



TRUST FORMATION



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Guidance notes

This document is an application for a trust to be prepared by CM&A (Pty)Ltd.

Registered address:

28, 7th Avenue, Edenvale 1609, Johannesburg, South Africa.

With the written consent of the Trustee(s) during his/her/their lifetime, by means of a new Letter of Wishes, the Trustee may add and delete Beneficiaries to the Trust. The Trustee(s) may also make alterations to the ways in which each beneficiary is to benefit from the Trust, again by forwarding a revised Letter of Wishes to the Trustee.

Offshore Trust Solutions for Individuals

A trust is the solution for individuals who:

- Want to preserve their wealth against uncertainty, political, economic or family.
- Want to transfer wealth to their heirs in a tax-efficient manner. They want to plan their estate to maximise the benefits of their wealth for family members and others.
- Want to transfer wealth to their heir heirs in accordance with their wishes and not in accordance with the laws of the country in which they live.
- Want to consolidate the ownership of assets owned throughout the world in one location.
- Want centralised reporting.
- Want to minimise or eliminate estate taxes arising on the death of the Trustee.



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Donor Declaration

We hereby declare for and on behalf of CM&A(Pty)Ltd, which we have today properly established

THE _____ TRUST

and we have applied for the investment(s) specified by the Trustee(s) above. The formal Trust Deed is being prepared and a copy of this, together with copies of the relevant investment documents, will be forwarded to the Trustee(s) as soon as possible.

Signed _____

Name _____

Date _____

Letter of Wishes

The Trustee of

The _____ Trust

In this letter, I/we set out certain wishes concerning the exercise of your discretion as Trustee of the Trust. These wishes are not intended to be legally binding on you and may be changed by me/us from time to time by letter to you.

I/we wish you to consult me/us during my/our lifetime regarding payments to the Beneficiaries of the Trust, and after my/our death, you are to consult

of _____

Relationship to Donor (eg. relative, lawyer, professional advisor etc.)

I/we wish the income and/or capital of the Trust:

to be accumulated

to be distributed to me/us occasionally, as required

After my/our death, I/we would prefer:

the Trust to be liquidated and the proceeds paid out equally to the Beneficiaries

the Trust to be liquidated and the proceeds paid out to the Beneficiaries as indicated in the box below

the Trust to be maintained and an annual amount paid out to my spouse during his/her lifetime, with the capital gains distributed equally to our children upon his/her death

the Trust to be maintained and dealt with as follows:

(Please tick one box only / continue on another sheet of paper if necessary)

I/we would prefer you not to pay to any Beneficiary until the age of

eighteen years

twenty-one years

thirty years

except for that Beneficiary's education or maintenance
(please tick one box only)

My/our additional wishes, if any, are as follows:
(please continue on another sheet of paper if necessary)

Signed _____ Signed _____

Trustee _____ Trustee _____

Date _____ Date _____

Address of correspondence _____



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Donor

Full Name(s)/Surname _____

ID no. _____

Residential Address _____

Postal Address (if different) _____

Trustee 1

Full Name(s)/Surname _____

ID No. _____

Residential Address _____

Trustee 2

Full Name(s)/Surname _____

ID No. _____

Residential Address _____

Trustee 3

Full Name(s)/Surname _____

ID No. _____

Residential Address _____

Beneficiary 1

Full Name(s)/Surname _____

ID No. _____

Residential Address _____

Beneficiary 2

Full Name(s)/Surname _____

ID No. _____

Residential Address _____

If you wish to appoint further Additional Trustees/ Beneficiaries, please provide details in the notes section on the following page. In addition, please indicate who should benefit in the event of the death of a named beneficiary - his/her children or perhaps the other named beneficiaries if there are no such children. If in doubt, please ask your adviser.



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TAX BENEFITS

Income Tax and Capital Gains Tax

1. Multiple beneficiaries allow multiple income splitting when profits are made by trusts.
2. Trusts never have to pay tax as the profits may be distributed to the beneficiaries, who in turn may utilize tax thresholds and tax losses. This is valid for income tax of revenue and capital nature.
3. Companies, trusts or individuals may be appointed as beneficiaries to trusts
4. Income generated by a trust's own assets utilizing its own funding, excluding trustees' or founders' loans, may be distributed to minor children up to the tax threshold without invoking section 7's provisions (tax in parent's hands) and the children need not be registered for income tax.
5. In certain circumstances trusts may have a differing year-end which means that income tax may be deferred for a period by distributing from one trust to another, provided that they are beneficiaries of one another. This is a limited tax planning opportunity.
6. Testamentary trusts have the benefit of being taxed like a natural person, without the benefit of the primary rebate, but this implies that income splitting may occur between the trust and the beneficiaries, thereby reducing the tax rates. Minors may become registered for income tax in this regard.
7. Revenue profits may be distributed to foreign beneficiaries free of local income tax. Capital gains tax is unfortunately payable by the trust on capital profits remitted to foreign beneficiaries.
8. When unusual profits are to be incurred by a trust, additional income beneficiaries may be appointed prior to the income distribution in order to utilize their (low) tax bases and be removed as beneficiaries subsequently.
9. Eliminating capital gains tax when transferring the assets to heirs on death. Estate Duty and Capital Gains Tax now go hand in hand as death is a CGT event. Bearing in mind that it could be a large amount taking into account the future growth of all assets since 1 October 2001 (base cost date) or on growth after purchase if bought after 1 October 2001. Other death costs like executor's fees on the gross value of the estate duties can easily eliminate a third of all the assets in the individual's estate. Add to this the fact that an individual can have himself replaced as beneficiary to a will or deed trust, by his own trust and so eliminate future Estate Duty on the assets inherited.

