

## Chapter 4

# Trusts

### **Chapter Objectives**

On completion of this chapter you should have a basic knowledge on:

- The Legal Principles Applicable to Trusts
- The Purposes of the Various Types of Trusts
- The Advantages of Using Trusts in Estate Planning
- The Duties and Powers of Trustees in Estate Administration

## Chapter 4

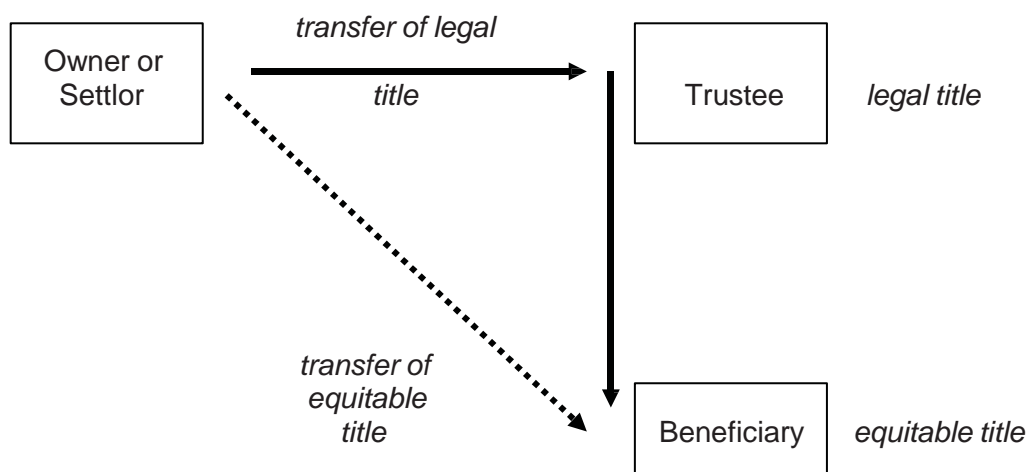
# Trusts

### Introduction

We have briefly learnt about trusts in Chapter One. In this chapter we shall go into further details on the subject and appreciate why trust arrangements are considered an important component of estate planning. The impression many people have when considering estate planning is that writing a will is adequate for purposes of distribution of the estate. They do not realise that in some circumstances or for specific types of assets, creation of trusts may be more suitable and appropriate. What then, is a trust?

***“A trust is created when the owner of an asset passes the legal title to another to hold on trust for the benefit of one or more beneficiaries”.***

Let us understand this arrangement further with the help of the following diagram:



The diagram above must be further explained to understand and appreciate the general principles of trusts.

1. The absolute owner of an asset is deemed to hold the legal and equitable (or beneficial) title. Under a trust arrangement he is called a settlor.

2. The settlor transfers the legal title to a trustee. This is most commonly done by a trust deed or by means of a will. The trustee is bound by the terms and conditions of the Deed or Will.
3. The trustee “holds” and manages the assets for the benefit of the beneficiaries. He thus has a fiduciary duty towards them, and who are deemed to have the equitable or beneficial title of the assets.

The above general principles of a trust were “born” several hundred years ago in England and became part of the law there. Malaysia has of course, inherited these concepts but over the years, as was expected, the legal principles governing trusts have evolved and have been modified by statutory and case law (or judicial precedents).

### **Purposes of a Trust**

One of the main purposes of creating a trust is to authorise the trustee to manage the assets for the benefit of beneficiary. This may arise because of the following circumstances or a combination of these:

- i) the trustee has special skills or knowledge  
eg. for investment purposes
- ii) the settlor will be away from the country for a considerable length of time
- iii) the settlor may make provisions to appoint the trustee to manage the asset upon his death.

Secondly where a trustee is needed as a custodian to protect the interest of beneficiaries.  
eg. as seen in the unit trusts industry in Malaysia

Thirdly, trust arrangements may also protect the beneficiaries from creditors of the settlor. Such protection is seen in statute law, more specifically in Paragraph 5 of Schedule 10 of the Financial Services Act 2013 or also by creation of irrevocable trusts (to be discussed later).

