Antippa Lawyers

since 1961

COMPANIES AND TRUSTS

Introduction

This brochure is a basic guide to having your own family trust and company.

ANTIPPA LAWYERS can guide you with the details.

HOW A TRUST WORKS

Income may come from rent paid by tenants, bank interest, share dividends and takings from a business. Income is collected by the 'Trustee'. The property or other assets will have the name of the Trustee written on the documents. Examples of assets owned by trusts are bank accounts, shares or real property. A trust distributes this income to the beneficiaries. Beneficiaries can be individuals, companies or trusts.

TYPES OF TRUSTS

- A Discretionary trust may give different amounts of income to the Beneficiaries; the Trustee decides who should get how much income each year;
- A Unit Trust divides the income in the fixed proportion of units held by the Beneficiaries; it is a common method of business partnership;
- A Superannuation Trust is often known as a Self-Managed Superannuation Fund (SMSF).

PURPOSE OF A TRUST

A Discretionary trust can be used to minimise tax by distributing more income to the Beneficiary with the lower tax rate. Your Accountant can assist you with this distribution each year.

A Unit trust distributes income between the unit-holders in proportion to their unit-holdings.

TAX CONSEQUENCES

Under tax law, a trust must report its earnings as if it were an entity.A Trust will distribute its income to the Beneficiaries and the Beneficiaries will pay tax at their own tax rates.

TRUSTEE

We recommend that a Trustee should be a company. It should be a separate entity from the Beneficiaries.The Beneficiaries should never be the Trustee.

COMPANY

A ‘Pty. Ltd.’ company with only one or a few Directors, Secretary and share-holders is the most common type of company.
Other types of companies are public companies, stock-exchange listed public companies and superannuation companies.

ADVANTAGES

1. Immunity from law-suit – In the case of alleged wrong-doing - unless you give a personal guarantee or warranty - the company would be sued rather than you; this is why most businesses and are owned by a company;
2. Tax – You can spread the burden of income tax by distribution of income to beneficiaries or members of your family; this is why most investments are owned by Trusts;
3. Land Tax – is paid by the Trust rather than by you personally (although be mindful of the differing rates);
4. Retention – The family property remains in the family for successive children: it is a prime method of wealth building;
5. No problems if someone dies – If someone dies, the property will continue to be held by the Trustee for the Trust; consequently, there is no probate or transfers of property or associated fees on death;
6. Control – The Trustee can keep control of the property: this cannot happen if you gift property to your children;
7. Protection - Family investment property is somewhat protected from divorce proceedings brought by the ex-spouse of your children, provided that no resultant monetary benefits are given to the children from the property;
8. Pension – Some people claim a pension benefit if they do not control the Trustee.

DISADVANTAGES

1. Cannot Will the property – Since the assets will be owned by the Trust and not by you anymore, the assets no longer form part of your estate; consequently, you cannot include those assets in your Will - the property remains for the benefit of all beneficiaries or children; however, you can will your interest in the Trust;
2. Prepare another tax return - Must prepare a separate taxation return for the Trust;
3. Pay Annual maintenance fee - of about $212.00 to the Australian Securities and Investments Commission (company’s office) and tax deductible accounting fees for preparation of accounts and a tax return each year;
4. Setup costs – about $2000.00 for stamp duty, co. registration fee, secretarial volume, various registers, common seal, legal costs to prepare a Constitution for the company and a Deed of Settlement for the Trust; additional costs would be incurred to transfer property into the family trust, or for a business name;
5. Surplus Land Tax - A Trust which is settled after December, 2005 would pay Land Tax on a higher rate: a company does not incur this surcharge.

NEW OR USED

ANTIPPA LAWYERS recommends that you incorporate a new company. A ‘shelf company’ means a second-hand company. Its history is questionable. The risk of not knowing its history is too great. A Director’s pledge is not recorded and, therefore, there is no way to know whether buying used company will be detrimental. Why get a second-hand company when you can get a new one for the same price!

Antippa Lawyers
Room 3, Level 5, 2 Collins Street,
Melbourne Vic
(03) 9650 2115
lawyers@antippa.com.au
www.antippa.com.au