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Succession Planning and Discretionary Trusts

10 Points in One Day Conference, QLD – March 2021

Darius Hii

Information provided is general in nature; precise application depends on specific circumstances



Overview

- Discretionary trusts and succession planning
- Multiple trust assets and multiple recipients
- Restructuring trust assets to fit the succession plan
- When the discretionary trust succession plan fails



Statistics and 'the vibe'

- Estimated 1 million trusts in Australia by 2022
- Rough percentage of trusts as discretionary ~73%
- Australian population ~25 million
- ~1 trust for every 25 individuals
- Discretionary trusts continued to be recommended
- Online providers making it easier, not harder to access
- Tax planning and 'asset protection' benefits trumps succession planning and trust law considerations



Discretionary trust

- Relationship
- Trustee
- Beneficiaries:
 - Discretionary beneficiaries
 - Default beneficiaries
- Appointor/Principal/Guardian (referred to as Appointor)
- Terms governing above relationship/roles subject to a trust deed
 - No two deeds identical even if they are from the same provider*
 - No two deeds identical even if they are from the same year*
 - Tailored and customised
- Not assets of a deceased's estate (regardless if trustee or beneficiary)

The issue (and key advantage) with discretionary trusts



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*“[n]o object of a discretionary trust has, as such, any legal right to or in the capital. His sole interest, if it be an “interest” within the scope of these provisions is with regard to the income: **he can require the trustee to exercise, in bona fide, their discretion as to how it shall be distributed, and he can take and enjoy whatever part of the income the trustee choose to give him”***

- *Gartside v Inland Revenue Commissioners* (1986) AC 553 at 606



Discretionary beneficiaries

[A] discretionary beneficiary has no proprietary interest, vested or contingent, in the assets of a trust but only an expectation...a discretionary beneficiary, is not entitled as of right to disclosure of that which could be properly described as 'trust document'

- *Kestenberg v Kestenberg* [2020] VSC 84 at 7



Default beneficiaries

'taker in default of appointment is ordinarily regarded as having a vested interest in the property to be taken, though liable to be divested by an exercise of the trustee's power to appoint elsewhere: Hardingham & Baxt Discretionary Trust (2nd Ed). The interest although vested, is defeasible'

- *Ramsden v FCT* [2005] FCAFC 39 at [37]



Succession planning for trusts

- Read the deed
 - Identify the default position
 - Determine if the default position aligns with client's intentions
 - If yes, then no further steps taken
- If no, prepare documentation either:
 - Changing the trustee/appointor now
 - Nominating a successor trustee/appointor on certain events occurring
 - Varying the trust deed to allow for successor trustee/appointors to be nominated
 - Varying the beneficiary class
 - Fixing beneficial entitlements
 - Other?
- Consider any unpaid present entitlements/loans



Issues to consider

- Can the trustee retire and appoint their own successor?
- Is there an explicit power to appoint a successor trustee by Will?
- Is there flexibility to outline the conditions on appointing a successor trustee?
- Are there any conditions before a trustee can retire and appoint their successor?
- Are certain persons excluded from being the trustee?
- Can the trustee explicitly be a sole individual or corporation?
- Are there other restrictions on how the trustee can appoint their own successor?
- Is the trustee automatically retired on certain events occurring?
- Who replaces the trustee if they are automatically removed? If any trustee are still able to act, do they continue to act in their own right?
- Are there any restrictions on how a trustee may retire (e.g. other consent required, or there needs to be a minimum of at least two individual trustees)?
- Can separate trustees be appointed over particular assets of the trust?



Example 1

- **Definition for Principal means:**

- (a) *the person or persons jointly or successively named in the Schedule and the person or persons nominated by the person so named in the Schedule and acting as Principal for the time being in writing inter vivos or (in the case of the sole or last surviving such person) by will to succeed the person named in the Schedule during his lifetime (and from the date so nominated) or upon his death as the Principal; or*
- (b) *the entity or entities jointly or successively named in the Schedule and the entity or entities nominated by the entity so named in the Schedule and acting as Principal for the time being in writing to succeed the entity named in the Schedule during its existence (and from the date so nominated) or upon its liquidation as the Principal; or*
- (c) *in the case of two or more persons named or nominated as the Principal, no power or authority or direction by the Principal shall be valid or effective unless the same is jointly exercised by such persons unless otherwise specified in the Schedule or in such nomination.*

- **Schedule definition for Principal**

John Smith and any other person who may be appointed by a written instrument but in the absence of any other appointment or nomination then on his or her death, Jane Smith and or any other person appointed by a written instrument but in the event of a failure of such appointment or nomination and on his or her death the legal personal representative of the survivor of them.