Estate Duty

10. Asset growth in the hands of trusts does not attract estate duty.
11. Trusts may be used to receive gambling or lotto winnings, thereby eliminating future estate duty on these (otherwise tax free) receipts.
12. Trust ownership of life assurance policies allow for a reduction in estate duty payable on the policy proceeds.
13. Inheritance may be received by a trust if the benefactor's will or trust deed is amended to replace the individual beneficiary by a trust, thereby avoiding future estate duty on these (otherwise tax free) receipts.
14. A beneficiary of a trust may run up a debit loan account (owing to the trust) without any tax implications, provided repayment ability can be shown (life policy, equity in property) and provided the trust does not trade. Such a debit loan has significant estate planning benefits.

Transfer Duty

15. Having a family trust as the beneficiary of a (residential) property trust means one can never fall into a transfer duty trap when there is a need to change beneficiaries to the trust.
16. Property sold to the trust by the founder may be sold back to the founder free of transfer duty.



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Donation Tax

17. Exact control is kept over the annual donation tax - free donations of R100,000 per natural person.
18. The first R100,000 of any distribution to a natural person may be donated back to the trust, provided the person has not made other donations in that year.

Secondary Tax on Companies (Dividends Tax)

19. Trust can never pay dividends Tax.

ASSET PROTECTION

20. Assets held by a trust enjoy protection from the creditors of trustees and of the founder, provided there are no loans owing by the trust to the trustee/ founder.
21. A spouse that holds all assets in trusts, avoids accrual in the event of divorce.
22. Children's rights may be protected in the case of death, disability or divorce of a parent.
23. Trusts may be appointed as beneficiaries to most types of policies, bearing in mind that estate duty will be attracted immediately in this case. The benefit of these structures is to ensure that the surviving spouse cannot squander the deceased's estate and is an important consideration when there are minor children.
24. Separate trusts may be used for separate purposes or to separate risks, including family trusts (low risk), share trusts (medium risk) and property trusts (High risk / sureties).
25. The loan account owing to a trustee or the founder (asset in that person's estate) may be eliminated through annual donations, rentals or an endowment policy.
26. Divorce proceeds may be received by a trust if the divorce settlement provides for the trust to be the recipient, normally where there are minor children or if the receiving spouse has a history of reckless money management. This arrangement will avoid future estate duty on these (otherwise tax free) receipts.

OTHER BENEFITS

27. Trusts lend great flexibility to asset and tax planning, covering all the different taxes that may become payable.
28. Trusts may be registered for VAT, but trading in a trust is frowned upon by SARS. Property speculators use trusts to great advantage.
29. Assets transferred into trusts can easily be transferred out again should legislation change. Only fixed property carry constraints.
30. Michael Katz proposed change to the taxation of trusts in 1997. To date, nothing has changed and the wealth of BEE leaders and government officials, have been amassed in trusts since then. It is therefore unlikely that they will be attacked by SARS
31. In the property market, the benefits, including tax benefits, of the trusts far exceed those of any other entity like CC's and Companies. When re-financing property, STC is eliminated and there is a lot more flexibility dealing with the withdrawal of income or capital advances.



LAST WILL & TESTAMENT

I, the undersigned,

Date of Birth: _____

married under the accrual system YES NO

to _____

presently residing at _____

hereby make my last will and testament as follows:

1. REVOCATION

I revoke all previous wills, codicils and testamentary dispositions made by me.

2. APPOINTMENT OF EXECUTORS

I hereby nominate, constitute and appoint as Executor to my estate

and,

AS WITNESSES:

1. _____

2. _____

TESTATOR/TESTATRIX



LAST WILL & TESTAMENT

2.1 I grant my Executor the power of assumption.

2.2 I grant my Executor all other powers which may be exercised by an Executor in terms of the common law or statutory law. My Executor may also, instead of transferring any asset to any heir/s, sell such asset by private agreement or in any other way my Executor may think most practical, and deliver the proceeds to such heir/s, this also applying to any immovable property/ies.