Fourthly, in certain countries (may not be relevant in Malaysia) trust arrangements can also provide tax advantages on investments.

### **Purposes of Trusts in Estate Planning**

Whilst a Will may be the most appropriate instrument in passing on gifts to beneficiaries upon the death of a Testator, in some circumstances the creation of a trust may be more advisable. This is because, a trustee can be appointed to manage the assets for the beneficiaries for the time being, and if instructed to do so, may transfer such assets to them at a later time. Let us look at some common examples where trustees are often appointed, to understand these purposes better.

- i) When beneficiaries of the estate are minors or young adults who may not be ready or lack the knowledge to manage assets.
- ii) When the management of the assets require specialised knowledge and skill.
- iii) When there is concern that disputes may arise amongst the beneficiaries.

Assets which are the subject matter of a living trust also have the advantage in that they do not form part of the probate estate and can be dealt with without the need of the Grant of Probate or Letters of Administration from the courts.

In circumstances as seen in the examples above, the trustees who may be individuals, professionals or trust corporations ought to be given specific instructions as to the management of the assets. Such instructions are usually stated in a Will or Trust Deed which are the most common and important ways that trusts are created. Let us look at some other common ways of creating trusts.

### **How are Trusts Created?**

- 1) By means of a Will
- 2) By a trust deed
- 3) Statutory law eg. Paragraph 5 of Schedule 10 of the Financial Services Act 2013
- 4) By implication
- 5) By oral instructions

We shall see the explanation and examples of some of these later in this chapter.

### **Classification of Trusts**

Trusts may be identified as a complex area of law if one were to study it in great detail. Law students usually spend at least one year in law school to understand the subject. However, for the purposes of estate planning, we need to understand only the broad basic principles that are relevant. One approach towards this direction would be to get familiar with the various aspects of trusts through the manner in which they are classified. Here again, different authors will have their own opinion on such methods of classification. The approach shown below is an attempt to understand the various types of trusts and their features in the simplest way possible and therefore it cannot be complete or exhaustive.

### **Types of Trusts based on their Characteristics**

- i) A **living (or inter vivos)** trust is one that is created and takes effect during the life time of the Settlor. This trust which is usually created by a trust deed, is effectively an “arrangement”

between the settlor and the trustee. In comparison to this, a **testamentary trust** is created by means of a Will in which case it becomes effective upon the death of the testator.

- ii) A **revocable (living) trust** is one where the Settlor reserves the rights to change or end the trust at any time. Such a trust is termed as an incomplete gift and has certain consequences for tax and bankruptcy purposes. An **irrevocable (living) trust** is created when the assets are permanently placed in trust and the Settlor cannot reclaim them. One of the advantages of this type of trust is that the assets may be exempted from claims under bankruptcy proceedings (details to be seen later). It must be noted that a testamentary trust, created under a will is always revocable until the death of the testator, when it of course, becomes irrevocable.
- iii) When there is a class of beneficiaries eg. all the children of the settlor, a **fixed trust** stipulates a specific proportion is to be distributed to them and the trustee has no element of discretion to vary the shares. A **bare trust** is the most minimal form of fixed trust whereby the trustee holds the rights and follows the instructions of the beneficiaries. A **discretionary trust** on the other hand allows the trustee to distribute to members within the class of beneficiaries and in whatever proportion he thinks is appropriate.

**Express trusts** are those which are created whereby the intentions of the Settlor are as to the assets and beneficiaries are clearly spelt out. These are of course usually done by a trust deed or by means of a Will. These are the most common types of trusts used for estate planning purposes. In contrast to express trusts, there are **implied trusts** such as resulting trusts and constructive trusts. **Resulting trusts** are those implied by the law (or the courts), whereby they are not intentionally created by the Settlor. One situation, where such a trust is said to arise is when a testamentary trust fails because a lone beneficiary has predeceased the testator (settlor). It is said that the assets which is the subject matter of the trust will “result back” to the Settlor (or his estate). A second situation where a resultant trust will arise is where a person contributes to a purchase price of a property, he is deemed to have an equitable (or beneficial) interest in that property although his name will not be identified as the registered owner. His equitable interest will be proportionate to the purchase price of the property. For example, if a person contributes RM 250,000 towards the purchase of a house that costs RM 1 million, it is deemed that he has acquired 25% of its value based on the resulting trust principle. A **constructive trust** also arises by operation of law. If for example, a person has received money which to his knowledge was paid to him mistakenly, the law will deem him to be a constructive trustee. Such a person is said to hold the money in constructive trust for the person who is rightly entitled to it. In practice, constructive trusts can arise in various ways, whereby the courts will always analyse the facts and the circumstances before treating them as such.

