

FACT SHEET – FAMILY TRUSTS

WHAT ARE THE ISSUES?

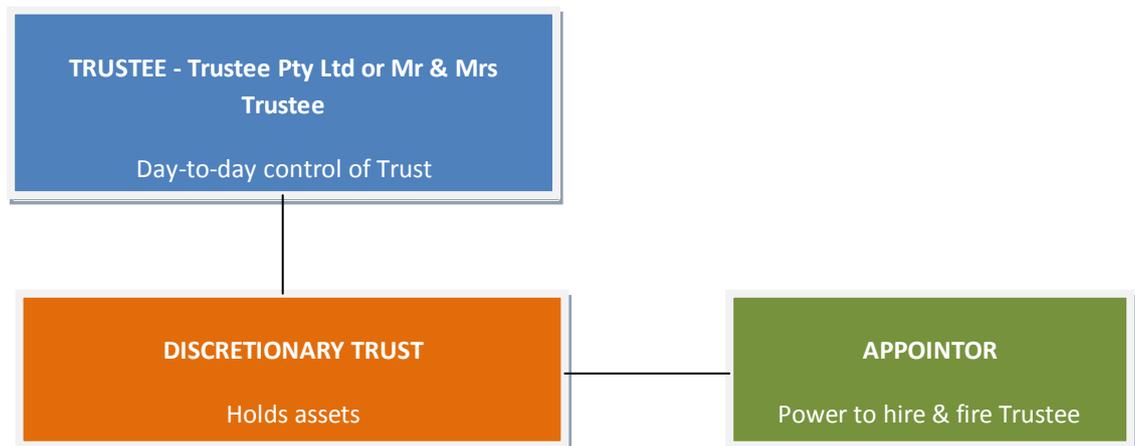
Firstly, are you aware that assets within discretionary (“Family”) Trusts do not form part of your estate? They are a separate vehicle and operate in their own right. In general terms, assets within these trusts prior to a person’s death will remain assets of that trust after the person’s passing.

SO HOW IS ESTATE PLANNING ACCOMPLISHED WITH FAMILY TRUSTS?

A great deal of what is possible with family trusts from an estate planning perspective, revolve around:

1. The Trustee Structure of the trust
2. The Appointor of the trust
3. The Deed of the trust

A typical trust structure might look as follows:



You can see from the above diagram that succession within a trust structure is not straightforward. Depending upon the level of assets within the trust, significant review, and re-structuring might be required to deliver on a client’s estate planning wishes.

TRUSTEE STRUCTURE

If a trust has a company as trustee, not only must the passing of Directorship roles and shares be considered, but also the Constitution of the company, which might set down rules for the passing of roles/shares.

APPOINTOR ROLE

Clients often pay attention to the Trustee role, but less so the role of Appointor. In reality the Appointor (assuming the trust has such a role) is in a much superior position to the Trustee in terms of overall control of the trust. As such, succession of this role is crucial in ensuring proper succession planning within a trust.

TRUST DEED

The Deed remains all important in terms of what can and cannot be done within a trust structure. In many cases the deed will prescribe rules for the passing of control of a trust – but equally there may be times when it is silent on these issues. If such rules exist, obviously attention should be paid to them. If they do not exist, or the existing rules are inappropriate, then some amendments to the Deed will be required. Take for example the situation where the existing deed assumes only one trustee or Appointor, but when control of the trust passes to the next generation, there is a need for clauses covering control by two, three or more people.

It is here that expertise is required.

Certain amendments to a trust deed may take place without adverse consequences, but others can cause what is known as a ‘resettlement’ – and can result in adverse capital gains tax and stamp duty implications. It is essential that persons in this situation seek expert advice to ensure an optimum outcome.

WHAT TO DO NEXT

If you have a trust which holds significant assets, prudent estate planning will require a thorough review of the deed and related documentation in order to provide you with an optimum outcome.