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Discretionary Trust Guidelines

Your accountant or financial adviser may have suggested to you that you accumulate part of your family's wealth through a discretionary trust (also known as a **family trust**).

Discretionary trusts are sometimes used for:

•Protection of assets
•Potential income tax benefits
•Flexibility of income and capital distributions
•Providing financial support for dependants
•Less regulation than companies

Before completing this form, it is important that you understand the purpose behind a discretionary trust, and if this business structure is right for your circumstances. If you have not already done so, please contact your adviser to obtain further information. We regularly review the terms of our discretionary trust deed to ensure that it complies with State and Commonwealth legislation, taxation law and succession issues.

What is a Discretionary Trust?

A discretionary trust is created when a sum of money (settlement sum) or other property is paid by the Settlor to the Trustee, who will then hold the settlement sum upon trust for the beneficiaries of the Trust, on the terms set out within the trust deed.

Name of the Trust

The trust will not be a trading entity, and the name of the trust is only an identifiable feature of the terms documenting the provisions of the trust (the trust deed). You will not need to check the availability of the proposed name of the trust.

Settlor

The Settlor is the person who will pay the settlement sum to the Trustee to establish the Trust. The Settlor is not eligible to derive any benefit from the Trust, so it is important that you do not nominate a potential beneficiary to be the Settlor.

Trustee

The Trustee has the power to make investments on behalf of the trust, to make income distributions to one or some of the specified beneficiaries of the trust, to accumulate any income for future distributions and to make limited variations to the terms of the Trust.

One or more eligible individuals can act as the trustee or trustees of a discretionary trust. Alternatively, you may have been advised to nominate a corporate trustee for your trust. Please note that if you have already instructed us in relation to the inception of a corporate trustee by completing the Company Instruction Form, we cannot finalise the trust documents until the corporate trustee has been registered with the Australian Securities and Investments Commission and has been allocated an Australian Company Number. We can however complete the documents in draft form for your perusal. The trustee has broad powers under the trust deed to deal with the trust property, and has absolute discretion to determine which of the beneficiaries receives distributions through the trust. It is therefore important that the trustee be either you or a company controlled by you.

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You may need to have a company as trustee to ensure adequate asset protection if the amount of property or assets of the trust is particularly large.

Appointor

The role of the Appointor is set out within the trust deed. The Appointor has the power to remove and appoint trustees.

The trust deed should provide that the power of appointment can be passed on to another person nominated by the Appointor. For example, if you are the Appointor named in the trust deed, you could nominate your spouse as your successor in your Will. If you do, you should reconsider your Will when your personal circumstances change significantly to ensure the appropriate person gains your power of appointment.

Beneficiaries

The trust deed will contain the names of the potential beneficiaries of the trust. The range of beneficiaries of a family trust usually extends to a wide class of people. The group can include you, your spouse, children, grandchildren (existing and future), parents, brothers, sisters, etc. The person who created the trust (the settlor) cannot be a beneficiary of the trust.

The trustee has complete discretion over the distribution of income from the trust or the trust property itself. None of the beneficiaries have a right to require any income or capital to be distributed to them from the trust. This is what gives a discretionary trust a great degree of flexibility.

The trustee can exercise that discretion differently from year to year, depending on the circumstances of the trust and the beneficiaries.