A **statutory trust** is created by means of **Paragraph 5 of Schedule 10 of the Financial Services Act 2013**. The object of this trust is to allow for nominees of a life insurance or personal accident policy to benefit from the policy moneys which are payable upon the death of the policyowner in such a manner that these moneys are not subject to the creditors of the estate. This is specified in subparagraph (1) and (2) of Paragraph 5 of Schedule 10.

**Paragraph 5 (1) of Schedule 10 of FSA 2013** *A nomination by a policy owner, other than a muslim policy owner, shall create a trust in favour of the nominee of the policy moneys payable upon the death of the policy owner, if-*

*(a) the nominee is his spouse or child; or*

*(b) where there is no spouse or child living at the time of nomination, the nominee is his parent,*

**Paragraph 5 (2) of Schedule 10 of FSA 2013** *Notwithstanding any written law to the contrary, a payment under subparagraph (1) shall not form part of the estate of the deceased policy owner or be subject to his debts.*

From the above, the following must be specially noted:

- i) This trust applies to non-muslim policy owners only.
- ii) Nominees who enjoy the benefit of the trust are spouse, children and parents only.
- iii) The benefit of the trust i.e. the “creditor protection” privilege takes effect only upon the death of the policyowner i.e. for the policy moneys which are payable upon death.

The other subsections of Subparagraph 5 of Schedule 10 i.e (3), (4) and (5) prescribe administrative aspects of this statutory trust which, it must be mentioned, significantly vary from conventional trust principles. (The details of these would not be included in scope of this module). Prior to this “Section 166 trust”, statutory trusts were governed by Section 23 of the Civil Law Act 1956.

A **Secret Trust** arises when a Will states that a particular asset is to be given to a beneficiary as a gift but the testator has agreed with the beneficiary that the latter is to hold the asset as a trustee for someone else. There is no mention in the Will, that the asset specified is the subject matter of a trust. Thus the trust, in this case is a secret and takes effect on the death of the testator.

A **Half Secret Trust** occurs where the asset is left by Will to a “beneficiary” and it states that he is to hold it in trust. The terms or the beneficiaries of the trust are not stated in the Will but are agreed between testator and the “beneficiary”.

**Off-Shore Trusts** can be created outside the country of the individual, more specifically in off-shore financial centers that are regarded tax free havens eg. Cayman Islands, Bahamas and Labuan.

The benefits of an off-shore trust may be the following:

- i) Tax advantages – provided the beneficiaries of the trusts are non-residents, trust assets and the income derived from them may not be liable for tax.
- ii) Secrecy – The trust may be kept confidential, as only the trustee and settlor will have knowledge of the assets under the trust.

- iii) Reducing political and economic risk – an off-shore trust can minimise the consequence of such risks which may be present in the country of the settlor.

Most of the types of trusts discussed thus far are **private trusts** (see table on Classification of Trusts). Public Trusts on the other hand include **Charitable Trusts** and **Purpose Trusts**.

The objective of charitable trusts is to benefit the public at large or a specific class of people. The main advantage of such trusts is that they are unusually free from income tax. If trusts are created for public purposes but not necessarily for charity, they are classified as purpose trusts eg. a trust for the maintenance and benefit of specific animals.

### **The 3 Certainties**

There have been several cases in the past whereby the testators instructions in the Will, created ambiguities as to whether a particular asset was intended by the testator as a outright gift or the subject matter of a trust. These problems were resolved by the courts in England when the judge declared in a very famous case **Knight vs Knight** that for a trust to be recognised as such, and be enforceable in law, it must be completely constituted, whereby the following 3 factors must be present.

