

DISCRETIONARY TRUST ESTABLISHMENT INSTRUCTION SHEET

MJHC LEGAL
LAWYERS

Superannuation · Property · Wills · Commercial

All correspondence to:
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A. ADVISOR/PERSON ORDERING DEED:

Enquiries, documents, invoices will be directed to this person, unless otherwise stated

Person Ordering:			
Firm Name:			
Street Address:			
Suburb/Postcode			
Telephone:		Fax:	
Email:		Signature:	

B. TYPE OF TRUST:

- | | |
|---|--|
| ☐ Family Trust | ☐ Superannuation Proceeds Deed Trust |
| ☐ Estate Proceeds Trust | ☐ Multiple Family Discretionary Trust |
| ☐ Child Support Trust | ☐ Compensation Proceeds Trust |
| ☐ Insurance Proceeds Trust | |

C. TRUST NAME:

Trust Name:	
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D. SETTLOR:

Name:	
Street Address:	
Suburb/Postcode	

See Part N. Important Information on the role of Settlor

E. TRUSTEE DETAILS:

Is the trustee a company or individuals? company ☐ individuals ☐

See Part N. Important Information on Trustee Requirements If company, complete Part D. the proceed to Part E. If individuals, proceed to Part E.

F. COMPANY TRUSTEE:

Company Name:		
Street Address:		
Suburb/Postcode		
ACN:		Date of Incorporation:

G. INDIVIDUALS INVOLVED:

1. Full Name:		DOB:	
Street Address:			
Suburb/Postcode:			
This person is a:	individual trustee: ☐	director of trustee: ☐	Appointor: ☐
		Primary Beneficiary:	☐

Select each check box that is relevant for the roles performed by all individuals

Individual 1 details continue over page

Present at Meeting ☐ Not Present at Meeting ☐

2.	Full Name:		DOB:	
				DD/MM/YYYY
	Street Address:			
	Suburb/Postcode			
	This person is a:	individual trustee: ☐	director of trustee: ☐	Appointor: ☐
		Present at Meeting ☐	Not Present at Meeting ☐	Primary Beneficiary: ☐
3.	Full Name:		DOB:	
				DD/MM/YYYY
	Street Address:			
	Suburb/Postcode			
	This person is a:	individual trustee: ☐	director of trustee: ☐	Appointor: ☐
		Present at Meeting ☐	Not Present at Meeting ☐	Primary Beneficiary: ☐
4.	Full Name:		DOB:	
				DD/MM/YYYY
	Street Address:			
	Suburb/Postcode			
	This person is a:	individual trustee: ☐	director of trustee: ☐	Appointor: ☐
		Present at Meeting ☐	Not Present at Meeting ☐	Primary Beneficiary: ☐

H. FOR MINUTES OF MEETING:

Place of Meeting:		Address of Individual 1 unless otherwise stated
Name of Chairperson:		Individual 1 unless otherwise stated

If not all trustees/directors were present at Meeting you **must** select one of the following options:

- ☐ The absent trustees/directors attended by telephone:
- OR**
- ☐ Circulating Resolutions required for signature by all trustees/directors:
- (See Part P. Important Information)

I. REQUIRED INFORMATION:

When is the meeting date? (This is the date the individuals involved met and decided to establish the Trust.)			
	DD/MM/YYYY		
	or for client flexibility is date to be left blank?	Yes ☐	No ☐
When is the Fund to commence? (this may be before or after the Meeting Date)			
	DD/MM/YYYY		
	or for client flexibility is date to be left blank?	Yes ☐	No ☐
Settled sum (usually \$50.00)	\$		

Who is to control Trust after the Appointor(s) identified in Part G? Set out your requirements in the panel below

(BEFORE answering this question you must read Part N. Important Information - Role of Appointor)

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Last possible date for distribution of Trust Assets 80 years ☐ or other date:

(maximum period is 80 years after the date of establishment) DD/MM/YYYY

Are there any additional potential beneficiaries? Yes ☐ No ☐

(see Part N. Important Information) If Yes, provide details in Part J. Additional Information

Are there any additional restrictions to be placed on Trustee? Yes ☐ No ☐

(see Part N. Important Information) If Yes, provide details in Part J. Additional Information

Is the Trust likely to receive compensation payments, damages, superannuation proceeds, life insurance or the proceeds of a deceased estate? Yes ☐ No ☐

If Yes, provide details in Part J. Additional Information

J. ADDITIONAL INFORMATION:

K. DOCUMENT DELIVERY:

Prepared documents are to be sent by:

email: ☐

mail: ☐

express post: ☐

Additional Fee of \$18.50 applies

L. PAYMENT DETAILS:

Payment of Invoice is required before document package delivery unless other arrangements are in place.

