

Janine
for discussion
Monday

CCH Trust Administration (Directors input)

Background

With the ever changing rules around trusts and the increased scrutiny on Trustee responsibilities, along with the insurance risk, it is becoming more and more important for Trusts (and in particular trustees) to have proper and full records for every decision made by them. This is increasingly so given the responsibility of trustees to act in the best interests of the beneficiaries, and the fact that the beneficiaries can demand to see almost any document or decision made by the Trustees at any time. Failure to be able to provide signed copies of these minutes could ultimately lead to legal action against the trustees.

Therefore it is becoming more and more important to ensure that these records are fully documented, and are available to be viewed and accessed by the beneficiaries at their request.

The CCH Trust software provides the ability to keep the following records on behalf of trustees:

- a) A list of all officers of the trusts (i.e accountant, lawyer, trustees, settlor)
- b) Type and dates of the trusts, and whether trust is active or not
- c) An analysis of the key areas of the trust deed such as:
 - a. Trustee appointment and removal
 - b. Resettlement powers
 - c. Names, or a list of beneficiaries,
 - d. Decision making criteria for the trustees
- d) Linking of all documents relating to the trust
- e) A complete list of minutes and signed decisions made by the Trustees
- f) Ability to keep an analysis of the loan accounts, documenting gifting, and other movements during the year
- g) The ability to set up reminders to trustees and or solicitors for such items as gifting, or any other documents required
- h) Reminders of when beneficiaries of a trust turn 20 for a trust which is a shareholder of a qualifying company.

Alistair and Donna visited Strettons in Taupo in early February. This meeting proved very enlightening as Strettons freely gave us information on the set up, objections, and ultimate uptake of the CCH Trust admin services by the Trusts and Trustees of their firm. The biggest message was 'selling' the CCH Trust admin service to the Directors, Managers, staff, and Trustees alike. Barbara (at Strettons) works fulltime on the Trust registers, and has built up a system over the years to ensure the integrity of the Trust.

Objections to the CCH Trust Service

Initially there were objections to the CCH service which included the following:

- a) The solicitors do the same as you, why should we pay twice:

Once it was explained that while there may be some duplication as the Directors (as Trustees) have to have copies of these resolutions on file. Further, our Directors have a statutory duty to account for the Trust meaning he needs full records to show that he is performing his duty managing the Trust assets.

- b) If we decide to change the Barnes Mossman as Trustee, and you still work closely with the solicitors, would you still charge us of perform the same service;

If you don't subscribe to the Trust Admin Service then we won't do any work for you.

- c) Are you doing any thing new;

Yes, we now have a company policy that states "by taking on the responsibility of acting as you Trust's professional independent trustee, we require your Trust to subscribe to the Barnes Mossman Trust administration service.

- d) You've charged me for Trust work which comes under accounting fees, so what's the point?

It has been charged in the past as part of the accounting fee; however it was on a time engaged basis, whereas the trust administration service fee is a fixed fee and is a new company policy, the trust administration service is quite separate from the accounting service. Where we have been Trustee clients should have had a 'bulk charge' of \$230.00

- e) I don't care that it is Barnes Mossman policy, if it was the government which said we have to keep the trust Admin at arms length from the accounting side of things, then I'd have to pay for the service, but it's not so why should I?

Mainly to ensure that we are doing it right for you and your trust. If your trust is not looked after and you get it wrong you may as well say goodbye to your assets and money.

Mandatory Subscription to the service

As noted above, Stretton's introduced Company policy that it was a mandatory requirement for trusts where a director was a trustee (whether individually or through a corporate trustee) to subscribe to the CCH service, particularly given the obvious insurance risks associated with trusts and trusteeship. As noted above, the mandatory policy drew some criticism. The Directors need to decide it is mandatory for the Trusts on which they are trustees to subscribe to the Trust service, and how far this should follow on.

Fees

Strettons charges an annual fee for maintenance of the trust service. This is a tiered fee based upon the size of the trust and the likely amount of work related to that same trust. I have listed the Strettons fees and nature of the trusts below. This fee is not charged to those Trusts who do not

subscribed to the service, although their basic details are still on the system. I have attached a copy of their fee structure for consideration.

In summary there fee structure is as follows:

- \$250 + GST – residential home / holiday home only / private company shares, passive
- \$250 + GST – investment trust (& own the farm only), medium active
- \$500 + GST – trading Trust, medium active
- \$750 + GST – Trading Trust, high active
- \$750 + GST – Two plus trusts combined

Time and Cost

Strettons charge their trust time to the client. Each Trust has a separate matter attached to it labeled CCH Trust service, and this is used for the tracking of the time. Time involved relates to scanning and filing of minutes, trust reminders, questionnaires, newsletters, liaising with other parties, and telephone calls. This way they are able to track the time charged against each Trust, and if necessary consider the fee charged to the trust. As a general rule, this matter is not open for accounting staff to post time to, mostly because the accounting staff do not want anything to do with it.

