

Ordering a Discretionary Trust – Things to Consider

<p>The Settlor</p>	<p>The Settlor should be a family friend or a relative who is not intended to benefit from the trust. The Settlor is excluded by the trust deed from benefiting from the trust to avoid any issues under s.102 of the ITAA 1936. Professional advisers should not be settlors unless they have a personal relationship with the client and a real interest in the client's family. The Settlor will settle the initial trust sum by gifting it to the trustee. The Settlor must not be reimbursed for this gift. Once the document is signed the Settlor has no further obligation in respect of the trust.</p>
<p>The Trustee</p>	<p>The trustee can be one or more individuals or a company. It is recommended that it be a company to avoid issues arising out of the death of an individual trustee. The company should do nothing else other than administer the trust, to avoid confusion regarding on whose account the company is acting at any time. The trustee company's actions are controlled by its directors and ultimately by its shareholders. The trustee conducts the day to day affairs of the trust. The trust should not normally be mentioned in those dealings and the company should behave as if it were the absolute owner. It should however keep good internal records evidencing that it is acting at all time for the trust. Recent cases have cast doubt on the asset protection qualities of a trust where the trustee is controlled by the key beneficiaries. Consideration should therefore be given to removing that control by appointing independent directors to the board of the trustee company.</p>
<p>The Beneficiaries</p>	<p>Before deciding who are to be the beneficiaries it is critical to consider why the trust is being set up. Is it for income levelling? business operation? asset protection? succession? estate planning? child maintenance? Once that issue is resolved the decision can be made as to who should be the beneficiaries of the trust. Generally a different trust should be used for the different purposes in order to ensure that assets and rights are not detrimentally affected or diluted by cross liabilities.</p>
<p>The Appointor</p>	<p>This is the person who can sack the trustee and appoint another and so is the person with ultimate control of the trust. The Appointor could be one or more individuals or a company. As the Appointor does not hold property, succession issues do not necessarily favour the selection of a company as the Appointor. Recent cases have cast doubt on the asset protection qualities of a trust where the Appointor is, or is controlled by, the key beneficiaries. Consideration should therefore be given to removing that control by appointing several people to jointly carry out the role of Appointor, with the majority of those appointed being independent of the key beneficiaries.</p>
<p>More Information</p>	<p>For more information about any of these issues or assistance in completing this order form please do not hesitate to contact us.</p>

Instructions to Establish Discretionary Trust

YOUR DETAILS

Date	
Name	
Company Name	
Street Address	
Billing Address (if different)	
Telephone	
Fax	
Email	

Authorised by: _____ Signature: _____

NAME AND ADDRESS OF SETTLOR

Note: This is the person who establishes the trust. They should be someone who is a relative or a close friend of the family but cannot be a beneficiary of the trust once it is established.

NAME OF TRUSTEE

It is wise to have a separate company as the trustee of the trust. That company should do nothing but run the trust. If you already have a company that can do this then insert details here. If not then contact us about establishing a new company for you on 02 8296 6222. Recent cases have suggested that the trust is less likely to be successfully attacked by creditors if the trustee is wholly or partially independent of the beneficiaries. It would be advantageous if at least some of the board of directors were independent persons.

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ACN OF TRUSTEE

(Not applicable if Trustee is a person)

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REGISTERED ADDRESS OF TRUSTEE

NAME OF TRUST

The

NAME AND ADDRESS OF THE KEY PERSON

This is the person whose family are the beneficiaries. The beneficiaries include all of the key person's family and all of the spouse's family (if any) as well as spouses of children and grandchildren.

<input type="text"/>
<input type="text"/>

NAME AND ADDRESS OF DIRECTORS OF TRUSTEE COMPANY ATTENDING DIRECTORS MEETING

Insert the names of the directors of the trustee company who will attend the first meeting of the Trust and indicate which of them will be the chairman

<input type="text"/>
<input type="text"/>

NAME AND ADDRESS OF APPOINTORS

The Appointer is the person with the de facto control of the Trust because they can appoint and remove the Trustee at any time. The Appointor can be the key person and/or their spouse – either jointly or separately. Recent cases suggest it may be safer to appoint a number of people to fill that role such as a husband, wife and their accountant.

<input type="text"/>
<input type="text"/>

NAME AND ADDRESS OF 'TAKER-IN-DEFAULT'

* Sometimes called the beneficiary, this is the beneficiary who takes the income if the trustee fails to make a determination. If there is no default beneficiary the Trustee will be taxed on the income potentially at excessively high rates.

<input type="text"/>
<input type="text"/>

DATE OF DEED

Insert here any required date for the commencement of the trust deed. If no special date is necessary then leave blank.

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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Signature	Print Name	Date:
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I confirm that the persons/corporations named above have consented to act in the capacity shown.

PAYMENT DETAILS

We will contact you when the work is complete and will forward the documents upon payment of our fee of \$385.00 (including GST).

Please make payment to: **TOWNSENDS BUSINESS & CORPORATE LAWYERS**

Cheque

Cheque enclosed for \$385.00

Credit Card

Please charge \$385.00

Visa / Master Card / Amex (please circle one)

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Expiry Date: /

Cardholder's name:

Address

Authorised Cardholder's Signatory _____

Please SCAN / EMAIL or FAX signed order form to:

TOWNSENDS BUSINESS & CORPORATE LAWYERS

Level 9, 65 York Street, Sydney NSW 2000

Phone: (02) 8296 6222

Fax: (02) 8296 6200

Email: info@townsendslaw.com.au

Thank you for your order. We will contact you shortly. If you require any further information or assistance in the interim please do not hesitate to contact us.