

Trust building

In any asset structuring exercise, the key is to take a fully informed view of the system as it is set up and as it evolves



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THE establishment and management of trusts are among the most common approaches to long-term family wealth preservation. This is so particularly in countries where there have been many generations of wealth and long-established approaches to safeguard and distribute that wealth responsibly across many generations.

These arrangements allow “settlers”, usually the businessmen, investors or entrepreneurs who have created or inherited substantial assets, to control the investment and distribution of their assets long into the future, and across many generations of their families.

• What are trusts?

Unlike corporations, trusts are not defined legal entities or “legal persons”.

Essentially, trusts can be thought of as three-way contracts which regulate the relationships between the settlor (the person who establishes the trust and provides its funding), the trustee (who oversees the management and distribution of the assets, and must act at all times “in the best interests of the beneficiaries”) and the beneficiaries (who are the people designated to receive the distributions and other benefits of the trust assets).

Trusts can take many forms. They can be

onshore, offshore, contingent, special purpose, foreign grantor, revocable (allowing the settlor to cancel the trust at his or her discretion) or irrevocable.

In addition to preventing beneficiaries from accessing (and then possibly misusing or investing unwisely) family assets held within a trust, trusts have been established for purposes of limiting distributions of liquid assets, obliging future beneficiaries to live within defined parameters before receiving distributions (for example; completing a university degree or living within a “work ethic lifestyle”); managing future tax liabilities; and ensuring that a defined set of assets – legacy, business or financial – remain within the family for a defined period of time.

In addition, through a trust deed and/or a non-binding letter of wishes – the key documents establishing the terms and operations of the trust – a settlor and his appointed trustee can decide the investment policies for the future, set risk management principles, and define family obligations that must be met with regard to the management or distribution of defined assets.

• It starts with a vision and aspiration

In some ways, developing and building an asset structuring approach to family wealth is like designing and constructing a family house. There is a need for a central architecture, a vision and a plan that achieves the purpose established by the owner within the prescribed local and international regulations.

Within that central architecture are the independent materials and building blocks, the legal and administrative structures that can be assembled by a supporting cast of characters in the proper order and with the proper relationships and operating principles to achieve the overall objectives.

Protective walls need to be erected to shelter the family from fiscal and economic storms, and foundations need to be firm enough to support the family through many generations of testing and change.

Every exercise of this kind is, to some extent, a balancing act. The need to respect the intentions of the original architecture has to be balanced with reasonable future flexibility on behalf of the beneficiaries of trusts or other purpose-driven or tax management vehicles.

Long before a potentially wealth-dissipating Next Generation inherits control of family assets, wiser (and usually older) members of the family will have designed and implemented actions to offset any foreseeable future risks.

• Structuring wealth to serve multiple purposes

Family wealth always serves more than one purpose within the family, and

the structuring and oversight provided by a trust arrangement allow family wealth to be allocated to specific purposes and managed in a particular manner to achieve these different purposes and related investment principles and objectives.

Financial capital can be invested, for example, within a trust established for the lifetime use of one individual or a set of individuals for legacy purposes, or for income or capital preservation, for family or philanthropy, for one individual or group within the family.

Before setting out on an integrated family investment strategy, the various “buckets” of assets making up the entire pool of family wealth need to be defined – by purpose, quantum of funds, investment philosophy and financial objectives, assets by type, reporting targets and dates, responsibility and structuring approach.

• Multiple non-financial purposes

The financial focus and long-term use of wealth in long-term planning lie at the heart of every trust arrangement, but there are many other factors to consider as well. Equally important can be additional objectives such as avoiding loss through litigation, marital disputes, profligate or incapable heirs, family discord, economic upheaval and even expropriation due to political or other unforeseen events. Careful planning can help ensure that family wealth is successfully protected and preserved across many generations.

A typical trust with multiple objectives could, for example, hold funds in a discrete account, invest the funds in safe income generating assets, and transfer a defined quantum of funds to a specified beneficiary upon that person reaching the age of 21 and completing a degree from an accredited university.

• Anticipating divorce and discord

Some of the most sensitive and complex asset protection issues for a wealthy family are those related to marital disharmony, separation and divorce, along with those established to limit the impact of family discord.

Although one hopes never to have to face the emotional and financial effects of a divorce, in many countries the divorce rate is approaching 50 per cent, while in others non-marital spouses are accumulating financial rights in a partner’s assets without ever making a conscious decision to marry or establish a formal legal relationship.

The need for structuring on the marital side stems in part from the fact that national laws on divorce, which can override any specific agreement between partners to a dissolving marriage, are evolving rapidly and unpredictably in many countries, creating a situation where unknown policies and legislation may determine the impact of a future divorce on family wealth.

Should a divorce become necessary, the prior asset structures and the initial selec-

tion of jurisdiction, often heavily influenced by the first filing by the petitioner, may have a substantial impact on the final outcome of a litigated action or agreed settlements related to the divorce.

While not all risks and disasters can be anticipated and managed, a sound approach to the structuring and administration of family assets can provide protection from many of the established patterns of wealth dissipation that have brought down many wealthy families over time. Effective structuring can thus enhance both the individual and collective future of the family.

• The “HEW Trust” option

One of the more attractive uses of a trust is to set aside a defined amount of total family wealth, often around 10 per cent or so, for the longer-term benefit of generations of beneficiaries, usually “bloodline descendants” of a defined individual, for their “Health, Education and Welfare”. This kind of trust, usually characterised by a conservative investment policy and managed in a safe foreign jurisdiction, can allow future generations of a given family to be assured of healthcare, a good education and support through disasters and other unforeseen events no matter what happens to the main trust corpus.

• Multi-jurisdictional approaches

Although all trusts, corporations and partnerships are registered and “resident” in a single jurisdiction, most asset structuring approaches for very wealthy families, especially those outside the US, are multi-jurisdictional in nature.

For families seeking to avoid undue scrutiny and preserve family privacy, a multi-jurisdictional approach has many advantages. In addition to sheltering income and assets from taxes, litigation and other risks, a multi-layered approach can make it very difficult for corporate rivals, journalists or other unauthorised parties to discover the extent and nature of a family’s wealth and operating approach.

• Integrity and integration

The key to success in any asset structuring exercise is to take a fully informed view of the system as it is set up and as it evolves, to ensure that it achieves its original purpose and that it has evolved to take into account any important regulatory or testamentary changes along the way. The principles of operation and the structures selected have to work in harmony, without placing any undue burden on future trustees, beneficiaries and settlors. **W**

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