- i) The Settlor's (or testator's) **intention** must be certain and clear as to express his desire to create a trust.
- ii) The **subject matter** or the assets referred to by the Settlor must certain.
- iii) The **object matter** or beneficiary or class of beneficiaries whom the Settlor wishes to provide must be certain.

The above three factors are well known as the “**3 Certainties**”. If any one of these are not present, incomplete or vague, the trust will be considered as having “failed”. If the trust fails, it reverts to the Settlor's estate.

### **The Main Components and Features of a Trust**

There are five important components of a trust. They are as follows:

- 1) **Settlor** : a person who intentionally sets up the trust. Only a natural person can create a trust under a Will, but a business organisation can create a living trust.
- 2) **Trust Property** : consist of rights, tangible or intangible interests in assets held under trust;
- 3) **Beneficiary** : a person for whom the trust exists. A beneficiary does not have to be a natural person (eg. business organisation) and can also be the settlor.

- 4) **Trustee** : a person or trust corporation who has been appointed to hold and manage property for the beneficiary. A trustee and beneficiary have a fiduciary relationship (i.e. the trustee must always act in the best interest of the beneficiary.)
- 5) **Terms** : often appear in a Trust Deed or where it is silent, one has to make reference to the Trustee Act 1949 for compliance.

### **Powers and Duties of a Trustee**

A trustee is said to owe a fiduciary duty to beneficiaries, i.e. he must always act in their best interest. In express trusts, the powers of a trustee may be specified in the trust deed, deed of appointment or in the Will. If the duties are not stated or implied, one must look at the **Trustee Act 1949**. Generally the powers provided in the Act for trustees are in addition to those conferred by the instrument, if any (eg. the trust deed). But these powers only apply if any, in so far as a contrary (lawful) intention is not expressed in the instrument. They include administrative powers (which are necessary for the administration of the trust) and dispositive powers (necessary to pay maintenance and advancement to beneficiaries).

Thus, a trustee has to act honestly and failure to comply with his duties as spelt out in the instrument or the Act may tantamount to a breach of duty. He may be removed as a trustee by a court and his actions may even be considered a civil or criminal “breach of trust”.

### **Application of Trusts in Estate Planning**

Having had a broad understanding of trusts in this chapter thus far, we may now summarise their uses in estate planning.

#### **i) Non-probate estate**

This has already been explained earlier and is one of the main advantages of creating trusts. The assets which are the subject matter of the trust, can be dealt with without going through the administrative, and sometimes lengthy process of application of Grant of Probate or Letters of Administration.

#### **ii) Creditor Protection**

Statutory trusts for life insurance and personal accident policies have also been discussed earlier and these are also prominent estate planning tools, particularly for business persons and high net worth individuals. Yet another aspect of “creditor protection” is the creation of irrevocable trusts for insurance policies or any other assets of the individual. Such trust assets, in the absence of fraud, and provided they satisfy the requirements of the **Bankruptcy Act 1967** are not considered as part of the assets of the Settlor should he be subject to bankruptcy



proceedings. For example, if the assets were to become a subject matter of an irrevocable trust, created more than 5 years prior to the “notice of bankruptcy”, then, they are not subject to be “seized” by the Director of Insolvency (previously Official Assignee) to be utilised towards the satisfaction of creditor’s claims. Of course, this is subject to the various legal principles and processes which is not the purpose and scope of this course.

### **iii) Trust created by Muslims**

Living (inter vivos), irrevocable trusts created by Muslims, also allow the assets which are divested by the Settlor to be dealt with according to the terms of the trust instrument. As was seen in the earlier part of the course, only assets owned by a muslim at the time of his death are subject to Islamic Law principles with regards to their distribution among beneficiaries. However, a settlement created by an irrevocable, living trust is deemed to be a gift given by a Muslim during his lifetime and does not constitute as part of his estate at the time of his death. A common example that is seen in practice is when a settlor enters into a trust arrangement with a trusts corporation to manage the funds strictly for the benefit of his children. Such a trust created should be declared irrevocable and the settlor should not retain any interest or benefit to qualify it as an inter-vivos gift. The share to each beneficiary can be given in any proportion depending on the wishes of the settlor.

