

DISCRETIONARY TRUST

Introduction

A discretionary trust ("family trust") is one of the most common small business structures in Australia. Some of the key attributes of the discretionary trust are:

- It offers some protection from bankruptcy and insolvency;
- It is a relatively low cost and simple structure to use; Buying or selling businesses;
- It allows you to distribute income to family members who are on low tax rates; and
- It allows you to "stream" income: you can distribute one type of income to one person and another type of income to another person.

Name of Trust

You are free to choose a suitable name for your discretionary trust. The name should be appropriate in terms of reflecting the nature of the discretionary trust's business (if any), its purpose or the identity of the trustee.

Settlor

The settlor must fulfil the pre-requisites for legal capacity namely majority age and of sound mind. The only obligation of the settlor is to gift the settled sum. The settlor should not have any other involvement with or control over the trust after its establishment. Generally, the settlor of a discretionary trust should be an independent third party.

Trustees

The trustee is the titleholder of all the trust property but has a personal obligation to deal with this property for the benefit of the beneficiaries or objects of the trust. The trust deed confers on the trustee wide discretionary powers enabling the trustee to deal with and manage the trust property.

Generally, a trustee will be a natural person or persons or a proprietary limited company. A trustee is personally liable for all debts and other. In most instances, it is preferable for a company to be trustee of a trust so that when it conducts business, enters into transactions, incurs debts, etc on behalf of the Trust, it will often have the benefit of limited liability. There are additional costs in having a company as a trustee and this needs to be

considered when deciding whether to appoint a company as a trustee.

Beneficiaries

The named beneficiaries do not obtain an interest in the assets of the discretionary trust nor do they obtain any right to distributions from the discretionary trust. The distribution of income or capital by the trustee may be made to any member of the defined set of beneficiaries which includes the named beneficiaries.

Appointors

The Appointor has the discretionary role under the trust deed to remove and replace the trustee. The appointor usually has the power to nominate a successor on his or her death and failing any such appointment, the personal representative (e.g executor) of the appointor will become the new appointor.

Although you have a choice as to whether an appointor will be appointed to the discretionary trust, it is desirable that there be an appointor to cater for situations such as the death or insolvency of a trustee. The appointor may be, an existing trustee, a named beneficiary or an other third party.

Settled Sum

\$20.00 is the standard amount for a settled sum.

There is no rule as to what the level of the settled sum should be. The Trust will be properly constituted if an amount of money is settled on the Trust. However the Trust should not be settled for less than \$20.00 in case the amount is regarded as being trifling. The settled sum is contributed courtesy of the generosity of the settlor. Therefore, neither the trustee nor any named beneficiaries should be asked to reimburse the settlor for this amount.

Meeting of the Trustee Company

The trustee company must hold a meeting in order to resolve to become trustee of the discretionary trust. This meeting is a meeting of directors and need not be attended by shareholders of the trustee company.