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Your wealth and how to 'trust' it

Trusts can serve a variety of needs, including making provisions for special needs kids and preserving one's assets

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Most people know that making a will is an essential step towards distributing our wealth to our loved ones when we are no longer around, but an increasing number of us are realising that it is no longer enough.

There are other steps you can take as well, including a Lasting Power of Attorney, which is effective when you are still alive but may have lost your mental faculties, or an Advance Medical Directive that kicks in if terminal illness strikes.

Some people might even want to set up a trust for a variety of reasons, such as making provisions for their special needs children.

Mr Henny Liow, chief trust officer at DBS Private Bank, says not every family needs a trust; it depends on the circumstances and needs.

For example, a trust may be appropriate if a person "wants to avoid probate formalities and freezing of his assets after his lifetime, provide for vulnerable dependants after his lifetime, protect the family's wealth from creditors and spendthrift heirs, pay for medical and other emergencies in the event of his disability, benefit charities and other social causes after his lifetime", notes Mr Liow.

Real-life examples

CASE 1

Mr and Mrs George Tan (not their real names), both 67, have a pair of 37-year old autistic twins. The twins have completed their education in a school for people with special needs.

Mr Tan left his job to look after their sons when they were very young, and Mrs Tan has been the sole breadwinner. Last year, she retired from teaching to look after Mr Tan, who has been diagnosed with lung cancer.

Mr Tan has focused on investing the family's savings to provide for their own retirement and for their two sons. He bought various types of insurance policies, including a mortgage protection policy so that their property will be free from any

Despite having done some financial planning, the couple did not have peace of mind because they had no one to manage the financial affairs for their two sons after they die.

When the Special Needs Trust Company (SNTC) launched its trust service in October 2009, Mr and Mrs Tan decided to set up two trust accounts for their sons, so that SNTC could safeguard the money the couple intended to leave behind for them.

Mr and Mrs Tan met SNTC's case manager to develop individual care plans for their two sons. Each care plan made provisions for each son's daily living, medical and residential care needs, and projected the amount required to provide for them after the death of both parents.

The parents also set out their wishes in the Letter of Intent to SNTC, detailing how the trust funds were to be used to care for the two sons.

The trust accounts were set up in 2009, and Mr Tan continues to meet the SNTC case manager to update the care plans periodically to reflect his sons' changing needs. During these reviews, SNTC's case manager advised the couple to take the necessary action to ensure that upon their deaths, the trust would receive the assets they have earmarked for their sons.

Since then, the Tans have made their wills to give instructions to the executors to liquidate their property and inject the proceeds into the two trust accounts. They have also made nominations of future payouts from the various insurance policies to the two trust accounts.

The Tans also managed to find two friends to be appointed as successor deputies for their two sons. Also, the couple drew up their respective Lasting Power of Attorney forms to appoint donees to manage their affairs in the event that they lose their mental capacities.

They are aware that their two sons will not be able to live independently in the community after the death or incapacity of either parent.

place plans for the personal and financial affairs of their sons.

CASE 2

Mr and Mrs Michael Chong (not their real names) had successful careers and have accumulated substantial assets over the years.

They have two children, aged 22 and 24, with special needs and who are incapable of caring for themselves or managing their inheritance.

The couple are clients of local law firm Characterist.

Ms Lie Chin Chin, the firm's managing director, said: "Mr and Mrs Chong finally enjoyed peace of mind when they formed a trust to care for their children beyond their own deaths and for the lives of the children."

They appointed three people as joint trustees over a substantial pool of assets. The trustees could utilise money for the monthly care and support of the children, capped at $2,500 per child.

The cap increases by 4 per cent each year to keep up with inflation. The trustees could also utilise funds for the children's medical needs at their discretion.

Mr and Mrs Chong directed their trustees not to sell the family home for as long as any of the children are alive. Upon both children's death, the trustees are to donate all remaining assets to a designated charity.

For accountability, the trust accounts are to be audited by chartered accountants.

CASE 3

Mr Damien Sim (not his real name) rose from poverty to become the owner of a successful business and a substantial portfolio of properties.

The trust requires his children to work together and dis-entitles any beneficiary who contests it. It sets aside money for family gatherings, permits discretionary allocation of income for educational and living needs, while requiring the assets to be preserved for decades to ensure future generations are provided for.