## **Corporate Trustees**

The role of a trustee is a very important responsibility, especially when managing large or complex estate matters. Individual trustees may not be appropriate in these circumstances as they do not have the professional knowledge required as well as for other reasons, attributed to the “human factor” aspect of managing a trust. The main advantages of appointing a trust corporation are as follows:

- a) An individual when appointed trustee, can predecease the Settlor or die half way through the administration of the trust. A trust corporation never dies as a legal entity.
- b) A trust corporation provides expertise in the managing and administration of trusts. An individual may not be familiar with or have the time to attend to these matters.
- c) There is security when a trust corporation appointed is being affiliated to a bank (which is quite common in Malaysia). Trust corporations are also regulate by the Trustees (Incorporation) Act 1952.
- d) As a company, professional trustees are unbiased and will carry out its duties with impartiality.

Trust corporations can act as trustees for individuals, minors, disabled persons or corporations. They discuss the terms of the trust with the settlors and draft a trust deed accordingly. The identity

of the beneficiaries of the trust must be specified, the assets which are the subject matter of the trust be stated and the objectives and terms of the trust clearly defined. (A sample of a trust deed is available at the appendix to this chapter).

### **Amanah Raya Berhad (ARB)**

The Department of Public Trustee and Official Administrator was corporatised in 1995 and commenced its operations as Amanah Raya Berhad under the Public Trust Corporation Act 1995. It is authorised under the Act to provide a range of services such as legal, financial and administrative duties in preparing trust documents and Wills. The other services provided include acting as administrators and executors of the estate's deceased persons.

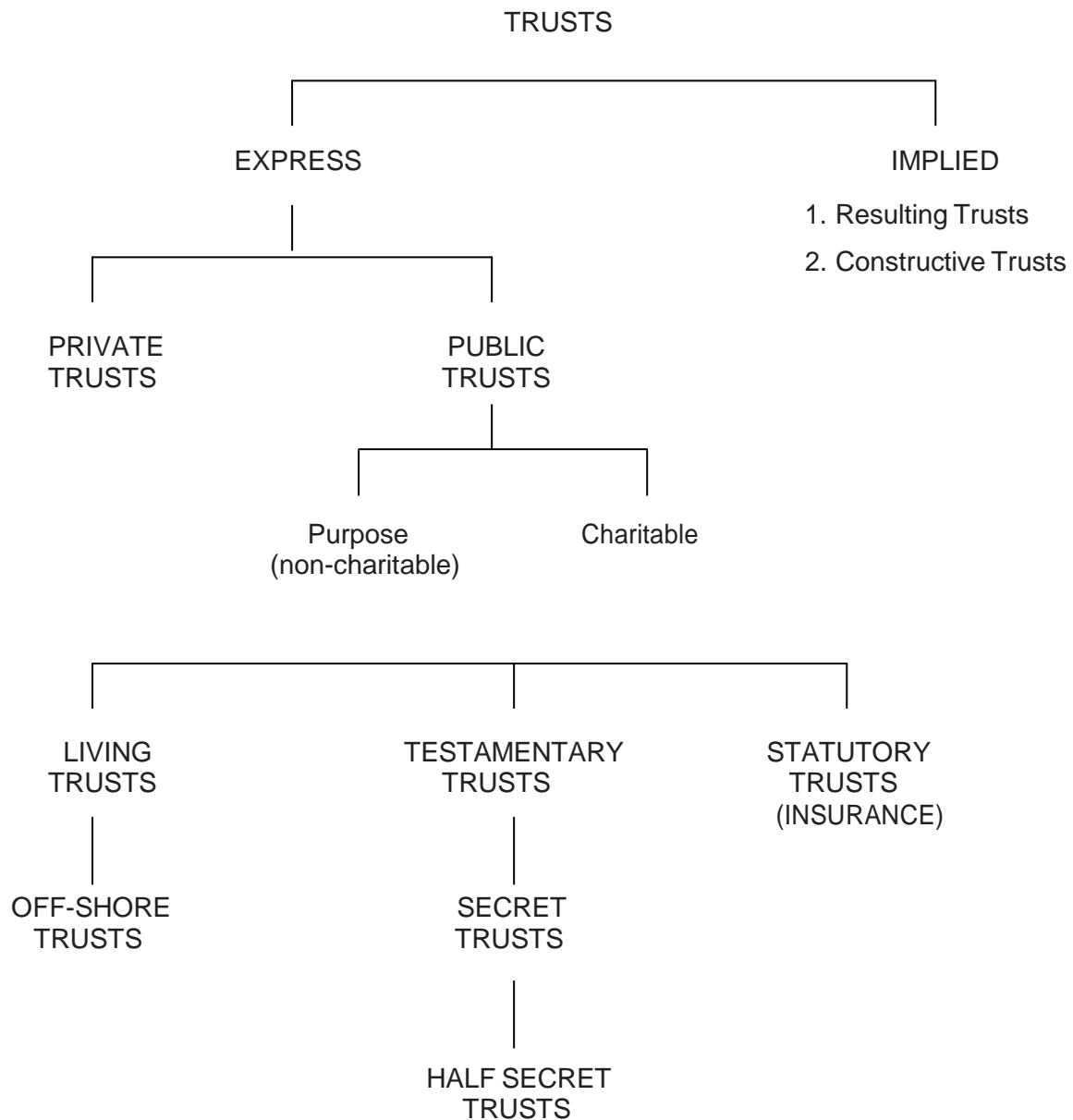
It is important for every estate planner to familiarise themselves with the services provided by ARB and the range of fees charged by them. Of particular importance are the various provisions in the EPF Act 1991 and the Financial Services Act 2013 (the Insurance Act 1996 was incorporated into FSA) which direct moneys to be paid to ARB under specific circumstances.

