

## CHECKLIST OF OTHER DEED UPDATE MATTERS TO CONSIDER

If you're planning to update a client's trust deed for Bamford provisions, you can save money in the long run by taking the opportunity and having a comprehensive review of the trust deed done.

We have conducted countless reviews of trust deeds over the years. Here are some of issues we tend to come across:

- strategic control options particularly in bankruptcy,
- clarifying Appointor succession provisions to cover an array of potential circumstances including survivorship between joint appointers and determining mental impairment and incapacities,
- dealing with the streaming for minors with proceeds from deceased estates, superannuation funds and life insurance,
- provide for family trust elections where bad debts, trust losses or more than \$5000 imputation credits are available and addressing the potential adverse tax liabilities that may arise on distributions outside the family group,
- addressing State anomalies with change of trustee such as stamp duty issues with land ownership and vesting issues with registration requirements,
- dealing with amounts set aside for corporate or trust beneficiaries to avoid division 7A problems,
- expanding the definition of relationship and children for more complex family situations,
- permitting conflicts of interest in a wide variety of instances to avoid the common law breaches,
- updating for current banking practices in particular investments in derivatives and options,
- setting out dispute resolution provisions outside of the courts to avoid court ordered vesting,
- allowing a trustee (with or without the Appointor's consent) to change the vesting date to allow for changes to perpetuity laws;
- providing appropriate disclosure and non-disclosure provisions to protect the integrity of the trust,
- limited liabilities on trustee appointments or nominations,
- outgoing trustee indemnities to avoid later liabilities for reassessments of tax and protecting and clarifying the obligations of incoming trustees,
- specifying investment decision making skill required for your circumstances,
- providing express trustee powers that match your use of the trust

to clarify operation and administration of the trust,

- clarifying the use of electronic technologies with emails notifications and facilitating decision making in more than one place,

### Resettlement issues

If you are worried about resettlement issues you will be pleased to note that following the Full Federal Court decision in *Clark*<sup>1</sup> handed down on 21 January 2011, the confirmation of the earlier 2001 High Court decision in *Commercial Nominees*<sup>2</sup>, the ATO's withdrawal on 20 April 2012 of its Statement of Principles on the Creation of a New Trust and its release of a Decision Impact Statement last updated on 11 May 2012, it is clear many changes to a trust deed may be acceptable without causing a resettlement so long as continuity of the trust estate has been maintained.

### More information

Should you have any queries or require more information, please contact the team at Topdocs on 1300 659 242.

#### Notes:

<sup>1</sup> FC of T v *Clark* [2011] FCAFC 5

<sup>2</sup> FC of T v *Commercial Nominees* [2001] HCA 33

Current as at 10 October 2012.

Please note this article is for information purposes only and does not constitute legal advice.