Example 2

16.2 – POWER TO REMOVE AND/OR APPOINT APPOINTOR

- (a) The Appointor may appoint a person as an additional or replacement Appointor. The Appointor may do so by deed.*
- (b) If the Appointor exercises the power under clause 16.2(a), the Appointor may remove the additional Appointor at any time by deed.*
- (c) The Appointor may appoint a person as a replacement by Will. The Will is effective unless the Appointor has revoked the power to appoint an Appointor.*



Example 2 (cont.)

16.5 – IF SOLE INDIVIDUAL APPOINTOR

If a sole individual Appointor

- (a) Dies and has not appointed a replacement by deed or by Will and has not revoked the power to appoint an Appointor, then the Appointor's legal personal representative becomes Appointor on the Appointor's death until all of the children of the Appointor attain the age of twenty-five years when they, together or with an independent person would become Appointor; and*
- (b) If any children referred to in clause 16.5(a) died leaving children, those children would have the right themselves or through their guardian to nominate one person to be Appointor in place of their deceased parent; or*
- (c) Becomes mentally or physically incapable of fulfilling the role of Appointor, the Appointor's legal personal representative becomes Appointor for so long as that incapacity continues; or*
- (d) Becomes insolvent under administration then the Appointor's legal personal representative becomes Appointor until all of the children of the Appointor attain the age of twenty-five years when they, together or with an independent person would become Appointor.*



'Trust power' v 'mere power'

- Particularly relevant for older trust deeds
- The use of words such as 'terms and conditions' in the variation power makes an impact
- Consider *Mercanti* cases (discussed below)



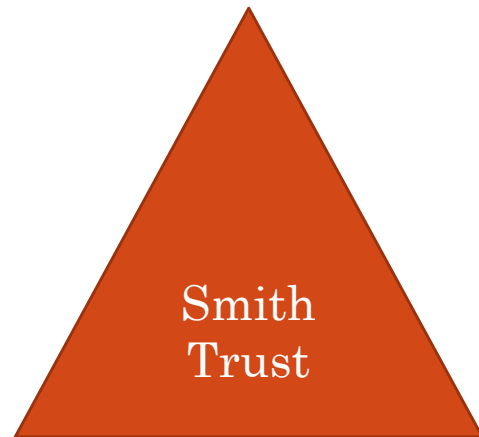
'Trust power' v 'mere power'

Where there is a mere power of disposing and it is not executed, the court cannot execute it; but wherever a trust is created and the execution of that trust fails by the death of the trustee or by accident, the court will execute the trust. But there are not only a mere trust and a mere power, but there is also known to the court a power which the party to whom it is given is intrusted and required to execute; and with regard to that species of power, the court considers it as partaking so much of the nature and qualities of a trust, that if the person who has that duty imposed on him does not discharge it, the court will to a certain extent discharge the duty in his room and place

- *Farwell on Powers* 3rd edition (1916)



The 'nuclear' family



Owns:

- Investment property
- Investment shares

Trustee: John and Jane Smith

Appointor: John and Jane Smith

Primary beneficiary: John and Jane Smith

Beneficiary class: Usual wider family

Default beneficiary: John and Jane Smith

provided that if a 'Default Beneficiary' is deceased,
then their children

John and Jane have two children. Adam and Bob.

Adam is married, and Bob is engaged to Blair.

Adam was 'never a fan' of Blair.



Example

12.7 – Several Trustees to Act Jointly

If at any time there is more than one Trustee of this Deed they shall act jointly.

14.6 – Several Appointors to Act Jointly

Subject to sub-clause 14.7 if, at any time, there is more than one Appointor appointed pursuant to this Deed they shall act jointly.

14.7 – Specified Appointors

If at any time there are two or more Specified Appointors –

- (a) Any one of the Specified Appointors may remove a Trustee pursuant to sub-clause 12.2;*
- (b) The written consent of each of the Specified Appointors is required to appoint a new or additional Trustee; and*
- (c) Where the Deed requires the written consent of the Appointor, that consent shall only be effective upon the giving of the written consent by each Specified Appointor.*



Example

Specified Appointors defined to be Specified Beneficiaries who is holding office as an Appointor or any other entity appointed by a specified beneficiary.