### **Taxation of Trust Assets**

The general principles of tax apply to income on profits earned by the assets which are the subject matter of a trust. In Malaysia these are subject to the prevailing corporate tax rate. If the income or any part of it, earned from the trust is paid to a beneficiary, then he is liable for any tax that may be incurred as a result of receiving the benefit. If this is the case, the amount paid to the beneficiary is deductible from the total income earned by the trustee.

If the trustee is separately assessed, the beneficiary is given a tax credit corresponding to the amount paid by the trustee. If the trustee can however prove that the beneficiary is taxable at a lower rate or not liable to any tax, a corresponding share of the trust income accrued to them will be taxed at the appropriate lower rate or he may not have to pay any tax at all. On this point, it must be noted that investments and returns in trust instruments may qualify for tax exemption if they qualify under the "approved schemes" as set out by the Inland Revenue (LHDN) guidelines. For example, Amanah Raya Bhd investment instruments for these purposes are tax exempt. There are several other rules that apply to taxation of trusts and the impact on beneficiaries and one would need to consult a tax consultant for further details as this would not be within the scope of the module.

## CLASSIFICATION OF TRUSTS



### **Characteristics of Trust**

Living Trusts	vs	Testamentary Trusts
Fixed Trusts (& Bare Trusts)	vs	Discretionary Trusts
Revocable Trusts	vs	Irrevocable Trusts

**Conclusion**

Trusts as estate planning tools, are very useful especially for high net-worth individuals. It is indeed the responsibility of the financial planner to identify and advise his clients as to the importance and the advantages of creating trusts for the appropriate assets of a client. It is often said that outright gifts to the beneficiaries of the estate may not “stay” for very long “in their hands”. This may be as a result of lack of their maturity, knowledge and management skills in dealing with the assets of the estate. In creating trusts, especially with the appointment of corporate trustees, this problem may be avoided and the objective of clients in making long-term provisions for their beneficiaries and dependents may be fulfilled.

## APPENDIX I

### Sample Draft of Trust Deed

THIS DEED OF TRUST is made on the 28th day of March 1997 between Tan Kee Seng (NRIC No. \_\_\_\_\_) of 237 Jalan Bukit 50100 KUALA LUMPUR (herein called the “Settlor”) of the one part and XYZ Trustee (Malaysia) Berhad of 47 Jalan Gopeng, 50450 KUALA LUMPUR (herein called “the Trustees”) of the other part.

