

## PARTNERSHIP OF DISCRETIONARY TRUSTS: WHAT, WHEN, HOW, WHY (AND WHY NOT)...

### What...

A partnership of discretionary trusts is just that: a partnership comprising 2 or more discretionary trusts.

Partnership law (including the relevant state *Partnership Act*) applies to this type of partnership in the usual way – this includes the general rule that partners carry joint and several liability for the actions of the other partners and the partnership.

### When...

Partnerships of discretionary trusts are well suited to own/ operate a business on behalf of multiple families and/ or to hold multiple families' passive investments (e.g. shares or property).

### How...

All that is required for legal purposes to constitute a partnership of discretionary trusts is at least 2 discretionary trusts and, as is the case for any partnership, an intention for these trusts to carry on business in common with a view of profit.

Where a business is to be conducted in a partnership of discretionary trusts, we suggest that the terms of the partnership be formalised in a partnership agreement and that a new company be established to act as the agent and representative of the partnership.

Best practice when using a partnership of trusts is to observe the following:

- The partnership should have its own ABN.
- A corporate trustee is advisable for discretionary trusts in a partnership that carries business or other risk. Where no risk exists, a corporate trustee is usually unnecessary.
- Because of the joint liability issues, a new and discrete discretionary trust is advisable for each partner. This avoids cross-tainting of liabilities between various holding structures.
- The complexity of this structure can be managed by the use of the agent company to represent the partnership with customers, trade creditors/ debtors and other counterparties, a good partnership agreement and a clear understanding by the principals of the operation of the structure.

### Why...

Although more complicated than, say, a company with 2 shareholders, a properly structured partnership of discretionary trusts offers significant tax, payroll tax and asset protection advantages.

### Why not...

Partnerships of trusts are often considered cumbersome (when compared to, say, a company with its well understood operation and share ownership structure) and misunderstood.

They can also be problematic where interests in the partnerships are sold/ transferred. Accordingly, if new investors are likely to be brought into the business with regularity, other structures may be more appropriate.

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