusion of others.

Whereas a fixed trust will specify the fixed interest each beneficiary will each receive. Unfortunately in some jurisdictions, this may be considered a taxable and/or reportable event despite a distribution not having even been made yet.

## Relevant Legislation

*Trustee Act 1956*  
*Tax Administration Act 1994*  
*Income Tax Act 2007*

## Finally

New Zealand trusts should be used by clients who are constrained from using “offshore” financial centres that are considered as tax havens, preferential tax regimes or are blacklisted in their home country. Reputationally, New Zealand foreign trusts are favoured worldwide.

## Contact

Our experts in New Zealand all have a legal background and understand the importance of getting the details right when establishing and implementing your wealth planning structure and will work alongside your professional advisers or specialist from anywhere in the world. We look forward to hearing from you so that we may assist you with your wealth planning needs.

*Please be aware that Southpac Trust and its affiliates do not provide tax, legal or accounting advice and that the material has been prepared for informational purposes only, and is not intended to provide, and should not be relied upon for, tax, legal or accounting advice. You should consult your own tax, legal and accounting advisors before establishing an offshore entity or trust.*