Specified Beneficiaries defined to be Adam and Bob.

6.2 Distribution in Default of Appointment

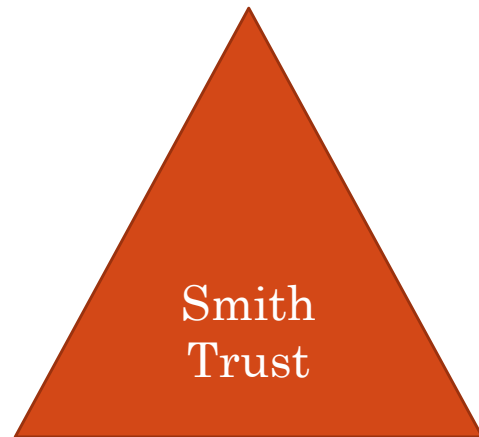
In default of and subject to any appointment pursuant to Sub-Clause 6.1, the Trustee shall on and after the Distribution Date stand possessed of the Trust Fund and the net income thereafter to arise including any income arising or derived therefrom –

- (a) UPON TRUST for such of the Specified Beneficiaries who are not Excluded Persons and if more than one as tenants in common in equal shares;*
- (b) Insofar as any part of the Trust Fund or the said net income thereof or any category of the net income is not effectively or validly disposed of by the operation of this Clause then UPON TRUST for such charitable objects or purposes as the Trustee may determine.*

Two properties, two recipients, one trust



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Owns:

- Investment property
- Investment shares

Trustee: Adam and Bob

Appointor: Adam and Bob

Primary beneficiary: John and Jane Smith

Beneficiary class: Usual wider family

Default beneficiary: John and Jane Smith

provided that if a 'Default Beneficiary' is deceased, then their children

RISK: Adam and Bob cannot agree in the management of the trust.

RISK: If Adam or Bob passes away, their spouse may not have any say in the management of the trust.

Stamp duty on trust amendments



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- Discussing Queensland stamp duty legislation (QLD Duties Act)
- Dutiable transaction:
 - there has been a transfer or an agreement for the transfer of dutiable property;
 - there is a creation or termination of a trust of dutiable property; or
 - there is a trust acquisition or trust surrender
- Applicable in relation to Queensland business assets
- Simplified way of thinking:
 - change of legal owner
 - change in manner of holding asset (directly to as trustee and vice versa)
 - change in beneficial owner (specifically, the 'takers in default')

Stamp duty on trust amendments



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- Appointor not legal or beneficial owner
- Deed of retirement and appointment v deed of nomination/appointment of successor
- Trustee is the legal owner but note change of trustee exemption
- **Default** beneficiaries are considered the beneficial owner (holder of a trust interest in a discretionary trust)
- Note family trust exemption for changes to default beneficiaries
- **Discretionary** beneficiaries not considered to hold a 'trust interest'

CGT consequences of trust changes



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- CGT events triggered on transfer to and from trusts.
- Amendments are not normally transfers to and from trusts.
- Note change of trustee exemption for trustee.
- Concept of 'resettlement' which triggers CGT events
- *Commissioner of Taxation v Clark (Clark)* [2011] FCAFC 5 and the 'continuum of a trust':
 - terms of the trust deed;
 - trust property;
 - membership of the trust
- Paragraph 24 of TD 2012/21 where '*the ATO accepts that a change in the terms of the trust pursuant to exercise of an existing power*' does not trigger a resettlement



Mercanti

- Michael (father) commenced a shoe repair business
- Two discretionary trusts were ultimately established to operate business (the Michael Mercanti Family Trust (**MMF Trust**) and Footwear Wholesale Trust (**FW Trust**))
- Slondia Nominees Pty Ltd (**Slondia** – defined for later reference) acted as trustee for MMT Trust
- Michael and Yvonne (wife to Michael) were shareholders in Slondia and the other corporate trustee, as well as directors
- Tyrone was appointed as director after being involved in the business
- Deeds were signed in 2004 to change the appointor of the above trusts to Tyrone
- A family relationship breakdown occurred between Tyrone and parents.
- Parents sacked Tyrone as director whilst he was on holiday
- Tyrone changed trustee of MMF Trust and FW Trust via appointor role



