



# ABC of FAMILY TRUSTS

PRESENTED BY

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# PRESENTATION

- ▶ - HISTORY OF TRUSTS
- ▶ - THE TRUST CONCEPTS & ESSENTIALS
- ▶ - TYPES OF TRUSTS
- ▶ - DOCUMENTS / TRUST DEED
- ▶ - SETTLORS/TRUSTEES/BENEFICIARIES
- ▶ - TAXATION OF TRUSTS
- ▶ - MOVEMENTS IN/OUT OF TRUSTS

# TRUST CONCEPTS & ESSENTIALS

## ▶ **THE PARTIES**

- ▶ - SETTLOR
- ▶ - TRUSTEE
- ▶ - BENEFICIARY

## ▶ **THREE CERTAINITIES**

- ▶ - INTENTION
- ▶ - SUBJECT MATTER
- ▶ - OBJECTS

# TYPES OF TRUSTS

## **EXPRESS**

- ▶ - FIXED
- ▶ - DISCRETIONARY
- ▶ - IMPLIED

## **STATUTORY**

## **CHARITABLE**

## **BLIND**

## **UNIT**

# DOCUMENTS & TRUST DEEDS

- ▶ TRUST DEEDS
- ▶ MEMORANDUM OF WISHES
- ▶ DEED OF ACKNOWLEDGEMENT OF DEBT
- ▶ DEED OF FORGIVENESS OF DEBT

# SETTLOR

- ▶ CREATOR/APPOINTOR
- ▶ CONTROL/SHAM
- ▶ TRUSTEE INDEPENDENCE

# TRUSTEES

## DUTIES & OBLIGATIONS

- ▶ EFFICIENT MANAGEMENT
- ▶ KEEP & RENDER ACCOUNTS
- ▶ ACTING IN GOOD FAITH
- ▶ IMPARTIALITY / PRUDENCE
- ▶ ACTING PERSONALLY

# TRUSTEES (2)

## LIABILITY

- ▶ PERSONAL
- ▶ RIGHT TO INDEMNITY
- ▶ BREACH OF TRUST/LOSS OF INDEMNITY



# TRUSTEES (3)

## MITIGATING LIABILITY

- ▶ INDEMINITY FROM SETTLOR & BENEFICIARIES
- ▶ CONTRACT WITH CREDITORS / LIMITATION CLAUSES
- ▶ CORPORATE TRUSTEE
- ▶ PROFESSIONAL INDEMINITY INSURANCE
- ▶ DO YOUR JOB PROPERLY

# BENEFICIARIES

## RIGHT TO INFORMATION

- ▶ DISCRETIONARY BENEFICIARIES
- ▶ ENTITLEMENT TO WHAT TRUST DOCUMENT
- ▶ DISCLOSING RATIONALE FOR THE TRUSTEES DECISIONS
- ▶ MEMORANDUM OF WISHES

# BENEFICIARIES (2)

## RIGHTS

- ▶ INJUNCTION TO RESTRAIN TRUSTEES
- ▶ ABILITY TO “REWRITE“ TRUST
- ▶ APPLY TO COURT TO REVIEW ACTIONS/DECISIONS OF TRUSTEES

# MOVING ASSETS INTO TRUST

- ▶ SETTLEMENT
- ▶ GIFTS & GIFT DUTY
- ▶ SALE & DEBT BACK
  
- ▶ GIFTING PROGRAMMES
  - Natural Love & Affection
  - Settlors Will

# MOVING ASSETS INTO TRUST (2)

## PROTECTING DEBT

- ▶ TERM DEBT
- ▶ MARSHALL CLAUSE
- ▶ RELATIONSHIP PROPERTY AGREEMENT

## LEASE FOR LIFE

# MOVING ASSETS OUT OF TRUST

## DISTRIBUTION

- ▶ POWER TO EFFECT
- ▶ CAPITAL DISTRIBUTION
- ▶ INCOME DISTRIBUTION
- ▶ REPAYMENT OF SETTLORS ADVANCE
- ▶ RESETTLEMENT OF TRUST
- ▶ PERPETUITY PERIOD

# TAXATION

## TAX CONSEQUENCES

- ▶ INCOME TAX ACT 2015 (SECT 54,55,56 &57)
- ▶ DEEMED DISPOSAL AT MARKET VALUE
- ▶ DEPRECIATION RECOVERY
- ▶ LOSS OF TAX LOSSES AVAILABLE
- ▶ LOSS OF IMPUTATION CREDITS
- ▶ IMPLICATION OF VAT
- ▶ CAPITAL GAINS TAX

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