

# FOUR FAST FACTS

## ON: TRUSTS IN FINANCING TRANSACTIONS

FEBRUARY 2021

### New laws now in force

1

The Trusts Act 2019 came into force on 30 January 2021. It applies to all trusts governed by New Zealand law, including those forming part of financing transactions. It applies retrospectively to trusts that were settled before its commencement, and to all new trusts.

### Mandatory and default duties

2

The Act prescribes mandatory duties and default duties for trustees. All mandatory duties must be complied with. Default duties will apply unless they are modified or excluded by the terms of the trust deed, which can be express or implied.

### Special treatment for trusts used in commercial contexts

3

The Act establishes the concept of a 'specified commercial trust' (**SCT**). These include qualifying commercial trusts, security trusts and wholesale/securitisation trusts. For SCTs that existed before 30 January, some of the new duties automatically do not apply. For new SCTs, the Act allows some flexibility to modify or exclude the new duties.

### Contracting out

4

It is not possible to contract out of trustees' mandatory duties. The Act specifies the other duties that can be modified or excluded. Evolving market practice for newly established SCTs is for the wholesale exclusion of those duties that can be modified or excluded.