MMF Trust

28 Subject to clause 10 hereof the Trustees for the time being may at any time and from time to time by deeds revocable or irrevocable revoke add to or vary all or any of the trusts terms and conditions hereinbefore contained or the trusts terms and conditions contained in any variation or alteration or addition made thereto from time to time and may in like manner declare any new or other trusts terms and conditions concerning the Trust Fund or any part or parts thereof the trusts whereof shall have been so revoked added to or varied provided that the rule known as the Rule against Perpetuities is not thereby infringed and provided that such new or other trust powers discretion alterations or variations -

- (1) insofar as the beneficial interests created by this Deed are revoked added to or varied shall be for the benefit of all or any one or more of the General Beneficiaries or any one or more persons born or unborn being lineal descendants of whatever degree (or the spouse of any lineal descendant) of any grandparent of any General Beneficiary; but
- (2) shall not be in favour of or result in any benefit to any member of the excluded class;
- (3) shall not affect the beneficial entitlement to any amount set aside for any beneficiary prior to the date of the variation alteration or addition; and
- (4) shall not (save as provided in paragraph (1) of this clause) enlarge the number of persons capable of falling within the description 'beneficiary' hereinbefore contained.

Save as provided in this clause these presents shall not be capable of being revoked added to or varied.



FW Trust

14.1 The Trustee may at any time and from time to time (but whilst there shall be an Appointor only after having given not less than 30 days written notice to the Appointor of his intention so to do) by deeds revoke add to or vary all or any of the trusts hereinbefore provided or the trusts provided by any variation alteration or addition made thereto from time to time and may by the same or any other deed declare any new or other trusts or powers concerning the Trust Fund or any part thereof the trusts whereof shall have been so revoked added to or varied.

14.2 The powers specified in clause 13.1 shall not be exercised so that:

14.2.1 any interest under the trusts as so revoked added to or varied may vest after the expiry of the perpetuity period;

14.2.2 any member of the Excluded Class is becomes or may become entitled to any interest or benefit under the trusts as so revoked added to or varied; or

14.2.3 the beneficial entitlement to any amount set aside for any Beneficiary prior to the date of the variation alteration or addition is affected.

14.3 Save as provided in clauses 14.1 and 14.2 these presents shall not be capable of being revoked added to or varied.



Mercanti

- The variation to the MMF Trust was valid and that ‘the natural and ordinary meaning of the words of cl 28 are that the trustees may amend the provisions of the trust deed, including the items in the Schedule naming or describing the Appointor and the Guardian. In my opinion there is nothing in the remaining provisions of the trust deed that necessarily imply that the trustees cannot amend the deed by removing the Appointor or Guardian and replacing them’.
- The variation to the FW Trust was held to be invalid as:
 - ‘The crucial words of cl 14.1 are 'the Trustee may ... vary ... the trusts hereinbefore provided'. In my opinion the 'trusts hereinbefore provided are the trusts provided for in the earlier provisions of the trust deed. Clause 2 (Declaration of Trust) declares that the trustee shall stand possessed of the Trust Fund and the income thereof upon the trusts and with and subject to the powers and provisions hereinafter expressed. The trusts and powers expressed are found in cl 2 (Declaration of Trust), 4 (Profits of the Trust), 5 (Vesting of Trust), 6 (Benefits in Addition), 7 (Trustee Powers), 8 (Trustee's General Powers). The identity of the Appointor is not 'any of the trusts hereinbefore provided ...'’
 - ‘In my opinion the natural and ordinary meaning of the words 'the Trustee may ... vary ... the trusts hereinbefore provided' does not extend to varying the terms and conditions of the trust deed dealing with the office of Appointor as distinct from the trusts created by the trust deed.’



Mercanti (on appeal)

- **Ground 1:** The MMF Trust Deed does not empower the Trustee to do so on construction of the variation power.
- **Ground 2:** Alternatively, the variation power did not allow the Schedule the MMF Trust Deed to be varied so as to remove the appointor and appoint a new appointor in his place.
- **Ground 3:** The MMF Trust Deed of Variation is not binding upon Slondia (the corporate trustee) because the instrument was not executed by Slondia pursuant to the lawful authority of Slondia's directors or shareholders.
- **Ground 4:** The MMF Trust Deed of Variation constituted a fraud on the power to amend the MMF Trust Deed and thus a breach of Slondia's fiduciary duty as Trustee of the MMF Trust.
- **Ground 5:** Michael's agreement to and execution of the MMF Trust Deed of Variation was as a result of the equitable fraud by, further or alternatively the undue influence of, Tyrone.
- **Ground 6:** The appointment of a new trustee by Tyrone for the MMF Trust amounted to a fraud on the power of the appointor and was a breach of duty.
- **Ground 7:** That the appointment of Tyrone as appointor was void but in the alternative, that Tyrone held such powers on constructive trust for Michael.