#### WHEREAS:

1. By a whole life Policy of Assurance issued by ABC Life Assurance Sdn Bhd dated the 1st day of March 1997 and numbered xxxxxxxx (hereinafter called “the Policy”) the sum of Ringgit One Million (RM1,000,000.00) and bonuses are assured to be paid on the death of the Settlor subject to the payment by the Settlor of the annual premium of RM xxxx
2. The Settlor has on even date appointed XYZ Trustee (Malaysia) Berhad as the Trustees of the Policy to hold upon the trust hereinafter declared for the benefit of his wife and children named in the Policy herein called the “Beneficiaries” as follows :-

- |     |   |          |                  |
|-----|---|----------|------------------|
| (a) | - | wife     | (NRIC NO. _____) |
| (b) | - | daughter | (NRIC NO. _____) |
| (c) | - | daughter | (NRIC NO. _____) |
| (d) | - | daughter | (NRIC NO. _____) |
| (e) | - | son      | (NRIC NO. _____) |

#### NOW THIS DEED WITNESSETH AS FOLLOWS:

- 1) The Settlor shall have the right to amend, modify or change the proportion or amount to be paid to each Beneficiary.

#### TRUSTEES

- 2) The Settlor hereby appoints XYZ TRUSTEE (MALAYSIA) BERHAD to be the Trustees and reserves the right to appoint additional trustee or trustees.

## INVESTMENT

- 3) Any capital monies or other monies required to be invested under the trust hereof may be invested in the name or under the control of the Trustee in the purchase of Trustee stocks and shares or may be placed and left on fixed deposit or in gilts unit trusts with any reputable bank or other financial institutions for such period and on such terms as to interest or otherwise in all respect as the Trustees shall in their absolute discretion from time to time consider appropriate in all the circumstances. The Trustees shall not be held liable for any loss or damage to the trust fund arising as a result of their exercise or failure to exercise such power or discretion.

## CAPITAL & INCOME

- 4) (a) The Trustees shall upon receipt of the policy monies pay a sum of Ringgit Malaysia Three Hundred Thousand only (RM300,000) to \_\_\_\_\_ (wife) and hold upon trust the balance of the said policy monies for the Settlor's children who are as follows : \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ who have attained the age of thirty years in equal shares absolutely.
- (b) The Settlor directs the Trustees to apply the net annual income of the policy monies and investment hereof for the maintenance expenses of the Settlor's children who are named herein as the Beneficiaries and it is hereby declared that the Trustees shall have absolute discretion as to how much income they will apply to any one of the Beneficiaries.
- (c) The Settlor declares that any amounts paid as provided in Clause 4(d) shall be treated as advances to the Beneficiaries and separate accounts shall be kept for each Beneficiary for the purpose of determining the final share each beneficiary will be entitled to on the determination of this trust.
- (d) The Settlor further directs that if at any time the income is not sufficient to pay towards the maintenance expenses for any reason whatsoever the Trustees may resort to any part or parts of the capital monies and apply and advance such amount to make up the deficiency.

## POWERS OF TRUSTEES

- 5) The Trustees shall have full right and power upon the written request of the Settlor to give consent provided always that the 'Provisions' of the Policy so permit to enable the Settlor.
- (a) To borrow moneys upon the security of the Policy for the benefit of the Beneficiaries provided always that the power hereby conferred shall be exercisable only when the Policy shall have obtained a loan value in accordance with the provisions contained in the Policy.
- (b) To surrender the Policy or to convert the Policy into a paid-up assurance for a reduced basic sum assured free of payment of future premiums provided always that the power

hereby conferred shall be exercisable only when the Policy shall have obtained surrender value in accordance with the provisions contained in the Policy. Any moneys received upon such surrender or any Policy issued upon such conversion shall be held by the Trustees upon the trust applicable to the Policy.

