

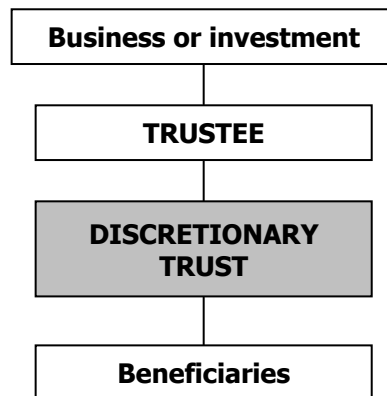
Crilly Lawyers Information Sheet

Level 4 Morris Towers, 149 Wickham Terrace, Brisbane 4000
Telephone (07) 3839 7555; Email: Brisbane@crillylaw.com.au
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The Standard Discretionary Trust

DIAGRAM



SUGGESTED APPLICATION

- To own and operate a business on behalf of a single family.
- To hold a family's passive investments (shares or property).
- To hold a family's interest in a partnership business.

PARTIES

Q. Who is the legal owner of the assets and makes decisions on a daily basis?

A. The trustee.

Q. Who owns a beneficial interest in the assets?

A. The beneficiaries (but they do not have a fixed interest).

Q. Who establishes the structure?

A. The settlor.

Q. Who appoints the legal owner?

A. The appointor.

ASSET PROTECTION

- The structure is protected from claims by creditors of beneficiaries.
- Beneficiaries are protected from claims by creditors of the structure.
- Assets are protected from claims by future spouses of principals and children.

Note: the indication of the availability of asset protection is based upon the structure itself. Care should always be taken to review loans, entitlements and any personal guarantees that may exist between various parties.

INCOME TAXATION

- Income accumulated by the structure will be taxed at the highest marginal income tax rate plus the Medicare levy (48.5%).
- Flow-through taxation applies, so that income distributed by the structure will be taxed in the hands of the recipient at their income tax rate.
- There is flexibility to distribute income (including income with special characteristics, for example franked dividends) to any one or more beneficiaries (subject to personal services income and Part IVA issues).

CAPITAL GAINS TAX CONCESSIONS

- 50% discount available.

Small Business Concessions:

- 50% active asset reduction available.
- 15 year exemption available (if there is a controlling individual throughout a 15 year period).
- Retirement Exemption available (if there is a controlling individual in the year of disposal).
- Roll-over available.

Note: the availability of CGT concessions only relates to the availability to the structure. Consideration must be given to the requirements for accessing the concessions outlined in ITAA 97. Further consideration must be given to the requirement to distribute amounts of net capital gains in some circumstances to avoid the benefit of the concession being eroded by gross-up rules.

SUCCESSION PLANNING

- The assets of the structure are not owned by any one beneficiary and do not form part of a beneficiary's estate upon their death.
- Ultimate control of the trust resides with the appointor.
- Ultimate control of the structure may be planned by appropriate drafting of the appointor provision.

NEW INVESTORS

- Beneficiaries may be added to the structure. Adding beneficiaries may cause a resettlement that incurs capital gains tax and stamp duty liabilities.
- The structure is not capitalised by beneficiaries.

OTHER ISSUES

The trustee on behalf of the trust may need to make a family trust election if:

- a beneficiary is to receive the benefit of franking credits attaching to dividends paid in respect of shares acquired after 31 December 1997; and
- the beneficiary will have greater than \$5,000 in franking credits (in total and from all sources) in the applicable financial year.