Gifting and Trust deeds

It was pointed out that it is not entirely legal for accounting firms to prepare gifting statements, and that if they do, they should not be charged. Accounting firms are not allowed to prepare Trust deeds. These services should be left to the lawyers. The CCH register can however, keep a track of when gifting is due, and advise as necessary that it is due if no documents are received.

Provision of the service.

Strettons has one full time employee (Barbara) in charge of Trust and Company registers. All Trust documents go to her (or are at least copied to her) when they are arrived, and Barbara is responsible for the maintenance of the database, ensuring all documents are scanned and saved onto the electronic client files, and the hard copies saved onto the Trust files. She has two assistants who help her with the scanning and filing of the documents.

There needs to be consideration as to who is going to maintain the register once it is up to date, and how it is going to be structured. Alistair is happy to get it started and then oversee the continuance and maintenance. Perhaps Josie could take charge of the database?

Trustee Services:

The Barnes Mossman Directors need to discuss whether they want to keep any corporate trustee companies, and consider the possibility of clients setting up a corporate trustee company upon which Director Trustees can sit. (This may have an impact on insurance premiums, as insurance policies do not generally cover trusts with net assets of \$5m or more).

Questionnaires

Strettons sends out a quarterly questionnaire to all of its Trusts which covers such areas of new asset purchases, retirements and appointments of trustees, guarantees on loans to trust beneficiaries, or a company if a shareholder, gifting, drawing down new, or final repayment of existing loans, permission for settlors to occupy the trust residence (relates predominantly to settlors living in the farmhouse on the far, for example).

I have drafted and attached an initial questionnaire for consideration.

Trust newsletters

Strettons send out a trust news letter every 6 months. This is often sourced from other documents and sent out on Strettons letterhead. Rather than having someone looking for good material to put

into the newsletter, perhaps we could ask if we can get a copy of the Strettons newsletter (for a fee) and use this newsletter to send out to our Trusts.

Time

There will be an initial amount of time spent to get the initial documents sorted and the templates saved into our systems. These documents will include the drafting of introduction letters, the scope of the trust service, and the acknowledgement of the fee involved. On top of this is the building of resolutions to go out with these letters for Trustees to sign as required.

Other requirements

A quick check of both the APS and CCH database shows inconsistencies. Alistair will liaise with managers as to which Trusts have been deleted or settled, with the aim of getting the two databases to match.

APS

As discussed above, Strettons record time against each individual trust. This would require the setting up of both administrative matters and trust details inside the APS system.

Client Drives (S:Drive)

Strettons have under their permanent sections of the current drive a folder labeled CCH Trust service. Within this umbrella are an additional three separate folders labeled Trust Deed, Gifting Documents, Trust documents. This would lead more organised filing of trust documents, and easy access electronically should those same documents need to be found in a hurry.

Training requirements

Initially there will be training required to get whoever is going to be the administration person confident on the use of the CCH trust service. This will involve such things as:

- The finding of the relevant clauses in the trust deeds for insertion into the legal section of the trust software;
- The update and continuing use of the advance accounts;
- The inputting of the minutes through the minutes section of the software
- Ensuring the correct officers are nominated on the trust register, including the adding of new names and retirements as necessary (some of which may not be on the register at the current time)
- Filing of the documents into the hard copy file and numerical procedure, and the naming and saving of scanned documents into the client "s" drive.

Blue folders

A quick check to two unrelated blue folders showed two separate sets of indexes in those files. Do the Directors want to make these two blue folders consistent, and should this be done as part of the trust administration service.

Document register

Barbara (at Strettons) keeps an excel document register, in which she keeps records of which documents have been sent out and are not yet returned.

Finally, I give to you an email received from Barbara at Strettons labeled 'a most objectionable objection'.

Barnes Mossman CCH Trust Services

What we offer:

- Retention and assistance in the maintaining of the records of your trust;
- Reminders to the Trustees and other parties of significant milestones and dates;
- Liaison with other parties as required;
- Preparation of appropriate minutes and obtaining the signatures of the trustees on the same minutes;
- Preparation of quarterly questionnaires to ensure all major decisions are documented and a list of executed decisions to date;
- Preparation and sending of 6 monthly newsletters;
- Availability to discuss any trust matter;
- Dedicated proactive administrator

TRUSTEES RESPONSIBILITIES

YOUR RESPONSIBILITIES

As a Trustee, you should be aware of the responsibilities of your appointment. This is necessary in order to provide the framework for effective administration and governance.

Neglecting any of your fundamental duties could result in a breach of Trust. As such, you could lose your right of indemnity from the assets of the Trust and become personally liable, irrespective of the liability incurred in your capacity as trustee.

The concept of a trustee's right of indemnity is fundamental to understanding the Trust relationship. As a Trust is not a separate legal entity, it is the trustees personally, who are legally responsible for the Trust's liabilities properly incurred.

It is important that you take your role as trustee seriously, bearing in mind the potential risks.

As such diligence on the part of a trustee is required below are some points that you should consider when performing these responsibilities.

