

## PRESENTERS



### **Sarah Kelly, Senior Associate, Dentons Kensington Swan, Auckland**

Sarah is a senior associate in the national private wealth team. She specialises in asset and estate planning, trusts, immigration by investment, relationship property agreements, estate administration, trust governance and compliance, as well as general corporate and commercial matters.

Sarah's expertise includes advising domestic and international high-net-worth individuals in relation to asset and estate planning, relationship property, trusts, family offices, and governance and compliance obligations. She regularly advises New Zealand families, foreign investors, new migrants, legal and accounting firms, executors and trustees, professional trustee companies, financial institutions, and family offices.



### **Silvia McPherson, Partner, Dentons Kensington Swan, Auckland**

Silvia is a partner in the national private wealth team. She specialises in asset protection and estate planning, relationship property law, business succession planning, the law and administration of trusts and charities and related governance and compliance matters. Silvia's clients are mostly domestic and international high-net-worth private individuals with varied and often complex needs, trustees and other fiduciaries, financial institutions, corporations and government entities.

She has significant international experience gained in the United Kingdom market where she provided a range of trusts, private client, tax and charity law advice to high-net-worth individuals, trustees of private, statutory, and commercial trusts, financial institutions and charities. Silvia also advised corporate clients with transactions where trusts were an integral part of structuring proposals. She draws on this expertise to provide commercially sound and sensible solutions to her clients.

*The statements and conclusions contained in this presentation are those of the author(s) only and not those of the New Zealand Law Society. This presentation has been prepared for the purpose of a Continuing Legal Education course. It is not intended to be a comprehensive statement of the law or practice, and should not be relied upon as such. If advice on the law is required, it should be sought on a formal, professional basis.*

# CONTENTS

<b>1. INTRODUCTION.....</b>	<b>1</b>
<b>2. TRADITIONAL APPROACH AND THE CHANGING LEGAL LANDSCAPE .....</b>	<b>3</b>
THE TRADITIONAL APPROACH.....	3
CHANGING LANDSCAPE: THE GREATEST TRANSFER OF WEALTH IN HISTORY.....	5
CHANGING LANDSCAPE: A MOVE FROM PRIVACY TO TRANSPARENCY.....	6
<b>3. THE ACT.....</b>	<b>7</b>
TRUSTEE DUTIES AND OBLIGATIONS .....	8
DUTY TO KEEP CORE TRUST DOCUMENTS.....	9
DUTY TO GIVE INFORMATION TO BENEFICIARIES .....	9
<b>4. SPECIAL TRUST ADVISERS AND THIRD PARTY POWER HOLDERS.....</b>	<b>13</b>
A THIRD PARTY WITH POWER TO CHANGE TRUSTEES IS TYPICALLY KNOWN AS AN APPOINTOR.....	13
HISTORICALLY AN ADVISORY TRUSTEE PROVIDED ADVICE TO THE RESPONSIBLE TRUSTEE .....	13
SPECIAL TRUST ADVISERS ARE THE REBORN STATUTORY CREATION OF THE ADVISORY TRUSTEE .....	14
A CUSTODIAN TRUSTEE HOLDS TRUST PROPERTY FOR THE RESPONSIBLE TRUSTEE IS AN EXECUTION ONLY ROLE.....	14
A PROTECTOR IS A THIRD PARTY WITH POWER TO INFLUENCE THE ADMINISTRATION OF THE TRUST .....	14
<b>5. INVESTMENT OF TRUST FUNDS.....</b>	<b>17</b>
<b>6. TRUSTEE COMPLIANCE IN LIGHT OF THE MOVE FROM PRIVACY TO TRANSPARENCY .....</b>	<b>25</b>
DOMESTIC TRUST REPORTING RULES.....	25
FATCA, CRS AND AML/CFT .....	26
FATCA .....	26
CRS.....	28
AML/CFT .....	30
<b>7. OTHER CONSIDERATIONS FOR TRUSTEES.....</b>	<b>31</b>
REVIEW OF TRUSTS .....	31
SETTLORS' WISHES .....	31
FORMAL VALIDITY VS ESSENTIAL VALIDITY .....	32
NEW TAX CONSIDERATIONS.....	34
“BLESSING” APPLICATIONS .....	34
“BLESSING” APPLICATIONS IN A NEW ZEALAND CONTEXT .....	35
<b>8. A LESSON AS TO WHY TRUSTS SHOULD BE PROPERLY GOVERNED AND ADMINISTERED .....</b>	<b>37</b>
THE RELEVANT FACTS.....	37
THE ISSUES IN THE CASE .....	37
WHAT THE COURT HELD.....	38
WHAT CAN TRUSTEES LEARN FROM THIS DECISION?.....	38
<b>9. CONCLUSION.....</b>	<b>41</b>