RESTRUCTURING- PART 3: THE BASIC BUILDING BLOCKS

14 June 2021

Diagram 2

COMAPANY ATF. Discretionary trust

1. Trustee should be a company if the trust conducts a business or is subject to any significant liability. Liability falls on the trustee first, then the trustee has the right to be indemnified from trust assets. Trustee can be an individual if the trust is only holding assets and the individual and the assets are without risk. Corporate trustee directors are important. If Mr A is "at risk", he should consider not being the sole director or even a director at all.

2. Appointor position is important. Appointor has power to change the trustee. Assets in Discretionary Trust are not taken into account in succession law and further, loan accounts can be called upon.

   E.g.: *appointor definition*: Mr A if has legal capacity and if not, Mrs A if has legal capacity and if not the children jointly, together with dispute resolution clauses. If Mr A is at risk, consider trusted professional advisor as appointor.

   Where there is a second or third marriage, care must be taken in respect of the appointors positions and loan accounts should be received on any marriage breakdown as a matter of course.

3. Ability to hold superannuation funds separately for dependants under Superannuation Industry Supervision (SIS) Legislation should be considered.

4. Ability to issue units should be considered and included in trust deed (Type of Hybrid Trust); normally issued with new funding rather than in respect of existing assets.

5. General CGT 50% exemption applicable to a sale of business by the Discretionary Trust, if gain can be passed through to individual beneficiaries.

6. "Significant Individual" issue as detailed in discussion above on "Small Business Relief".