TRUSTEES HAVE A DUTY TO EFFICIENTLY MANAGE A TRUST

This includes:

- Familiarizing yourself with the terms of the trust deed and supplementary deeds (for example, any deeds that vary provisions within the original trust deed)
- Ensuring the trust assets are correctly held in the Trustees names
- Identifying the needs, circumstances, background ect of all beneficiaries.

TRUSTEES HAVE A DUTY TO KEEP ACCOUNTS AND RENDER THEM TO BENEFICIARIES

You should make sure that information regarding the trust and its management is recoded and assessable to you. Beneficiaries are entitled to see some trust documents. It is unnecessary to disclose all documentation (to the beneficiaries) regarding the management of the trust, for example the memorandum of Wishes or Guidance.

TRUSTEES HAVE A DUTY TO ACT PERSONALLY

This means that you and all the other trustees must be:

- Personally involved in the decision making process, (ensure that you are fully informed and where necessary seek advice from professionals) and make your own decision, not allowing others to determine how you should exercise your responsibilities.
- Consider the wishes of the settlor when making decisions, (detailed in the Memorandum of Wishes of Guidance). It is important to remember that these orders are not legally binding on you as a trustee, unless the trust deed states otherwise.

TRUSTEES HAVE A DUTY OF LOYALTY WHICH MEANS:

Unless otherwise authorized, trustees cannot profit from their appointment. An example of being authorized is in the detail of the trust deed that states that the trustee be paid for their services.

If you perceive that as a trustee you have 'conflict of interest' with a particular situation, firstly check the trust deed to see if there is a provision for dealing with conflicts. If the trust deed is 'silent', seek legal advice before proceeding. An example of 'conflict of interest' is when the trustees (you) have resolved to loan money to a company, of which you are a shareholder or a director.

TRUSTEES HAVE A DUTY TO CONSIDER

- The needs of all beneficiaries
- To act at all times in the best interests of the beneficiaries
- Exercising trustees powers and discretions under the terms of the trust deed
- Ensuring independent trustees are up to date with the needs and circumstances of all beneficiaries

FURTHER POINTS YOU SHOULD CONSIDER AS A TRUSTEE

When exercising any power of investment being legally bound by the Trustees Act to withstand scrutiny under the 'prudent person' test, which means that when exercising this power, you will use 'care, diligence and skill that any prudent person of business would exercise in managing the affairs of others'. Therefore, any power of investment that you exercise as a trustee must be able to withstand this test.

Be familiar with the terms of the trust deed, for example, some trust deeds state that if a trustee is also a beneficiary of the trust they are excluded from exercising certain discretionary powers, including distributing trust income and capital. Does your trust deed preclude any trustee(s) in this manner?

Trustees holding shares in family companies should also document the signing of company minutes (i.e. annual general meeting minutes, company major transactions), in a trustees' resolution

Ensure the completion of a trusts accounts in a timely manner

There is also a duty imposed upon trustees to inform an infant beneficiary interest in the trust when they become sub juris i.e. 20 years of age,

When exercising discretionary powers, even when provided with advice from others, the final decision rests with the trustee

If you have any issues or concerns in performing your duties as trustee, you should obtain professional advice i.e. from the Trusts solicitor or accountant.

TRUST ADMINISTRATION QUESTIONNAIRE

March 2014

IF NO CHANGES WITHIN LAST 3 MONTHS JUST TICK HERE AND SIGN BELOW

Financial / general administration

Yes	No
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1 Have you opened a bank account in the name of the Trust		
2 Do you still have insurance for your trust assets		
3 Have you granted permission for the Settlor (s) to occupy the Trust residence		
4 Have you adopted an investment advisor		
5 have you adopted or reviewed the investment strategy for the trust		
6 Have you distributed any capital to beneficiaries not recorded in the annual accounts		
7 Have you guaranteed any loans for beneficiaries or a company that the trust is a shareholder		
8 Have you accepted any gift by way of reduction of debt		
9 have you adopted an annual budget for the Trust (i.e for the purchase of a capital item)		

Assets:

10 Have you purchased or sold any Trust assets: e.g property or shares		
11 have you agreed to least trust assets		
12 Have you signed any shareholder resolutions		
13 have you obtained any finance		
14 have you refinanced any loans		

Other matters:

1 Do you hae a current will?		
2 In your will, have you considered forgiving any debt back to the Trust		
3 Have you a memorandum of wishes		
4 Have you discussed the need for a power of attorney with your solicitor		
5 Have you engaged the trusts solicitors on any matters i.e retirement appointment of trustee		
6 Do you know of any beneficiaries who have changed their name e.g through marriage		

for any legal advise please consult your solicitor

Name _____

Signed _____

Thank you for taking the time to complete this questionnaire.

TRUST ADMINISTRATION QUESTIONNAIRE

March 2014

BENEFICIARY DETAILS

Please provide up to date beneficiary details:

Full name of beneficiaries and relationship to settlor	Approx age	Beneficiary Notes