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## FAMILY TRUSTS—INDEPENDENT TRUSTEES

There have been a number of developments in the law relating to the position of Independent Trustees of Family Trusts.

Some of these developments are not actually new, but are a clear update as to the rights and obligations of all Trustees of Family Trusts.

These developments have also confirmed an increased scrutiny of the actions of Trustees of Trusts and also the liability of those Trustees even in a situation where they are totally independent of the beneficiaries and obtain no personal gain or benefit from the existence or operation of the Trust.

These developments include:

1. Court cases where creditors have taken action against all Trustees and had pursued the Independent Trustees for recovery of money as well as the Interested Trustees.
2. IRD confirming that they hold all Trustees equally and fully responsible for all tax obligations of the Trust. Again, they do not differentiate between the obligations of Interested Trustees and Independent Trustees.
3. A pending change to the Trustee Act which could affect company directors of a company established for the sole purpose of acting as an Independent Trustee of a Trust. This change could make those company directors personally liable for the obligations of the Trust.

This makes our position different to when your Trust was established.

These personal liabilities can arise in a situation where an Independent Trustee takes a back seat ie. a passive role in the

administration of the Trust and just allows the Interested Trustees to run the Trust.

However, it can also occur in a situation, for example, where a Trustee might move to another country leaving the problems of the Trust behind in New Zealand. The Independent Trustee may still be in New Zealand and may be the focus of any scrutiny of the Trust's activities and become responsible for payment of the Trust debts.

Although in circumstances such as a bank loan you can have a limitation of liability clause, there is no such limitation provided in a situation where a Trust incurs an obligation such as a tax debt or a debt to an outside third party if the Trust is involved in trading activities.

A limitation of liability will also not protect a Trustee where there is any form of Court action by a beneficiary.

For these reasons we have recently come to a decision that we will no longer offer to take the position of an Independent Trustee for a Trust established on behalf of a client. We were reluctant to come to this decision because we know that it provides a benefit to the vast majority of our clients.

However, the risks of doing so are now too serious.

In respect of existing Trustee positions, we will seek to phase these out. We will only do so in a situation where you as the client are not inconvenienced. In other words, we will look to do that at a time when you are undertaking some other action on behalf of the Trust which involves the use of our services.

If you have any queries regarding this please feel free to contact us.