

Wellington Shield

Single Family Trust Company
- a Short Introduction -

A SINGLE FAMILY TRUST COMPANY

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Introduction

The ‘Single Family Trust Company’ is a specialist wealth protection plan based out of New Zealand. It is designed to provide an international family with a private office structure affording privacy of ownership and confidentiality of the family’s financial affairs. It allows the client to enjoy the benefits of security associated with an overseas trust at the same time as allowing greater control to be retained over their family’s affairs.

The information contained herein is intended as a general commentary only; it does not purport to constitute legal or taxation advice. Wellington Shield does not provide legal or tax advice; Prospective clients are advised to take specialist professional advice. Referral to such specialists will be made upon request.

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Background - Trust Planning

In the 1970s & 80's the trust was standardized, packaged and marketed widely to the new entrepreneurial wealth emerging in both the developed and developing countries.

The traditional standardized trust package was an English common discretionary trust, with the family's assets forming the capital of a series of underlying companies owned by the

trustees. Those companies were commonly incorporated offshore and the family's assets divided between them. This division could be either by category of family assets 'moveables' (cash and investments) were held separately to 'immoveables' (real estate and boats -, and or by country, so real estate in Switzerland was owned separately to the apartment in NYC.

Use of Corporate Trustees

Most families choose a corporate rather than individual trustee. A corporate trustee provides continuity. Over the last hundred years corporate trustees have become highly adept at managing the affairs of several families, often from very different backgrounds and countries.

Some corporate trustees have become very large (US Trust, Bessemer, Royal Trust Co. of Canada, Coutts). However

some families, particularly outside North America, have preferred the smaller corporate trustee offering greater privacy and flexibility.

Since 1960 the great majority of corporate trustees whether large or small have opened offices in the offshore financial centres (tax havens) of Switzerland, Luxembourg, Jersey, Bermuda, Cayman Islands, Bahamas, Singapore, Hong Kong and elsewhere.

Good but not perfect...

The traditional structure of a discretionary trust with corporate trustees and underlying investment, real estate and other companies has stood the test of time stretching back over several decades of the 20th century. However it has always had a number of serious drawbacks - Specifically;

- The family was obliged to give away (legally transfer) the family's assets to professional trustees,

whom they are then obliged to 'trust' to nonetheless give the 'benefits' of ownership to them the 'beneficiaries'.

- Since the trust was 'discretionary' there could be no obligation upon the trustees to pay out;
- The power to decide which members of the family might benefit was vested in the trustees.

Privacy and Security under attack

Some of these drawbacks have been mitigated by clever arrangements created by London family lawyers involving the office of Protector and the use of Letters of Wishes. In any case, families appreciated the very real advantages of privacy and security, now called asset protection, that a family trust afforded them.

However, in recent years, the advantages of privacy, and security, in

this structure have been severely compromised. Governments have for reasons of public policy steadily eroded the fiscal advantages of a trust; and because many of the independent corporate trustees were in tax havens (now called offshore financial centers) which are subject to attack by organisations like the OECD, and the Financial Action Task Force.

The Wellington Shield Single Family Trust Company.

In response Wellington Shield has developed a new structure to provide both security (asset protection) and privacy with traditional levels of European confidentiality.

This new structure is based upon a single family trust company incorporated by Wellington Shield in New Zealand, to provide an

international family with a private office structure affording privacy of ownership and confidentiality of the family's financial affairs. It is designed to allow the client to enjoy the benefits of security associated with an overseas trust at the same time as allowing greater control to be retained over their family's affairs.

What is it ?

A Single Family Trust Company is a private trust company that is established for the sole purpose of looking after the affairs of a specific client. It is also an excellent tool for

generational planning and asset protection – indeed this is how many of the great dynastic trust companies such as The Bessemer Trust Company or the Westminster Estates began.

Organisation of the Single Family Trust Company.

A diagrammatic outline of the Single Family Trust Company is shown in figure 1 on page 8 of this document. The structure consists of a specialist

New Zealand Company which is owned by Wellington Shield Trustees (NZ) Ltd in a nominee capacity for the client.

In practical terms, Wellington Shield arranges for;

- ❑ The incorporation of the Captive Family Trust Company.
- ❑ The settlement of the appropriate assets with the Family Trust Company as Corporate Trustee.
- ❑ The provision of ongoing administrative support by Wellington Shield Services Ltd.

