

Deeds of Trust

Summary of General Provisions

1. WHAT IS A TRUST?

The basic features of a trust are that persons (TRUSTEES) hold or control property (including money/ investments/ income derived) (TRUST FUND) not for their personal benefit but for the benefit of others (DISCRETIONARY BENEFICIARIES and RESIDUARY/FINAL BENEFICIARIES)

2. SETTLOR

The persons who create the trust are called SETTLORS

3. TERM OF TRUST

The maximum term is 80 years but may be less than that in the discretion of the TRUSTEES

The final day of the term is called the DATE OF DISTRIBUTION.

On the DATE OF DISTRIBUTION, the TRUSTEES are required to pay the remainder of the TRUST FUND to the RESIDUARY BENEFICIARIES.

4. RESIDUARY OR FINAL BENEFICIARIES

These are the beneficiaries who are paid the balance of the TRUST FUND on the DATE OF DISTRIBUTION in the proportions set out in the Trust Deed.

5. DISCRETIONARY BENEFICIARIES

During the term of the trust, the TRUSTEES may unanimously make income and/or capital distributions (equally or unequally) to any one or more of the DISCRETIONARY BENEFICIARIES. Using this power the TRUSTEES can effectively distribute the whole of the TRUST FUND to any DISCRETIONARY BENEFICIARY or one or more of them.

The DISCRETIONARY BENEFICIARIES are defined in the Trust Deed.

6. INCOME ACCUMULATION

Generally the TRUSTEES are able to accumulate income not paid to beneficiaries. Any income retained by the TRUSTEES is currently taxed at the rate of 33%. Income distributed to DISCRETIONARY BENEFICIARIES is taxed in their hands at their respective marginal rates of tax.

Be aware of any need to distribute income within specified time frames (eg within six months of balance date).

7. PAYMENTS TO OTHER TRUSTS

Generally the TRUSTEES are able to pay any part of the capital and/ or income of the TRUST FUND to any other trust which includes amongst its beneficiaries any DISCRETIONARY BENEFICIARY.

8. PROPER RECORDS

The TRUSTEES must keep proper records – this includes minutes of all Trustee decisions, annual minutes, and financial statements or similar. This is very important to minimise risks to the Trust Fund being challenged.

9. APPOINTMENT OF NEW TRUSTEES

The power to appoint new trustees is generally:

- a) The SETTLORS jointly; or
- b) Upon the death of a SETTLOR, by surviving SETTLOR; or
- c) On the death of the surviving SETTLOR, the children of the SETTLORS, the last of whom to die may exercise that power by deed or by will.
- d) Under the powers of the Trustee Act 1956 – by the surviving or continuing TRUSTEES or the personal representative of the last surviving or continuing TRUSTEE.

A Trustee may resign but the SETTLORS cannot remove a TRUSTEE unless they are authorised to do so by the terms of the trust deed.

10. LIMITATION OF LIABILITY OF TRUSTEES

Most Trust Deeds incorporate provision that a TRUSTEE will not be liable for any loss where the TRUSTEE has acted prudently and honestly and within his/her powers granted by the trust deed.

11. POWER OF TRUSTEES

These powers are set out in the trust deed – they are generally very wide powers and include power to vary the trust deed so long as the variation is not materially prejudicial to the interests of the DISCRETIONARY BENEFICIARIES or RESIDUARY/FINAL BENEFICIARIES.

12. RIGHT TO INFORMATION

Historically many beneficiaries have had no ready access or right to certain information about the trust – with the proposed trust law changes this situation may change and make it easier for beneficiaries to obtain information.

These changes in the law may warrant careful consideration by Settlers and Trustees as to what information may be available. As an example, if Settlers want to keep information away from younger beneficiaries, which is understandable, but may not be lawful, if asked for, in future.

Please do not hesitate to contact us to discuss any aspects of this overview