

The discretionary living trust... **the right tool at the right time**

The discretionary living trust continues to fulfill an important role, both in estate planning and as a business structuring tool. As with every other part of the financial planning process, suitability of the product for the particular client is always a pertinent issue.

In this article some of the advantages of trusts will be highlighted.

Liability is the first advantage and grants both the trustees and the beneficiaries a high level of protection against the claims of the trust's creditors. The lack of extended statutory requirements also offer distinct advantages, making it a user friendly vehicle for the small to medium business operator as well as the investor.

An enabling business environment

Business owners have to create an enabling environment in which to develop their businesses.

- **Connecting role:** this has the capacity to connect natural persons and legal entities to one another. As it can be a member of a close corporation as well as a shareholder of a private company, a high number of natural persons, including minors and other individuals with limited legal capacity, can have a financial interest, albeit indirect, in a commercial trust entity.
- **Perpetuity:** the perpetual existence of the trust makes it the ideal entity for certain estate planning exercises and business transactions. It ensures that a family business or a business wherein more than one family is involved can perpetuate without major changes, even after the original planners are retired or deceased. It is the ideal alternative for the *fideicommissum* as there is no limitation as to the duration of the trust and can also easily replace a usufruct.
- **Termination:** the flexibility in determining the moment of termination of the trust makes it attractive as a planning instrument. Termination can therefore be timed to take place exactly at the stage when it is in the best interests of the beneficiaries.
- **Accounting:** the flexibility and discretion regarding the bookkeeping and accounting of a trust ensures that it can be administered in a cost-effective way.

Containing costs

Containing costs in the retirement industry is one of the major challenges facing retirees.

However, this needs to be done in a responsible way.

- **Tax planning:** trusts should never be regarded as tax-reduction instruments in the first place as the tax dispensation is too fluid and uncertain, but trusts should rather be regarded as tax planning organs.
- **Reduction or capping of estates:** the trust creates an annual donation opportunity, which can be utilised as a protection mechanism against creditors as well as the impact of death taxes and executor fees.
- **Asset protection:** a trust which is set up and administered properly can assist a family to protect their assets from potential creditors as well as against their own unwise business decisions.
- **Flexibility:** a trust is very flexible and can often be administered so as to take into account major changes in family and financial circumstances, which enables the trustees to manage the assets in the best interest of the beneficiaries even during uncertain times, such as divorce or insolvency.

Privacy in your daily life

Increased privacy is becoming a feature of the business environment. This needs to be reflected in our daily life.

The separation of enjoyment of and control over trust assets is a factor that enables natural persons that would otherwise be prohibited from taking part in the normal commercial environment to be involved as beneficiaries and to protect their position, while the rest of the business world is still protected against their potential future indiscretions.

The trust entity is the ideal vehicle for investors who require anonymity in a particular business initiative, as the details of trusts are not as available as that of companies.

One must bear in mind that while these are general assumptions, clients need to incorporate legal and financial structures that would suit their own risk profile. ●



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