

Let's chat

Succession planning and trusts – August 2021

With:

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

What is a trust

- Relationship between
- Legal owner (trustee)
- For the benefit of the beneficiaries (beneficiaries)

Managing control

- Beneficiaries
 - No control entitlement
 - Discretionary v fixed
- Trustee
 - Day-to-day control
- Appointor/Guardian
 - Ultimate control
 - Subject to terms of the trust deed

Managing benefit

- Beneficiaries
 - Suitable class?
 - Discretionary beneficiaries
 - Default beneficiaries
- Trustee/appointor
 - Disagreement and default beneficiaries

Managing entitlements

- Loans
- Unpaid present entitlements
- Difference with Will

Beneficiaries

- Who are the beneficiaries?
- People excluded?
 - Trustee
 - 'Notional settlor'
 - Certain trusts?
 - Foreign persons
- Able to add beneficiaries
- Family trust election?

Trustee/Appointor

- Changes prior to death
- Changes in Will
- Amendments to allow sufficient power:
 - *Mercanti* – per the trust deed
 - *Ying No. 6* – fiduciary duty to the beneficiaries
- Court order

Trustee/Appointor

- Multiple persons (?)
- Independent persons (?)
- How decisions are made:
 - Trustees decide unilaterally (in QLD)?
 - Terms of the trust deed?

The questions

- Who?
 - Choosing your appointors carefully
 - Choosing your trustees carefully
 - Choosing your directors carefully
 - Ownership of corporate appointors
 - Ownership of companies acting as trustees
 - Width of classes of beneficiaries.

Beneficiary disputes

- Discretionary interest
 - No fixed entitlement
 - Only a right to be considered
- Process of making decisions is disputable rather than the actual decision itself
- Decisions are to be made:
 - In good faith
 - Upon real and genuine consideration
 - In accordance with the purposes for which the discretion was conferred
- Documents outlining issues for real and genuine consideration or purposes for which the discretion was conferred?

Contact details

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