Mercanti (on appeal)

- **Regarding Grounds 1 and 2:** the Court accepted that notwithstanding the variation power related to variations 'hereinbefore' declared and the MMF Trust deed of variation varied the Schedule (being situated after the variation power), on construction:

(a) 'the attachment of the Schedule as a convenient drafting technique in the context of a trust deed that was obviously intended for use as a standard form document;

(b) the status of the definition of 'the Appointor' as, in part, a definition in the strict sense and, in part, an operative provision; and

(c) the express references in the definition of 'the Appointor' to the relevant provision of the Schedule,

(d) require, in combination, that the relevant provision of the Schedule be read and construed as if it were, in substance, embodied in and part of the definition.

Also, in my opinion, the definition of 'the Appointor', with the relevant provision of the Schedule read and construed as if it were, in substance, embodied in and part of the definition, must be read and construed with the operative provision with respect to the Appointor in cl 21.



Mercanti (on appeal)

- **Ground 4:** Accepted that the trustee's duties conferred in exercising the variation power were:

(a) to act honestly and in good faith; and

(b) to exercise the power for the purpose for which it was conferred and not for any extraneous or ulterior purpose.,

and that 'the power of variation in cl 28 of the MMF Trust Deed may be exercised to achieve or promote, relevantly, any of the purposes for which the MMF Trust was created'

- Accepted the variation wasn't done in an improper or manner that can cause it to be set aside in equity.
- The Court also separately noted the independent legal advice obtained by Michael and Yvonne from Brett Davies Lawyers.



Mercanti (on appeal)

- **Ground 6:** was rejected on the basis that not all roles in a trust deed attached fiduciary duties on them.
- Where the role:
 - prevents the exercise of a power in favour of the yielder, then fiduciary duties may arise;
 - otherwise, if the yielder of a power is entitled to exercise the power for his or her own benefit, then the power will be person as distinct from fiduciary.



Ying Mui

3 *Hoh Senior passed away on 21 April 1988. Before his death, Hoh Senior delivered instructions for his will which included the following prayer:*

These are my last instructions to my children, grand-children and their descendants and it is my sincere wish that they will be faithfully carried out.

...

It is my deepest and dearest wishes that my children and descendants will continue to love and help each other when I am gone. Take heed of the old saying “Harmony within the Family promotes prosperity”. The way to achieve such harmony as taught by ancient sages is to cultivate the virtues of filial piety and brotherly love.

4 *It is tragic for the Hoh family that these wishes of Hoh Senior have not to date been fulfilled, culminating in the present litigation of Wagnerian proportions and cost – not only in financial terms, but also in exacerbating the strains within the family which have driven it to this point*

- Ying Mui Pty Ltd v Hoh (Ruling No 1) [2016] VSC 519 at 3-4



Ying Mui

- Two factions in a family dispute:
 - George faction – based in Malaysia; and
 - Frank faction – based in Australia
- The dispute related to the actions of the Frank faction regarding multiple discretionary trusts (the Ying Mui Trust, The Amore Trust and FRG Investments Trust, collectively the **Trusts**) owning significant Australian assets (accumulated by Hoh Senior during his lifetime), whereby the Frank faction greatly benefited, including (but not limited to):
 - selling assets held by the Ying Mui Trust to associated persons of the Frank faction;
 - deliberately misleading the George faction as to the assets and distribution holding of the trust;
 - arranging for net income of the Ying Mui Trust to be distributed to associated persons of the Frank faction; and
 - entering into management fee agreements in favour of associated persons of the Frank faction
- Changes in trustee were also involved



Ying Mui

- Held there were conflicts of interests and abuse of the role.
- Regarding the payment of management fees, held that the Frank faction members were in a clear conflict of interest by benefitting themselves
- Regarding trust distributions, held breaches of trust as distributions could be seen as being for an *'improper purpose of obtaining a 'fighting fund' to be used by the Frank faction against the George faction in anticipated litigation concerning the administration and control of the Ying Mui trust'*
- The Court noted that *"George's statements are consistent with him working for the whole family (including Derek and Richard) on behalf of SYM and with Frank acting for the narrower family (excluding Derek and Richard) on behalf of Ying Mui"*



Ying Mui

By letter dated 31 July 2010, she rejected the proposed meeting and stated that the dispute was 'past the point of discussion' because: 'MY DAD HAS MADE HIS DECISION — in his words, he wants "out" of all business associations with the extended Hoh family'.