Control

The level of control permitted often depends upon the domestic tax regulations to which the client is subject.

Often the head of the family can act as the managing director of the Single Family Trust Company. In this case, they will take back into their own control the power to appoint and remove beneficiaries. This allows them to choose to appoint and remove classes of beneficiaries to suit the disclosure requirements of the moment.

Professional Corporate Trustees are reluctant to offer the same facility as

they might risk the possibility of litigation by a disgruntled beneficiary who had been removed to suit one family's own disclosure requirements. However, if the family is in practice its own trustee, they can change the beneficiaries whenever they deem it to be wise.

Alternatively, for fiscal reasons, it may be important to ensure that the management and control of the trust company and its assets is undertaken from outside the clients' home jurisdiction. In this case, Wellington Shield can make arrangements for the appointment of professional directors resident in New Zealand or elsewhere.

Generational Issues

Generally, Wellington Shield Trustees (NZ) Ltd holds the shares of Single Family Trust Company as nominee for the client. The client's rights in regard to those shares are assignable under NZ law. In order to ensure generational continuity the client can

establish a New Zealand Will for the purpose of dealing only with the shares of Single Family Trust Company. This allows the New Zealand arrangements to be dealt with separate to a general Will and provides a further layer of privacy for the family.

Asset Protection.

In the event of liquidation or attack by creditors, the assets of a Single Family Trust Company are not part of that company's own general funds and are therefore not available to settle a claim.

New Zealand has a strong history of distinguishing between beneficial and legal ownership of trust assets. Therefore it is likely that a foreign judgement seeking the return of assets to the settlors home country will not be enforced because, for the purposes of New Zealand Law, the foreign settlor no longer owns the assets.

Further, New Zealand's Reciprocal Enforcement of Judgements Act 1934 should not apply where the trust assets are located outside the foreign jurisdiction. This can usually be achieved using a suitable company structure.

Why New Zealand?

Taxation - a New Zealand trust with a non-resident Settlor is defined in the New Zealand Income Tax Act 1994 ("ITA") as a "foreign trust." A "foreign trust" is exempt from taxation of income and capital gains in New Zealand so long as the settlor/grantor remains non-resident, no income is earned in New Zealand, and no distributions are made to beneficiaries who reside in New Zealand.

Law and Regulation - New Zealand is an English speaking Common Law jurisdiction. It is a sovereign state within the British Commonwealth and United Nations. It has a Westminster style parliament with Queen Elizabeth as Head of State. The Trustee Act 1956 is the current law.

Unlike the majority of Offshore centres; New Zealand's trust legislation is entirely consistent with the notion of a Family Trust Company. Section 59 of the Tax Administration Act 1994 imposes obligations on New Zealand Tax resident settlors to disclose information to the New Zealand Commissioner of Taxes; however, it **does not apply** to trusts Settled by non New Zealand taxpayers and therefore a Single Family Trust Company has no disclosure requirements in New Zealand.

Thus New Zealand regulation allows Single Family Trust Companies to be established and managed with little disclosure or regulatory interference.

Clientele.

A Single Family Trust Company is suited for use in a variety of situations including;

- Wealthy international families who require flexibility, privacy of ownership and confidentiality of the family's financial affairs can achieve their objective using a Single Family Trust Company.
- US Citizens who require an effective but low profile alternative to an offshore asset protection trust can utilize a New Zealand incorporated Single Family Trust Company.

- Families from countries (such as those South America) which base their anti-tax avoidance policy on tax haven black lists can use a Single Family Trust Company for legitimate asset protection and tax deferral as New Zealand does not feature on any tax haven black list.