- (c) Where the Policy is issued with profits or with additional (rider) benefits, to surrender any bonus or additional benefits or addition to the basic sum assured or any part thereof for the reduction of the premium payable but for no other purpose and provided always that this power shall be exercisable subject to any provisions endorsed on the Policy as to the vesting of bonus or additional benefits or addition to the basic sum assured and disposal thereof. Any bonus or additional benefit or addition to the basic sum assured not applied in accordance with this power shall be received and held by the Trustees upon the trusts applicable to the Policy or left with the company to be accumulated upon the trust applicable to the Policy.
- (d) To discontinue any accidental death benefit provision, if any, at any time endorsed on the Policy.
- (e) To exercise any conversion privilege and/or discontinue any term rider provision, if any, at any time endorsed on the Policy in any manner provided for by such endorsement.
- (f) To apply to the company for an extended term assurance upon the terms and subject to the conditions contained in the Policy and/or any endorsement thereon applicable thereto. Any such extended term assurance shall be held by the Trustee upon the trusts applicable to the Policy.

## **EXONERATION OF TRUSTEES**

- 6) It shall not be obligatory on the Trustees to enforce any of the covenants hereinbefore contained in relation to the Policy or to apply any of the monies payable under the Policy in payment of premiums or to see to the Policy being kept in force and no omission to do any of the things hereinbefore specified by the Trustees shall be chargeable as breach of trust and the Trustees shall not be answerable for the Policy becoming void through any means whatsoever.

## **POWER OF TRUSTEES TO CHARGE**

- 7) (a) XYZ Trustee (Malaysia) Berhad shall be entitled to charge an acceptance fee of 1 1/2% on receipt of the Policy monies.
- (b) The Trustees shall be entitled to charge an annual management fee of 5% on the income of the Policy's monies and any investments thereof subject to a minimum sum of RM1,000. The annual fee shall be paid yearly in arrears from the day the trust fund is managed. Such annual fee may be paid out of the Policy monies or the investment or income thereof as the Trustees shall think fit in all the circumstances.

IN WITNESS WHEREOF the parties hereunto have set their seals on the day of this deed.

SIGNED by the said )  
Settlor Tan Kee Seng )  
 )  
in the presence of : )  
 )  
 )  
..... )

THE COMMON SEAL OF )  
XYZ TRUSTEE (MALAYSIA) )  
BERHAD was hereunto )  
affixed in the presence of: )  
 )  
 )  
..... )



## Case Study

Albert has retired as an executive director of a multinational company at the age of 55 years. His EPF contributions and retirement gratuity from his employers total about RM 2.5 Million. His wife who is 49 years of age is employed as an executive and his two sons are 15 and 17 years of age. Albert is keen to invest up to RM 2 Million on a long term basis to provide for his and his wife's retirement as well as for emergency funds that may be required for anyone in the family. He has already set aside some moneys for his son's tertiary education and has also written a Will a few years prior to his retirement, to deal with all his other assets. How would you advise Albert?

## Recommendation and Advice

Albert should be advised to consider creating a living trust of the RM 2 Million in which case, he should deal with a corporate trustee. He must discuss the various details of the trust arrangements with such a trustee and express his objectives and goals. In dealing with Albert, the trustees would also make further suggestions and recommendations. They must also disclose their various terms and conditions as well as the fees that they are going to charge in executing their role as trustees.

The following are examples of the main terms of the trust, details of which will be found in the trust deed. This deed is effectively an agreement entered into between Albert and the trustees. Albert may choose to receive a percentage of the investment income as long as he lives. For emergency funds, such as medical expenses for major illnesses to anyone in the family, the trustees may be directed to pay an advance from the capital sum. Similarly, advancements may also be paid for educational expenses for the sons, if so required. If Albert were to pass away, these similar arrangements may be carried on for the benefit of his wife and the two sons. If Albert or his wife do not utilise all the funds in the trust, the balance may be shared equally between the two sons. These funds are normally recommended to be vested in them absolutely provided they have reached a mature age such as 30 years or 35 years. The investment returns on the trust fund will continue to be reinvested thus enabling it to grow, unless withdrawal for any specific purposes as stated earlier.