Credit Card and bank deposit/internet banking options will be set out in the Invoice.

M. COMPLETED INSTRUCTIONS:

Please forward completed instructions to MJHC Legal:

email: mjhc@mjhcllegal.com

mail: PO Box 412, Mount Waverley VIC 3149

Print and review your instructions before submitting and retain printed copy for your file. Adobe Reader will not allow you to save the data in this form.

The Email button will forward your completed Instruction Form to MJHC Legal.

The Reset button will clear all data in the form.

In submitting the completed Instruction Form, the person described in Part A authorises MJHC Legal to prepare the new Trust documentation and agrees to pay the Fee payable for the new Trust. You understand that typing/spelling errors or incorrect information given is your responsibility

Print Form

Submit by Email

Reset

N. IMPORTANT INFORMATION:

Role of Settlor

Family discretionary trusts are established by an independent person known as the Settlor paying to the Trustee a (usually) nominal amount (called the "settled sum") to be held upon the trusts set out in the trust deed. For other discretionary trusts specific amounts or assets may be paid as the 'settled sum'.

Once the settled sum is paid, the Settlor has **no** further involvement in the trust. The Settlor should not be a beneficiary under the trust deed otherwise the trust might be invalid.

When establishing the family discretionary trust, the Settlor could be your lawyer, accountant or other advisor. It is better practice for the Settlor to be a family friend as they have a genuine desire to benefit the family.

Trustee Requirements

A Trustee is personally liable for the debts or liabilities of a trust but is entitled to be indemnified out of the assets of the trust. As the trust assets may not be sufficient to cover liabilities, it is recommended that a company only act as a trustee of a discretionary trust and that the company have no other role other than that of a Trustee.

Role of Appointor

The Appointor has the power to remove and replace trustees. The consent of the Appointor is required if the trustee wants to amend the trust or to distribute capital to beneficiaries.

When deciding on your requirements regarding who is to control the Trust after the Appointor(s) identified in Part G, you should consider the following:

- If there is only one named Appointor who will succeed this person.
- If more than one Appointor is initially nominated, will the surviving Appointor(s) have control or is an alternative to be appointed if a named appointor dies.
- If more than one Appointor is initially nominated, who is to take control when the last appointor dies.
- What is to happen if an identified alternative Appointor dies before the named Appointor they are to succeed.

Example: H is to be replaced by W then replaced by C

If W does not survive H then C

If W & C do not survive H, then executor of H's estate

If W becomes Appointor but C does not survive then executor of W's estate.

Effective Dates

The fund and the security/custodial trustee must resolve to execute the prepared documents. The date the parties meet will usually be the date of the prepared documents. However, the date on which the security/custodial trust comes into effect can be a future date. It is not possible to retrospectively establish a trust.

Meeting & Resolutions

It is not always a legal requirement that individuals physically attend a meeting of trustees or directors of a corporate trustee. Most modern trust deeds and company constitutions permit teleconferencing. Attendance by telephone can be a convenient method of meeting where parties are physically separated. You must indicate whether or not a party was or will be physically present at a meeting.

A circulating resolution is an alternative to attendance at a meeting in person or by telephone. A circulating resolution requires all parties to sign and date the resolution. It is also necessary for the parties to be provided with all relevant material relating to the resolution. This may not always be convenient or a secure means of safeguarding the material.

Importantly, a circulating resolution does not have any legal effect until the resolution is signed and dated by all required parties. It will also only be effective from the date on which the last signature is obtained to the circulating resolution. For these reasons, physical or telephone attendance at a meeting is preferred over a circulating resolution.

Additional Potential Beneficiaries

The Deed would normally include close relatives, their legal and defacto spouses, dependents, employees, related companies and Trusts, charitable and religious organisations. Consideration needs to be given to whether there are to be any additional potential beneficiaries outside of immediate family, related Trusts and charitable and religious organisations.

Additional Restrictions on Trustee

Trustee normally needs the Appointor's consent for major decisions such as amending the trust deed and distributions of capital.

DISCLAIMER:

MJHC Legal prepares documentation based on your written instructions. MJHC Legal is not licensed to provide financial product advice. The rules concerning Self Managed Superannuation Trusts change and it may be advisable to request specific advice.

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