2.4 The Executor may where necessary appoint a person or persons to assist him in the administration and finalisation of my estate including attorneys, auditors, sworn valuers and auctioneers.

2.5 Where I have appointed more than one Executor, the reference to an executor in the singular will also include the reference to the plural.

3. SPECIFIC BEQUESTS

I make the following specific bequests:

AS WITNESSES:

1. _____

2. _____

TESTATOR/TESTATRIX



LAST WILL & TESTAMENT

4. HEIR

I hereby give, devise and bequeath the remainder of my estate of whatsoever kind and nature, whether movable or immovable and wheresoever situated, nothing excepted,

Four horizontal lines for text entry.

5. ALTERNATE HEIRS

5.1 Should my said husband/wife/children predecease me or die simultaneously with me or within 30 (thirty) days from date of my demise, and as a result of the same accident or calamity which caused my death, I give, devise and bequeath the residue of my estate to THE _____ TRUST. The Trustees shall add this bequest to the said Trust to form part of the trust capital. The Trustees shall utilize and apply this bequest for the benefit of the beneficiaries under the said Trust, subject to the terms of the said Trust Deed.

5.2 Should I, my husband/wife and my children die simultaneously, I give, devise and bequeath the residue of my estate to

One horizontal line for text entry.

6. GENERAL

I specifically direct that all legacies or inheritances becoming payable to any beneficiary under this my Last Will and Testament, shall not be affected by or be subject to the jus mariti or control of any husband or wife whom she/he may marry or have married and no such legacy shall fall into or form any part of the community of goods or property that may exist between her/him and the husband/wife whom she/he may marry or may have married, but such legacy shall form

AS WITNESSES:

1. _____

2. _____

TESTATOR/TESTATRIX



LAST WILL & TESTAMENT

part of her/his own separate estate and shall be quite distinct and excluded from any such community, and shall further exclude any accrual system which might be instituted by the Matrimonial Property Act No. 88 of 1984, and shall not be affected by the debts or act of her husband / his wife, and the receipt of such female/male beneficiary alone for any payments made hereunder without the assistance or consent of her husband or his wife shall be sufficient discharge to our Trustees.

7. EXCLUSION

No payment/award/bequest made in terms of this my Last Will and Testament shall be paid into the Guardian's Fund.

8. GUARDIAN

Failing a natural guardian, I appoint _____ as guardian of my minor child:

9. SPECIAL REQUESTS

I request that my body be buried/cremated

10. COLLATION

There shall be no collation.

11. REVOCATION AND ADDITIONS

I reserve to myself the right at all times hereafter to revoke and/or make all such alterations and/or additions to this my Last Will and Testament as I shall think fit, either by a separate act or at the foot hereof, desiring that all such alterations and additions thus made under my signatures shall be held as valid and effectual as if the same had been inserted herein.

SIGNED AT _____ ON THIS _____ DAY OF _____
IN THE PRESENCE OF THE UNDERSIGNED WITNESSES WHO SIGNED IN THE PRESENCE OF EACH OTHER AND IN MY PRESENCE
ALL BEING PRESENT AT THE SAME TIME.

AS WITNESSES:

1. _____

2. _____

TESTATOR/TESTATRIX



LIVING WILL

TO MY FAMILY AND MY PHYSICIAN:

I, the undersigned _____ of _____ being of sound mind and after careful consideration, make the following declaration:

1. NON-REVOCATION OF PREVIOUS DISPOSITIONS

This Living Will does not in any way revoke or vary any Will or other testamentary disposition heretofore made by me.

2. INTERPRETATION

In this Living Will, unless a contrary intention clearly appears:

2.1 "doctors" means one or more medical practitioners who may, from time to time, be called upon to give a prognosis of my condition;

2.2 "systems" means any mechanical or artificial life support systems or the use of drugs.

3. The time may come when I can no longer make decisions for my own future. In such event if my physical and/or mental condition should deteriorate to such an extent that there is no reasonable prospect of my recovery from physical illness or impairment which is expected to cause me severe distress or to render me incapable of rational existence, I request that no systems be used in order to keep me alive in circumstances where, but for the use of such systems, I would have died.

4. I further request that I be given whatever quantity of drugs which may be required to keep me free from pain or distress even if the moment of death is hastened thereby.

AS WITNESSES:

1. _____

2. _____

TESTATOR/TESTATRIX



LIVING WILL

5. It is my express wish that my doctors and members of my family who carry out my wishes in terms of clauses 3 and 4 shall be fully exonerated and exempt from all blame or liability howsoever arising as a result of their use of or their failure to use or their decision to terminate the use of any systems.

IN WITNESS WHEREOF I have hereunto set my hand at _____
on this the _____ day of _____, _____ in the presence of the undersigned
witnesses, all being present at the same time.

AS WITNESSES:

1. _____

2. _____

TESTATOR / TESTATRIX



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