



Chat Legal Pty Ltd  
ABN 64 621 391 553  
letschat@chatlegal.com.au  
GPO Box 989, Brisbane, QLD 4001  
Level 16, 97 Creek Street, Brisbane, QLD 4000  
<https://chatlegal.com.au>

# Let's chat

Testamentary trusts: How prescriptive should they be?

With:

Darius Hii – Tax and estate planning lawyer; Chartered Tax Advisor; and Director at Chat Legal

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

# Where we are at – testamentary trusts



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*Let's have a chat*

- When would your client benefit from it?
  - Tax planning
  - Succession planning
  - Inheritance protection (creditors/relationship breakdown)
- How to structure it to align with your client's objectives
  - Beneficiary
  - Trustee
  - Appointor
- Restructuring to utilise such structures
  - Assets form part of estate
  - Joint assets/superannuation/life insurance
  - Loans



# Modern testamentary trust

- Discretionary in nature
- Beneficiary class varies:
  - Primary beneficiary and lineal descendants
  - Primary beneficiary and wider family
  - Primary beneficiary, wider family and entities
- Terms of trust as flexible as standard discretionary trust:
  - Income and capital distribution flexibility
  - Investment flexibility



# To be flexible or not to be

- Flexibility means:
  - Ability to tax plan
  - Higher 'protection'
- Flexibility also means:
  - Increased ability to abuse position by Trustee/Appointor
- Importance to pick the right people to manage the testamentary trust
  - 1 v 2 v 3
  - Decision making process (where company involved)
  - Independent persons
  - Someone from each side of the family



# What can be done?

- Anything client wishes
- More bespoke changes means an increase in fees however due to the customisation at hand
- War story:
  - Set distributions
  - Variation based on change in value
  - Restriction on loans/gifts
  - Restriction on varying terms



# What's reasonable?

- Prevent beneficiary changes unless minor consents
  - Reasonable
  - Beneficiary should include legal personal representative of deceased beneficiary
- Restricting certain trustee decisions unless minor consents
  - Kind of reasonable, but note that some decisions are limited
- Automatically pass control to child upon attaining certain age
  - Reasonable
  - Consider issue of minor being 'lazy' until attaining age



# Rabbit hole?

- Better to keep standard terms?
- Where there is trust, then yes
- If not trusting, then reconsider benefits of a testamentary trust
  - A bare trust may be more suitable, noting loss of advantages



# Standard provisions

- Income
- Capital
- Trustee powers
- Trustee obligations
- Trustee succession
- Appointor/Principal/Guardian succession
- Variation
- Why keep it flexible





# Testamentary trusts

- Substantial benefits
- Complex, particularly to those who lack trusted persons
- Flexibility over prescriptive preserves benefits

# Contact details

## Darius Hii

Tax and estate planning lawyer; Chartered Tax Advisor; and Director at  
Chat Legal Pty Ltd

[darius@chatlegal.com.au](mailto:darius@chatlegal.com.au)

0403923374