

## NOTES FOR COMPLETION OF INSTRUCTIONS FOR A DISCRETIONARY TRUST

The **Settlor** under the terms of the Deed is precluded from being a beneficiary under the Trust and should not be the Trustee of the Trust. After execution the Settlor has no further responsibilities for administration of the Trust.

### 1. **BENEFICIARIES:**

A Discretionary Trust in effect has 2 forms of beneficiaries which comprise of a) Specified Beneficiaries; & b) General Beneficiaries.

#### **Specified Beneficiaries:**

A Specified Beneficiary is a nominated person, or a number of persons, who are appointed as beneficiaries. Such persons under our deed have default vesting entitlements to the capital of the trust in the event the trustee does not exercise its discretion within 80 years of the creation of the trust. The class of General Beneficiaries is defined by reference to the Specified Beneficiaries (e.g. grandparents, parents, children, siblings, aunts, uncles, corporations in which aforesaid parties have a shareholding & trusts of which any beneficiary is a trustee). Any future changes to Specified Beneficiaries operates as a resettlement of the trust having capital gains tax and stamp duty implications.

For flexibility, it is suggested that the Specified Beneficiaries should be 'the children of the principals behind the trust. This flexibility may assist in asset and income tests for Centrelink. Such tests are not only limited for pension entitlements, but also for future nursing home fee liability if such tests are not satisfied – presently estimated to be around \$30,000-\$40,000 per annum.

#### **General Beneficiaries:**

A class of General Beneficiaries under the terms of the deed is immediately defined by reference to you nominating Specified Beneficiaries. No default vesting entitlements, are only discretionary objects. In addition to the class of beneficiaries defined by reference to the Specified Beneficiaries you could nominate General Beneficiaries specifically to be included as GENERAL Beneficiaries e.g. a non relative.

### 2. **APPOINTOR/GUARDIAN:**

The Appointor has the power to appoint or remove a trustee. The Guardian is a party whose consent must be required before the trustee can exercise certain powers under the trust deed. Generally the Appointor/Guardian is the same person. Our deed provides flexibility to enable the Appointor/Guardian to appoint additional or substitute parties. In the case of bankruptcy of an individual, the trustee in bankruptcy could assume and exercise the legal rights of the bankrupt. Accordingly great care should be taken when you nominate the Appointor/Guardian as such persons in effect, control the trust. We would suggest that 2 persons be appointed to act jointly.

Our deed does make provision for a Step-In-Nominee to replace the Appointor/Guardian who has lost legal mental capacity or has otherwise been declared bankrupt. Please complete details of a Step-In-Nominee should you wish this to apply.

### 3. **TRUSTEESHIP:**

It is recommended that the trust be established with a corporate trustee. Where a natural person is appointed as trustee there may be stamp duty implications upon the retirement or appointment of a new trustee, unless the Commissioner of Stamp Duties is satisfied that no trustee, or former trustee, can become a beneficiary of the trust. For creditor estate planning, care should once again be exercised for structuring the composition of the board of directors or for shares held in the trustee company. Care should also be taken in your Will concerning who gets the shares in the corporate trustee.

### 4. **LAW APPLICABLE:**

Generally duty will be payable in the state or jurisdiction where the trust is first executed. The law applicable to a trust under private international law is where central management and control of the trust deed is. Land held in a trust may, however, be governed by the jurisdiction where the land is located.

### 5. **LIFE OF TRUST:**

In all jurisdictions, except SA, duration of a trust is 80 years. In SA applications can be made to the court after 80 years for distribution of the trust property.

### 6. **INCOME OF TRUST:**

Our deed provides for an automatic accumulation of income if not vested by June 30<sup>th</sup> of each year. The Trustee should record a standing resolution in the minutes vesting income in certain specified persons unless resolved to the contrary.

### 7. **SETTLEMENT SUM:**

The settlement sum should be the initial deposit into the opening of the trust bank account. The settlement sum should not be charged as a disbursement by any professional advisor settlor.

PLEASE FAX OR EMAIL TO:

**COMPANY CREATIONS**    **WEB:** WWW.COMPANYCREATIONS.COM.AU  
PO Box 110    **WEB:** WWW.COMPANIESONDISC.COM.AU  
WINSTON HILLS NSW 2153    **EMAIL:** ADMIN@COMPANYCREATIONS.COM.AU  
**PHONE:** 1300 302 155    **Fax:** 1300 302 156