Fees and Charges

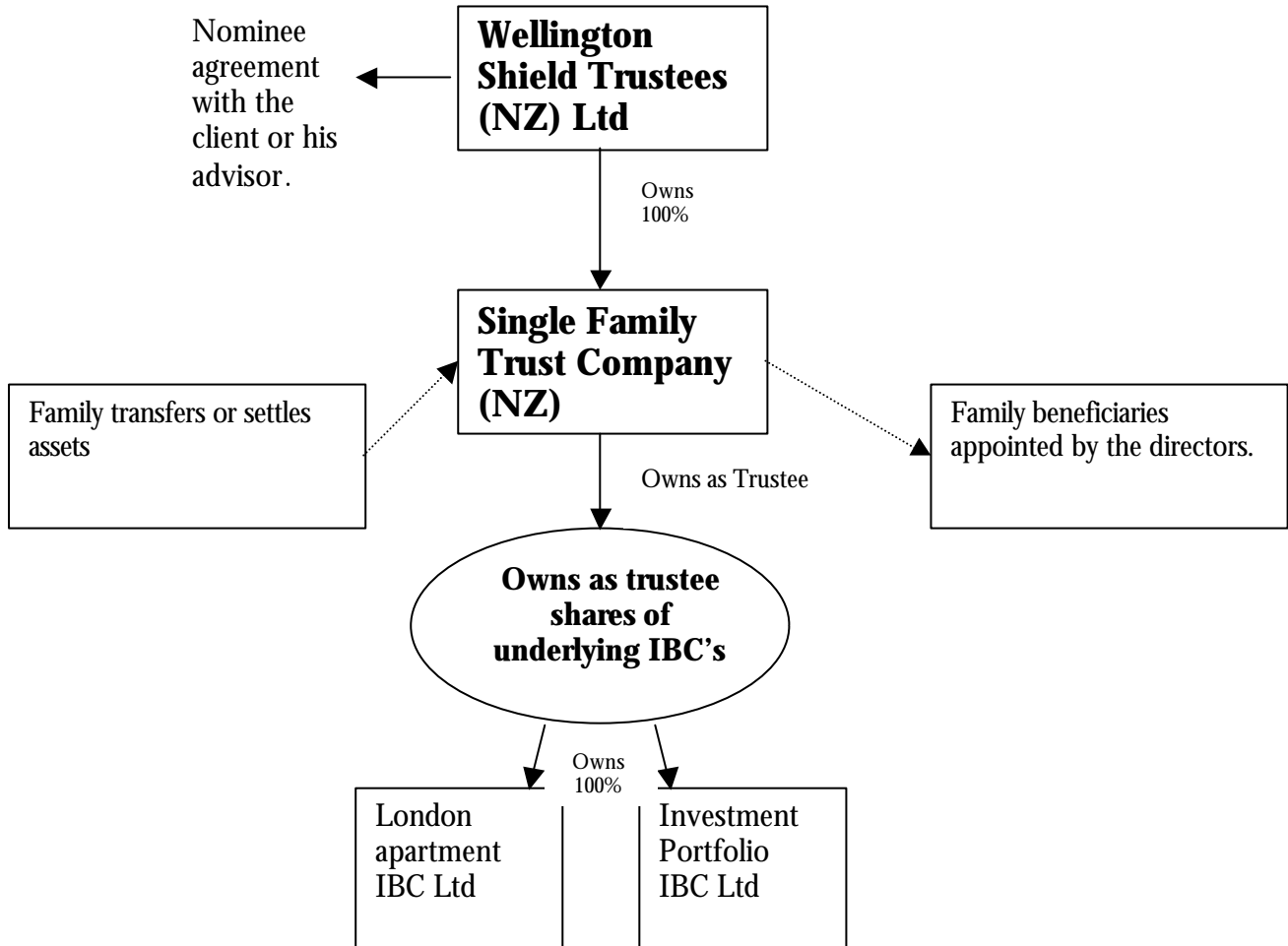
Best results are achieved by tailoring the design and implementation of Single Family Trust Company to the client's specific circumstances. The cost of establishing and running such a Company naturally depends upon a number of issues including the complexity of the issues involved and the level of specific tailoring required. For further information please contact;

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Figure 1.

A Wellington Shield Single Family Trust Company.



Appendix A.

Issues for US Persons.

The structure is designed to be transparent for US tax purposes. In order to achieve this, the Grantor should file a form 3520 upon settlement of the assets. Annually thereafter a 3520-A should be filed to disclose the income.

The Single Family Trust Company provides a very effective and legitimate asset protection structure for high net worth US persons. As it is not located in a known tax haven, it provides a low profile alternative to a traditional offshore asset protection trust that is less likely to attract attention from the special compliance unit of the Internal Revenue Service.