MURDOCH PRICE

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NOTES ON FAMILY TRUSTS

Purpose
There are many reasons and situations in which a family trust may be suitable. The following examples are not an exhaustive list.

1. **Inheritance Protection** – The trust's assets are protected against claims against your children following your death e.g. a child's failed relationship or business venture.

2. **Protection of your Estate** – The trust owns the assets so they do not form part of your estate and are therefore protected against claims by family members against your estate.

3. **Creditor Protection** - The trust owns assets which are not then available to creditors in the event of personal bankruptcy or business failure.

4. **Protection of a Family Member** - The trust administers the assets and income for the benefit of a family member who may be physically, emotionally or financially incapable, or likely to be unduly influenced by a third party.

5. **Matrimonial Property** - Assets that are to be kept separate and apart from the marriage can be held by the trust. e.g., on a second marriage.

6. **Allocation of Taxable Income** - Income from investments and property owned by the trust is taxed at 33% or at beneficiaries marginal tax rates if distributed to them.

7. **Income Allocation Flexibility** - The income of the trust can be allocated amongst selected beneficiaries in accordance with need and does not have to be allocated equally between the selected beneficiaries.

8. **Distribution Flexibility** – Capital distributions can be allocated amongst selected beneficiaries in accordance with need and does not have to be allocated equally.

9. **Eligibility for Asset-Tested Government Subsidies** - Assets owned by the trust are not taken into account in assessing personal eligibility for asset-tested Government subsidies, eg, resthome subsidy. The assets otherwise having to be sold to pay for resthome fees.

   There are deprivation of assets and income rules which limit the effectiveness of a trust for this purpose.

10. **Estate Duty** - If estate duty is re-introduced then assets owned by the trust are not taken into account.

Trust Structure
A trust Deed establishes the trust.

The Deed appoints trustees and nominates beneficiaries. The trustees have a discretion as to which beneficiaries to favour, and as to how much.

The discretionary beneficiaries would usually include yourselves, your immediate family, future generations, and your extended family (brothers, sisters, cousins, etc).

The trust has a termination date. Often the lifetime of your children, or eighty years. The trust can be terminated by the trustees at any time before that date. Upon termination the trustees distribute the assets as they see fit to selected beneficiaries.

You are usually given the power of appointment and dismissal of trustees. In many cases the trustees are yourselves and one other person.

Trust Operation
The trustees administer the trust assets. They complete annual accounts and income tax returns, and allocate income (and sometimes capital) amongst beneficiaries. They keep minutes recording important decisions made by the trustees.

Transfers of Assets to the Trust
Transfers of property and investments to the trust are made at market values.

The trust does not have any money to pay market values, and accordingly, the transfer is either a gift or the trust owes the money to you (Acknowledgement of Debt).

At this stage, you still have an asset, i.e., the debt owing to you by the trust.

You can release the trust from payment of all or part of the debt (Forgiveness of Debt) but this is deemed to be a gift. Gift duty is abolished as from 1st October 2011.

In addition, the trust can repay part of the debt from time to time using the income (if any) generated from the property and investments owned by the trust.

Procedures
A Trust Deed is required. Careful attention should be given to the Trust Deed because it is intended to last for a long period and may not have the desired effect if insufficient care is given. Murdoch Price Limited should be involved in creation of the Trust Deed. This will ensure that complex legal issues are taken into account.

The Trust obtains an IRD number for tax purposes (and if necessary is registered for GST purposes).

A separate trust bank account is required for receipt of income from the property and investments and for payment of outgoings.

Documents are prepared for the initial transfer of property and investments to the trust.

The documents are registered where appropriate (e.g. property transfers).

Trustees Minutes are completed, where appropriate, from time to time.

Annual accounts and annual trustees minutes are completed, and income tax returns filed.

Your Will should be reviewed at the same time and Enduring Powers of Attorney are recommended.

Generally, the accounting functions are handled by your accountant. All other documentation will be handled by Murdoch Price Limited. It is best to have your accountant and us working together to your best advantage.

WARNINGS:
The above is only a very brief summary and does not necessarily apply to every trust or every situation. We suggest a full discussion with us and (where appropriate) a consultation with your accountant before embarking upon a family trust.

Family circumstances, case law, legislation and Government policy can change from time to time which may affect the ability of the trust to achieve the desired purposes. If the trust is not able to adapt to the changed circumstances the trust can be brought to an early termination.

Costs
Send us brief details of your assets and liabilities and we will give you an idea of the likely costs involved.

Include the approx. value of your assets and the approx. amount of mortgages and charges. Don't forget life insurance policies.