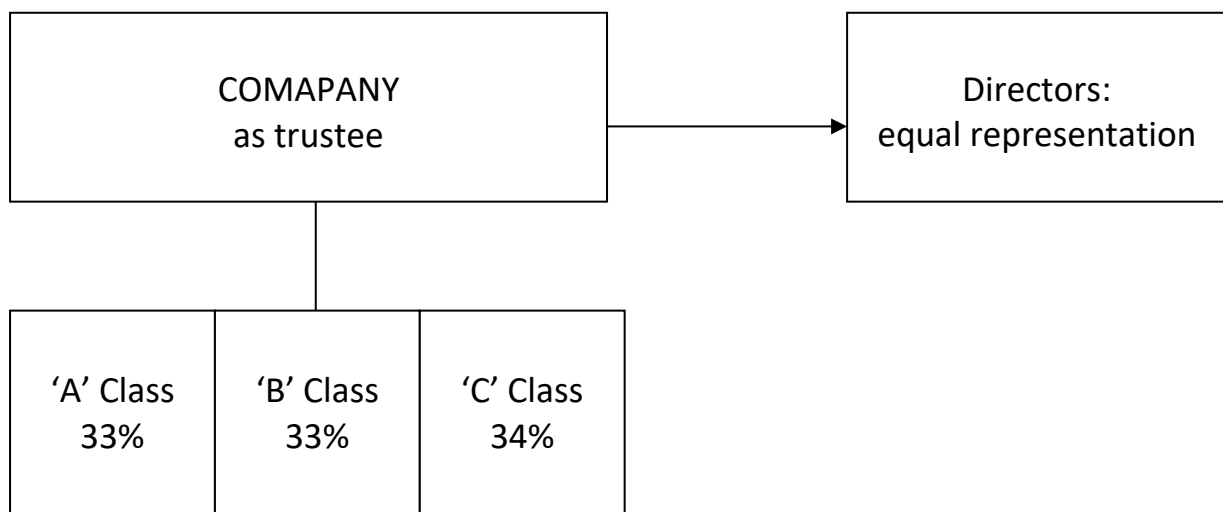


## RESTRUCTURING- PART 4: THE THREE TRUST STRUCTURE ALTERNATIVES

21 June 2021

### Classic Trust/Hybrid Trust:



1. Effectively a Discretionary Trust with class interests held in set percentages. This allows the trust to be used for say, 3 families, rather than use a unit trust. Family one would have "A" class, family two would have "B" class, and so on. Each class would be entitled to a fixed % of the trust income. Within each class, the trustee has a discretion as to how to distribute the income.
2. Such trusts avoid the problem with unit trusts (CGT event E4) as no person within a class has a fixed entitlement: TD 2009/17.
3. There is a disposal of interest for CGT if another party is admitted. Some trust deeds attempt to draft around this.
4. Have been cheaper to establish and administer than a partnership of trusts, but \$6,000,000 net asset test for small business CGT relief is not as each to meet as with a partnership of trusts.
5. General CGT 50% exemption applicable to a sale of the business by the discretionary trust, if gain passed through to individual beneficiaries.
6. Small business CGT can still be available as it is still possible to trace a "significant individual(s)".
7. Test for use of trust losses the same as for a discretionary trust. Income injection must be monitored as such a trust for more than one family can't make a family trust election.

8. Check trust for beneficiary liability limitation from Trustees right to be indemnified, definition of income etc.
9. Note discretionary trusts which have units issued are also referred to as hybrid trusts. Such trusts with units entitled to income but gains to be available to discretionary objects were used to allow high income individuals to borrow to subscribe for units to obtain “negative gearing” while the capital gains on the assets went to low income family members. TD 2009/17 contested that concept, but the Commissioner does not accept that *Forrest v FC of T* [2010] FCAFC 6 is against him.