CASE 4

Mr Henny Liow, chief trust officer at DBS Private Bank, recalled the case of a successful Taiwanese entrepreneur who wanted to give back to society.

Mr Mark He (not his real name), formed a trust with instructions to fund eligible tertiary students in Taiwan as well as to pay for Taiwanese students to study in overseas universities. The trust is a charitable one and can last perpetually.

Case 5 A Singapore family has children who are extremely successful in their respective careers but have little interest in managing the wealth their parents built up.

The parents established a trust with DBS Private Bank with a specific distribution plan to take care of the well-being of their children and future grandchildren, while leaving the management of the assets in the hands of a professional investment manager.

Lorna Tan

What is a trust? In her book, Instant Legal Protection For Your Family, Ms Lie Chin Chin, managing director of local law firm Characterist, explains that a trust is a legal arrangement where an individual (settlor) places assets into a trust for the appointed trustee to manage and administer for the benefit of others (beneficiaries), such as family members, friends or charitable bodies.

The assets can include property, cash, investment portfolios, shares, family businesses and jewellery.

Ms Lie says that the trust document will contain specific instructions for the trustee to manage, protect and distribute the assets and income. It will also set out the trustee's duties and responsibilities.

The trustee has a statutory obligation to act in the best interest of the beneficiaries. A protector can be appointed by the settlor to safeguard the trust and prevent a trustee from abusing his powers, adds Ms Lie.

What are the main reasons for setting up a trust? Trusts serve a variety of purposes and are typically used for wealth accumulation and asset protection.

Ms Chin outlines five reasons why a trust will be useful:

1. PROTECTION FROM CREDITORS

holder of the trust assets, creditor access to the assets may be limited to the settlor's beneficial share.

2. WEALTH MANAGEMENT

A person who wants to distribute assets to his dependants who are incapable of managing their own finances or wealth can use a trust to control the distribution.

3. PRESERVATION

A person who does not want his assets to be dissipated can use a trust to consolidate them for continuity of administration and preservation of growth potential. The settlor can also use a trust to preserve assets for future generations, even for beneficiaries who do not yet exist when the trust is formed.

4. FAMILY UNITY

If you want to preserve and enhance relationships within families or to prevent disputes over the inheritance of your assets, you can use a trust to promote family togetherness or shield assets from becoming the object of disputes.

5. TAX EFFECTIVENESS

A person who wants to protect his assets from being depleted by income tax can use a trust to channel asset income or profits to family members on lower income tax brackets, thereby subjecting that income or profits to lower tax rates. Similarly, a trust can be used to protect assets from capital gains or death taxes that may be applicable in other jurisdictions.

What are the common types of trusts?

In Mr Liow's experience, an inter vivos revocable discretionary trust is the most common type of trust in Asia.

discretion to determine the entitlement of the beneficiaries but guided by the settlor," he says.

Ms Lie notes that there are two common types of trusts - testamentary and family.

A testamentary trust is formed in a will to take effect only after the settlor's death. It is often used to preserve assets from immediate depletion or mismanagement, to maintain family unity and to assist family members who have little or no financial management abilities.

Family trusts (also known as living trusts) can be formed during the settlor's lifetime by executing a trust deed together with the transfer of assets to the trustee. Such trusts are commonly used for tax effectiveness and protection of assets from creditors.

What are the costs involved in a trust?

The fees for setting up a trust vary according to the complexity of the trust, for example, whether it holds operating companies and if special accounting is required for certain tax filing purposes.

Ms Lie says: "A simple trust for the distribution of insurance payouts could cost about $2,500. A trust covering a few assets and beneficiaries with straightforward instructions to trustees typically costs a few thousand dollars to set up.

"A trust to provide for the family over multiple generations requires a long-term management and usually involves careful planning, discussions, design and legal advice. Such complex trusts could cost much more."

Professional trustees usually charge annual fees as a percentage of the trust assets. These could range from $8,000 to a maximum of $15,000. This fee kicks in only when the trustee's duties are activated, she adds.

Mr Liow says: "A simple trust may cost around $10,000 to set up and the annual fees will be between 0.10 per cent and 0.50 per cent of the trust asset value. Some trustees may also charge fees on a time-cost basis for additional work."

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trust services to people with special needs, which include physical and mental disabilities. The set-up fee is $1,500 and it is 90 per cent subsidised. A minimum of $5,000 is required to set up an SNTC trust account, compared with $50,000 at a private trust firm.