CHARITABLE TRUSTS

1. Trust Formation

1.1 A Charitable Trust is formed by the Founder and Trustee executing a document called a Trust Deed, which expresses the intention to create the Trust and refers to trust property.

1.2 The trust property is initially the gift of property to the Trustee called 'the settled sum', or 'settlement'.

1.3 The Founder is the person who pays the settled sum to the Trustee and signs the Deed of Trust.

1.4 Payment of the settled sum must be an absolute gift by the Founder. There must be no arrangement between the Founder or the Trustee or any beneficiaries of the Trust to refund the settled sum whether directly or indirectly or by way of contra.

1.5 In practice, the settled sum paid by the Founder is usually a nominal amount, usually not more than $100.00.

1.6 The settled sum should be deposited promptly in a bank account operated in the name of the Trustee as Trustee of the Trust.

2. The Founder

2.1 To act as Founder, he/she must fulfil the pre-requisites for legal capacity – majority age and be of sound mind.

2.2 The only obligation of the Founder is to gift the settled sum. The Founder should not have any other involvement with, or control over the Trust after its establishment. In this way the person acting as Founder therefore has no other liability or obligation to the Trust.

2.3 To avoid any possible adverse application of the provisions of the Income Tax Assessment Act the Trust Deed will provide that the Founder is precluded from taking any benefits under the Trust. An independent person should act as Founder. The Founder should be independent of the Trustee and beneficiaries of the Trust.

3. Trustee

3.1 The Trustee may either be a natural person or persons, an incorporated association, or a Company Limited by Guarantee. It is preferable that the Trustee is an incorporated entity.

3.2 To properly identify trust property, the Trustee should disclose that it acts as Trustee in respect of all activities undertaken on behalf of the Trust.

3.3 A Trustee is personally liable for all debts and other liabilities incurred on behalf of the Trust. If an individual acts as Trustee, then all his personal assets are exposed to the liabilities incurred by him on behalf of the Trust.

The Trustee has a right of indemnity against the assets of the Trust for liabilities incurred on behalf of the Trust. However, the personal assets of the Trustee could still be exposed to any shortfall between the amount claimed by creditors of the

Trust, and the amount recovered by virtue of this right of indemnity against the assets of the Trust.

3.4 Where the Trustee conducts a business operation, it is prudent to have a corporate entity act as Trustee of the Trust, thereby providing limited liability.

3.5 The Trustee is the titleholder of all the Trust property, but has a personal obligation to deal with this property for the benefit of the beneficiaries or Objects of the Trust.

3.6 The Trust Deed normally confers on the Trustee wide discretionary powers, enabling the Trustee to deal with and manage the Trust property.

4. Beneficiaries

4.1 The Trust Deed identifies potential beneficiaries who may be specifically named or identified as a class of organisation that are also charities with Tax Concession Charity (TCC) endorsement.

4.2 In a Discretionary Trust, a beneficiary organisation does not have any property rights in the Trust property and cannot require the Trustee to exercise his or her discretion, so as to appoint income or capital in favour of the beneficiary. The only right that a beneficiary has is to require the Trustee to exercise his or her discretion in good faith.

4.3 A Charitable Trust may operate for a fixed term, if nominated in the Trust Deed, but are commonly Trusts in perpetuity.

4.4 During the term of the Trust, the Trustee may distribute income and capital between any of the beneficiaries, subject to the specific conditions of the Trust Deed.

4.5 At the end of the term of the Trust, the beneficiaries are entitled to receive the capital and income of the Trust.

HARDING & ASSOCIATES

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