

Deed establishing discretionary trust

This precedent has been authored for LexisNexis by S and updated by **Jane Garber-Rosenzweig, Gable La**

This precedent is part of a suite of business structure of Specialist Editor **Stephen Newman, Executive Coun**

This precedent is current to **1 July 2015**.

Introductory note

This precedent is a template deed establishing dis

A discretionary trust in the nature of this preceden beneficial ownership of it. It provides a unique dec from income earned and from capital gains. Perso term of the trust (beneficiaries) should be determin added or deleted during the life of the trust, stamp account before using the power.

A discretionary trust is most suited to a family situ greater degree of certainty and security in financia

The commercial advantages of discretionary trusts

- allows for changes of / choices betwe
- generally, provisions of Corporations applicable. See section 197 of Corpo corporation liable for debts and other circumstances

Persons entitled to receive moneys from the trust, disclosed on public records. Whilst proper account optional and winding up the trust is a relatively sim

Tax aspects of discretionary trust

A discretionary trust can result in taxation benefits within the general anti-avoidance provisions of the Distributions of income can be made to corporate rates although special provisions apply to distribut tax losses or shares which have been acquired by 1997 carrying imputation credits, it may be necess "family trust election". This election can be made r particular, the definition of "beneficiaries".

This deed of settlement is made [date]

between:

[Settlor name] of [address] (**Settlor**)

[The settlor should be a person who will provide the sum of money to be held in trust. The settlor should not have any future dealings with the trustee in its capacity as settlor. The consequences will arise if the settlor is the parent of a child who is a beneficiary of the trust: section 102 of the Income Tax Assessment Act (1936)]

and:

[Name] [first trustee ACN] of [address] (**Trustee**)

[The trustee may be one or more of a company or a natural person. A company or a natural person who is not a beneficiary should not be the trustee: see clause 8.1(a). A company or a natural person who is not a beneficiary to act as a trustee, is often preferred, as it overcomes the difficulties of the absence for prolonged periods of a natural person eg a trustee who is a director of a company taken by persons who are shareholders in specifically designed trusts. Care should also be taken in selecting a trustee who is not a beneficiary of the Trust. A trustee who is not a beneficiary of a discretionary trust is to be a sole director/shareholder of a company which is not a business. clauses 5.7, 7.5 and 8.1(c). If a company is to act as trustee of a trust which is not a business, consideration should be given as to whether the company is a company for tax purposes.]

BACKGROUND

- A. The Settlor wishes to gift money to establish a trust for the benefit of persons who are otherwise eligible to be or become beneficiaries of the Trust and are empowered to acquire and deal with investment property.
- B. The Trustee has agreed to act as the first trustee of the Trust.
- C. The terms on which the Trust is established are set out in clause 6.

OPERATIVE PROVISIONS

1 Definitions and interpretation

1.1 Definitions

In this deed, the following definitions apply:

Appointor means the person having the power under clause 2 to appoint a trustee.

Beneficiary means a person who may become entitled to a benefit under the Trust.

Category in relation to income or capital means that part of the trust fund as to which the Trustee has separately identified, characterised, and recorded the income or capital as provided in clause 6.

Capital means that part of the trust fund as does not constitute income.

the Distribution of the Income is made in such shares or proportions and from such Category of Income as the Trustee may in its discretion determine.

4.2 Accumulation [*accumulating income may resolve to accumulate income on such income.*]

- (a) The Trustee may before the end of a Financial Year set aside any part of the Income of that Financial Year in accordance with clause 4.2(c), form part of capital.
- (b) A resolution to accumulate may be in respect of any one or more categories of Income.
- (c) The Trustee may pay Tax in respect of any Income which is accumulated.

4.3 Default Distribution of Income

If the Trustee fails to effectively distribute the whole or part of the Income in clause 4.1 or to effectively resolve to accumulate Income in accordance with clause 4.2, the Trustee must set aside the Income which has not been so distributed absolutely:

- (a) for the Default Beneficiaries named or described in clause 4.1;
 - (b) if there are no such Persons, for the Default Beneficiaries named or described in clause 4.1;
- and the provisions of clause 4.4 will apply to any Income so set aside.

4.4 Income set aside for a Beneficiary

If the Trustee has determined that the whole or part of the Income of the Trust for the benefit of a beneficiary or Income is set aside in accordance with clause 4.3 (whether the beneficiary is under a legal disability or not) or the default distribution occurring, those monies shall be held for that beneficiary:

- (a) shall become the unpaid entitlement of that beneficiary;
- (b) if held for that beneficiary at the end of a Financial Year shall be credited to the accounts of the Trust for that Financial Year;
- (c) shall be held by the Trustee on Trust for the benefit of that beneficiary;
- (d) may be mixed with the Trust Fund as provided in clause 4.1;
- (e) the beneficiary will not be entitled to any Income which may be payable in respect of the payment of interest.

4.5 Payment or application to a Beneficiary who is not under a legal disability

If the Trustee has determined that the whole or part of the Income of the Trust, of a beneficiary who is not under a legal disability, of that beneficiary, the Trustee may deal with the