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Let's chat

Testamentary trusts: How to structure it to align with your client's objectives?
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With:

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



Why use a testamentary trust?

- Provides you with flexibility and certainty of who looks after a recipient's 'inheritance'
- Tax planning opportunities recipients with minor children
- Provides protection against bankruptcy (if structured properly)
- Provides protection against family Court proceedings (if structured properly)



How to structure?

- Trustee – Who manages?
- Appointor – Who oversees?
- Beneficiary – Who benefits?
- Different depending on objective



Trustee

- Power to:
 - Deal with trust assets
 - Invest
 - Distribute income
 - Determine when to distribute capital
 - Determine when to vest trust
- Can nearly do anything they want
 - Subject to terms of deed
 - Note Guardian provision in older deeds
 - Requires trustee to consult



Appointor

- Also known as Principal/Controller/Protector/Guardian
- Usually power to change trustee
- Commonly required to vary terms of trust deed
- Occasionally required to be consulted prior to certain decisions made



Beneficiaries

- Those who benefit under the trust
- Distinction between
 - Discretionary beneficiary – person who benefits when trustee exercises discretion
 - Default beneficiary – person who benefits if trustee forgets to distribute income/capital
- Primary beneficiary
- Beneficiary often includes in relation to primary beneficiary:
 - Spouse of Primary Beneficiary
 - Children of Primary Beneficiary
 - Etc.



Structuring for tax planning

- Broader beneficiary class
 - More tax planning
 - Ability to distribute to other persons
- Trustee/Appointor is whoever suits (subject to later slides)
- Consider scenario:
 - Testamentary trust for spouse and minor children – may want to restrict beneficiary class should other persons become the trustee whilst your children are too young
 - Testamentary trust for child and their family – no issue with broad beneficiary class



Structuring for minors

- Reduced beneficiary class
 - Require primary beneficiary consent to add beneficiaries?
- Trustee/Appointor
 - Surviving spouse/parents
 - Trusted family members
 - Couple pairing
 - Person from each side of family
 - Independent advisor
 - Backup appointments
 - 1 or 2 or more
- Always better to trust as always potential to abuse position



Structuring for protection

- To argue assets of trust not assets of an individual, individual should have less control
 - *Richstar*
 - *Bernard*
- Consider
 - Spouse as only Trustee/Appointor
 - Spouse and one other person as Trustee/Appointor
 - Spouse and two other persons as Trustee/Appointor
 - One or more other persons as Trustee/Appointor
 - Other persons listed as Beneficiary



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Curveball

- Foreign family members and estate contains property
 - FIRB requirements



Example #1

- Spouse and minor children survives
- Named beneficiary – spouse
- Trustee –
 - Spouse and then consider
 - Couple
 - Individual
 - One person from each side of family
- Appointor – as above



Example #2

- Spouse and minor children survives but worried from a second marriage perspective
- Named beneficiary – children
- Trustee –
 - Other persons
 - Couple
 - Individual
 - One person from each side of family
- Appointor – as above



Example #3

- Children survives (with a family)
- Named beneficiary – respective child
- Trustee –
 - Respective child
- Appointor – as above
- If worried about child's spouse, then consider if siblings act as Trustee/Appointor and name beneficiaries as the grandchildren

Contact details

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