

Intergenerational Trust Warfare

Lang Hancock's trust legacy, tips and traps

We have all read of the ructions within the Reinhart family and their tussle in the courts over a trust fund established by iron ore oligarch, Lang Hancock. However, it is not only the rich and famous who end up at loggerheads over family trusts – millions of ordinary citizens in Australia and New Zealand have either set up trusts or are beneficiaries under them. Engaging robust legal and accounting advice early in the piece to deal with crucial succession and related issues may avoid warring factions within the family heading to court to argue over control of the trust.

Some of the issues recently identified by MSI member firms include:

Control of the Trust – usually the person who sets up the trust (the Appointor or Settlor) retains control of it. But what happens when he or she dies? Your trust deeds should be checked for the following:

Who will be the successor of the appointor as usually the appointor and his or her successor have ultimate control of the trust, often with the right to dismiss the trustee.

The trustee also needs to be checked to ensure an appointor is not excluded from being a beneficiary or acting as a trustee.

Most deeds do not address the situation where the appointor loses capacity and his or her affairs are administered by a power of attorney or legal guardian.

Second generation beneficiaries of a trust may not want their father or mother's trusted advisor, for example, to be in control of "their" trust.

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

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

Administration of a Trust – again MSI firms have had recent experience of sloppy administration of trusts leading to disastrous results. Take this actual case study:

In a family law dispute, a second generation in-law took issue with the minutes of a trustee company distributing income on 30 June for a number of years. However, the relevant meetings were found not to have been held. This resulted in the trust income in each of the years failing to be distributed under the default provisions in the deed – this ultimately benefited the in-law although that was never the appointor's intention.

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

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

TIP – you should compile a statement of trust assets when you make your will to ensure the will deals only with those assets owned personally.

About MSI Global Alliance:

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

In Australia and New Zealand, MSI consists of 14 independent legal and accounting firms that provide specialist services to local and overseas businesses.

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

For further information about MSI in Australia and New Zealand, visit www.anz.msiglobal.org or contact Maree Schneiders on 0411 446 484 or maree@strategyco.net to arrange an interview.

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