Intergenerational Trust Warfare

Lang Hancock's trust legacy, tips and traps

We have all read of theructions within the Reinhart family and their tussle in the courts over a trustfund established by iron ore oligarch, Lang Hancock. However, it is notonly the rich and famous who end up at loggerheads over family trusts millionsof ordinary citizens in Australia and New Zealand have either set up trusts orare beneficiaries under them. Engaging robust legal and accounting adviceearly in the piece to deal with crucial succession and related issues may avoidwarring factions within the family heading to court to argue over for controlof the trust.

Some of the issuesrecently identified by MSI member firms include:

Control of the Trust usually theperson who sets up the trust (the Appointor or Settlor) retains control ofit. But what happens when he or she dies? Your trust deeds shouldbe checked for the following:

Whowill be the successor of the appointor as usually the appointor and his or hersuccessor have ultimate control of the trust, often with the righttodismissthe trustee.

Thetrustee also needs to be checked to ensure an appointor is not excluded frombeing a beneficiary or acting as a trustee.

Mostdeeds do not address the situation where the appointor loses capacity and hisor her affairs are administered by a power of attorney or legalguardian.

Secondgeneration beneficiaries of a trust may not want their father or mother'strusted advisor, for example, to be in control of "their"trust.

Trust deeds can usuallybe amended to deal with appointor succession issues. In relation tocompany trustees, provision can also be made to pass the shares down to thenext generation by means of a will.

TIP - Even if you alreadyhave a trust, you should have it checked for the above pitfalls.

Administration of a Trust again MSI firmshave had recent experience of sloppy administration of trusts leading todisastrous results. Take this actual case study:

In a family law dispute, a second generation in-law took issuewith the minutes of a trustee company distributing income on 30 June for anumber of years. However, the relevant meetings were found not to havebeen held. This resulted in the trust income in each of the years failingto be distributed under the default provisions in the deed this ultimately benefitedthe in-law although that was never the appointer's intention.

Also, in Australia thatdreaded fiscal fiend, the Tax Office, has been getting in on the act, writingto trustees to check that the distribution minutes actually accord with thetrust's tax returns as lodged. It is important therefore that trusteemeetings actually and physically be held prior to 30 June, the minutes ofdistribution be recorded and that those distributions are reflected in thetrust's tax return.

Trusts and wills many people whoset up trusts forget that the trust's assets are no longer their personalassets but continue to treat them as their own.

TIP you should compilea statement of trust assets when you make your will to ensure the will dealsonly with those assets owned personally.

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MSI Global Alliance (MSI) is one of the worlds leading international alliances ofindependent legal and accounting firms, with over 250 member firms in 105countries.

InAustralia and New Zealand, MSI consists of 14 independentlegal and accounting firms that provide specialist services to local andoverseas businesses.

As a group, MSI members are committed to serving companies andindividuals both in Australia, New Zealand and around the world.

For further information about MSIin Australia and New Zealand, visit www.anz.msiglobal.orgor contact Maree Schneiders on 0411 446 484 or maree@strategyco.net to arrange aninterview.

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