Lynn said in her letter that her proposal: 'was a "cleaner" solution to my dad's initial intentions to effectively wind up all these businesses with a view to distributing the proceeds to relevant parties',[24] and continued: '[t]he only decision that needs to be made here is by you and uncle George — whether you want to accept my proposal as set out in my letter, or take your chances with what my dad will do if you reject my proposal'.[25] She set a deadline of 6 August 2010 for acceptance of her proposal and, on Frank's instructions, threatened that he would 'do it his way' if the proposal was not accepted by that time.



Contrasting decisions

- The *Mercanti* cases effectively related to the passing of the family business to a son whilst the father and mother were living;
- The *Ying Mui* case considered the ongoing management of discretionary trusts following the passing of the heads of the family (which can be distinguished in that the discretionary trusts were not passed or set aside for a particular family unit).



'Real and genuine consideration'

- *Callus v KB Investments* [2020] VCC 135 referencing McMillan J in *Re Marsella*; *Marsella v Wareham (No. 2)* [2019] VSC 65
 - In accepting to be a trustee, the trustee is bound by duties to exercise their power in the best interest of beneficiaries.
 - Where a trustee is provided 'unfettered discretion', such discretion must be exercised in good faith, upon real and genuine consideration and in accordance with the purposes for which the discretion was conferred.
 - In determining whether such discretion was exercised appropriately, a Court may look at the inquiries the trustee made, the information they had, and their reasons for, and manner of, exercising their discretion.
 - It is not the Court's role to determine the weight of such matters in the trustee exercising its discretion.
 - A lack of good faith can include the taking account of irrelevant considerations and a refusal to take into account relevant considerations.
 - The trustee must inform themselves of the relevant matters to exercise the discretion. Where the consideration is not properly informed, then it is not genuine.
 - Finally, the purpose for which a power is conferred on the trustee must be inferred from the trust deed.
 - Whether a trustee exercised a power for a proper purpose is a question of fact to be decided on the evidence. A trustee is not bound to disclose her or his reasons in reaching a particular decision, and a negative inference cannot be drawn from the non-disclosure by a trustee of the reasons for his or her decision

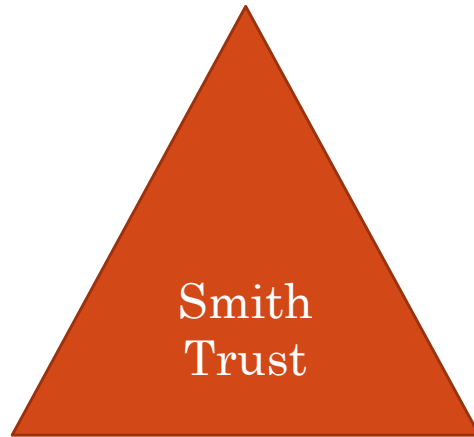


Callus v KB Investments

- Following the death of the head of the family, the trustee of a trust (controlled by one of the children of the deceased) distributed asset to a beneficiary (another child of the deceased)
- A disgruntled child challenged the trustee's decision
- Held no proof that the trustee did not act honestly and in good faith
 - Trustee able to prove on the balance of probabilities that terms of discretionary trust followed
 - Trustee able to evidence via oral recollection of intentions of the initial trust creator
 - No hostility between trustee and disgruntled beneficiary at the time of the transfer



Splitting the assets – trust clone



Smith
Trust

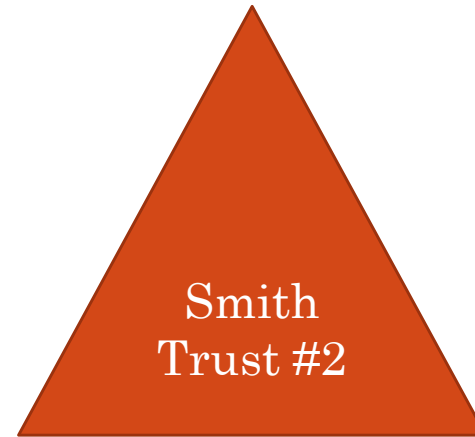
Owns:

