

Single Family Discretionary Trust

IMPORTANT NOTES

1. This trust is only suitable if the appointor (together with the trustee) is to have total control of the trust, other than possibly for replacement of the trustee. It is generally suitable for 1 family but never for more than that.
2. Assets of this trust will normally form part of the assets of the marriage of the first group beneficiaries in the case of marriage breakdown and the assets will be exposed if there is a challenge to the will of a first group beneficiary. If protection against these risks is required, further advice will be required.
3. The settlor must be independent of the trustee and the appointor. The settlor must pay \$10 to create the trust from his or her own funds. The payment must not be refunded in cash or in kind. The settlor must not be a beneficiary or someone that you may want to be a beneficiary. We recommend that the settlor not be the trust's accountant.
4. The trustee is assumed to be controlled by the appointor. This implies the appointor will be the trustee/s in the case of human trustee/s and is/are director/s and hold/s a majority of shares in the case of a corporate trustee.
5. The appointor is normally the 1st group beneficiary and 2 of them will be appointed jointly.
6. The appointor has the power by their Will to nominate capital beneficiaries and the vesting date. The appointor should consider including these powers in their Will.
7. The appointor is also the party with the power to replace the trustee. The present law provides that an appointor's powers cannot be arbitrarily exercised by the appointor's trustee in bankruptcy to replace the trustee and vest the trust's assets in favour of a bankrupt beneficiary's estate.
8. However, there is also case law by which a receiver was appointed to a **corporate trustee** of a trust because the court said the trust was the alter ego of the appointor and trustee. If there is any risk that an appointor could become bankrupt and the trustee is a corporate trustee controlled by the appointor, you may want to consider using a more independent non risk person in the role of the appointor.
9. Each appointor will have the power to nominate someone in their place.
10. If the trustee is to be a person and the trust carries on a business, you must consider the trustee's potential personal liability for trust debts. This is why most advisers recommend a corporate trustee is used. A corporate trustee also makes it easy to manage passing control of the trust on the death of the 1st group beneficiaries.
11. The trustee is a potential beneficiary as are the 1st, 2nd and 3rd group beneficiaries and the discretionary beneficiaries. In addition, they are all default beneficiaries in that order.
12. The **1st group beneficiaries** (normally the husband and wife for whom the trust has been set up) are those entitled to Income and capital if the trustee does not decide otherwise - a future spouse of a single 1st group beneficiary will be a 1st group beneficiary without the need to do anything further.
13. The **2nd group beneficiaries** are those entitled to Income and capital if the trustee does not decide otherwise and if both the 1st group beneficiaries have died. Normally they are the 1st group beneficiaries' (first trustees') children.
14. The **3rd group beneficiaries** are those entitled to Income and capital if the trustee does not decide otherwise and if the 1st and 2nd group beneficiaries have died. They are the grand children and further issue of the 1st group beneficiaries.
15. The discretionary beneficiaries are additional beneficiaries who are entitled to Income and capital if the trustee decides but not otherwise, and they are:
 - (a) spouses (including defactos) of the 2nd and 3rd group beneficiaries
 - (b) any persons or companies (whether beneficially or as trustees) as the appointor may appoint by written or oral notice to the trustee (providing it does not cause a resettlement)
 - (c) the first trustee (which permits a corporate trustee to be a beneficiary too)
 - (d) any religious institution or charity
 - (e) any trust of which a beneficiary is a beneficiary
 - (f) any proprietary company in which a beneficiary is a shareholder (except the first trustee where it is prohibited from being a beneficiary after any later change of trustee)
 - (g) any deceased estate of which a beneficiary is a beneficiary

KNOWLEDGE + INNOVATION + SKILL = SOLUTIONS

Level 16 55 Clarence Street Sydney NSW 2000
GPO Box 7082 Sydney NSW 2001

T 02 8915 4900 | F 02 9290 2998 | E mail@sydneybl.com.au

Liability limited by a Scheme approved under Professional Standards Legislation.

Legal Practitioners employed by and directors of

Sydney Business Lawyers Pty Ltd are members of the Scheme.