- Investment property

Trustee: Adam

Appointor: Adam

Same beneficiaries



Smith
Trust #2

Owns:

- Investment shares

Trustee: Bob

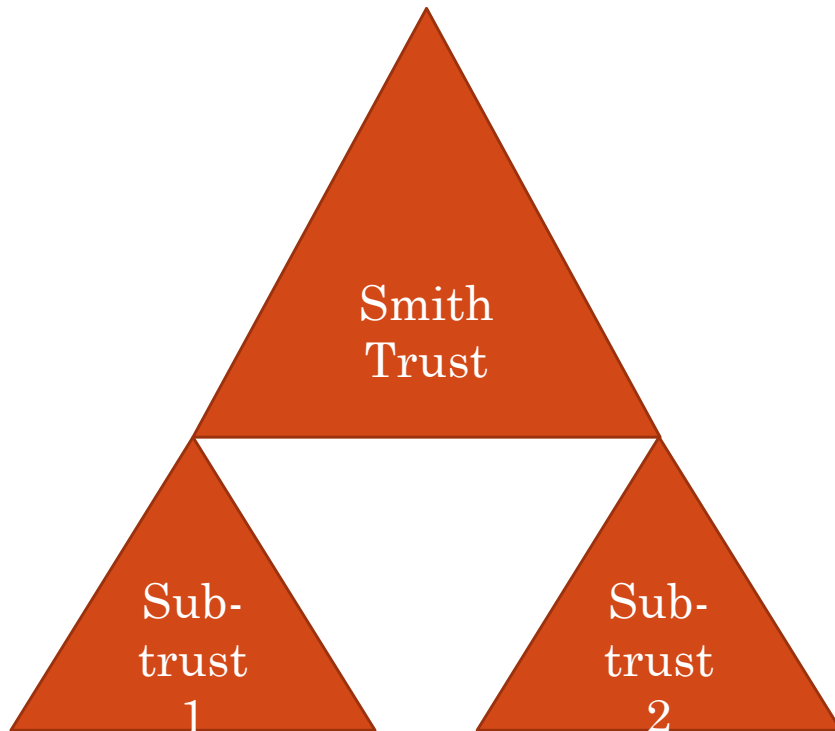
Appointor: Bob

Same beneficiaries

RISK: Tax issues to
effect arrangement to
be managed



Splitting the assets – trust split



- Investment property

Trustee and Appointor
of sub-trust#1: Adam

- Investment shares

Trustee and Appointor
of sub-trust#2: Bob

Trustee: Adam and Bob

Appointor: Adam and Bob

Primary beneficiary: John and Jane
Smith

Beneficiary class: Usual wider family

Default beneficiary: John and Jane
Smith provided that if a 'Default

Beneficiary' is deceased, then their children

RISK: Dispute at the Smith Trust level

RISK: ATO has flagged this arrangement
as at risk of capital gains tax consequences
if not properly implemented



Other tools

- Family constitutions/shareholders agreement:
 - any named successor directors;
 - a requirement that key persons to be involved in advising successor directors as independent directors of the company, including:
 - where the discretionary trust conducts a business - key employees involved in the business who can assist with advising on the operational aspects of the business;
 - also - independent advisors who can provide unbiased recommendations in the interest of the discretionary trust;
 - the process to appoint successor directors which could:
 - require the independent directors being in the majority in any appointments;
 - require such persons being of suitable qualification;
 - the process on how decisions must be made including:
 - the voting power of directors;
 - any threshold percentage for decisions to be made (which can often be difficult tailor given that there can only be a maximum of four trustees of a trust);
 - requiring certain persons to be in the majority for decisions or holding casting votes
- RISK: Fettering of trustee's discretion - *Dagenmont*



Other tools

- Memo of directions/letter of wishes/memorandum of wishes

Trustee is entitled to take into account this memorandum of wishes in exercising its discretions conferred under the Trust Deed, just as the Trustee is entitled to take into account the views of beneficiaries

- *Monaghan v Monaghan* [2016] NSWSC 1316 at [49]

- Assists trustee in making real and genuine consideration?

the Trustee's obligations in this area are well established: Karger v Paul [1984] VR 161 at 164, 166 and 178. It can be assumed that the Trustee will follow established law in respect of the degree of inquiries the Trustee has to make in order to give "genuine consideration" to the exercise of its discretion to reach the decision that the Trustee contemplates

- *Monaghan v Monaghan* [2016] NSWSC 1316 at [63]

Questions?



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