

CPBM[®]

CERTIFIED PRIVATE BANKING MANAGER[®]

Session 6- Estate and Legacy Planning

Presentation Order

Objective

Wills

Trust

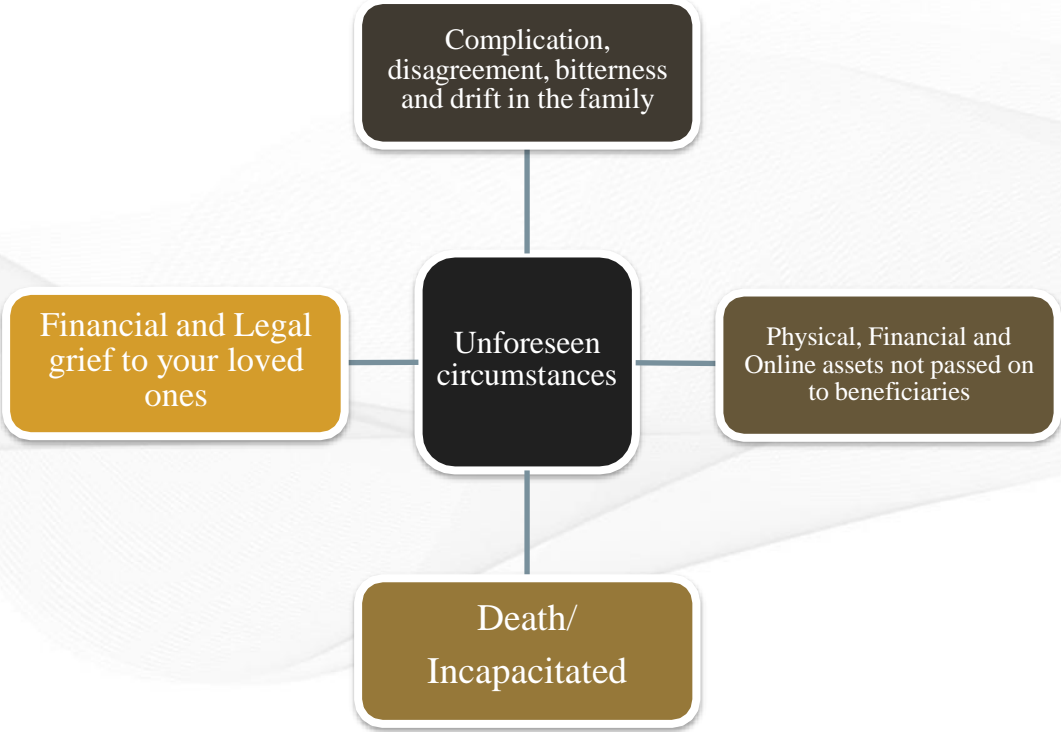
Transmission Loss



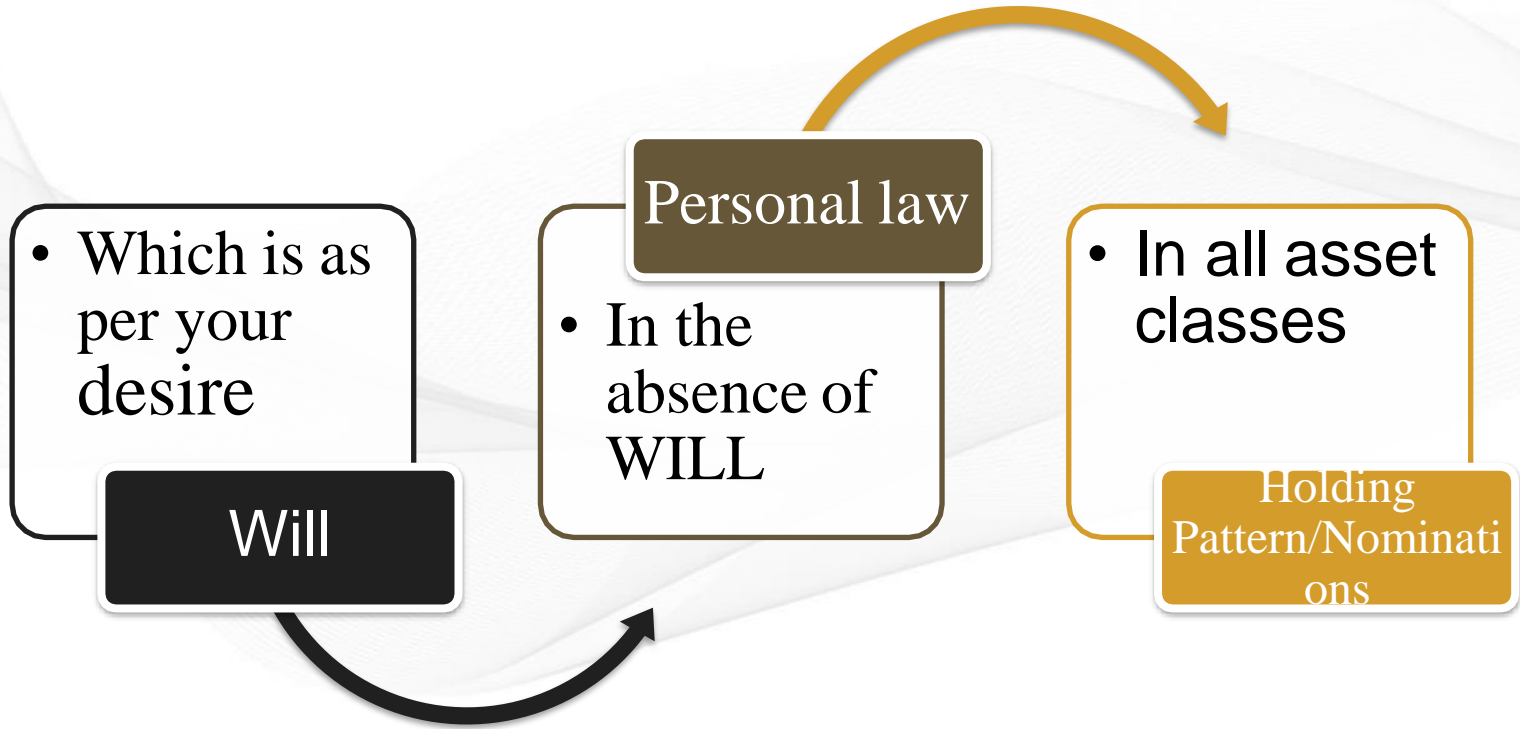
Objective

To ensure wealth is safeguarded against any risks and passed on in a smooth manner in order to achieve near to zero transmission loss.

Low probability high impact events



What impacts your Wealth Distribution



Will – For Assets Outside the Trust

In order to achieve zero transmission loss of wealth, 3 steps are imperative:



STEP 1 WELL THOUGHT

- Have you thought of how you want your wealth to be distributed?
- Have you decided who should be the rightful recipient of your wealth?
- Are your family members equipped to manage your wealth in your absence?



STEP 2 WELL DOCUMENTED

- Have you documented your thoughts in the will?
- Is your documentation simple, clear and without any ambiguity?



STEP 3 WELL COMMUNICATED

- Do your family members/intended recipients /legatees know what your will contains?
- Do they know what and where your assets are?

THE WILL - 5 THINGS TO CONSIDER

1. Define your Desired manner

WILL should clearly mention the desired manner of bequeathal of assets

E.g. -One may have criss-cross WILL (i.e. Husband to wife and vice versa) or in a % form to more than one legatee

2. Asset details not to be mentioned except Real Estate

The WILL should be simple with no details of movable assets mentioned due to the dynamic nature of the assets.

Real Estate –need to be listed out

3. Guardian of Minor

In case of minors, it is highly recommended to mention a Guardian in the absence of natural guardians

4. Appoint an Executor

An Executor's role is to do the transmission of assets as per the wishes mentioned in the WILL

5. Registration of Will

Registration of WILL is not mandatory but highly recommended as the authenticity of the person signing the WILL is not questionable

Introduction of the Testator (i.e. the person making the Will)

1. Declaration stating this as the Last WILL and Testament
2. Assets held by the Testator
 - Movable Assets
 - Liquid Assets like Bank Account, Demat Account, PPF, Insurance policies
 - Business Shareholding
 - Bank Locker
 - Jewellery
3. Immovable Property
4. Residuary Assets – Assets inherited/acquired and/or accumulated in future
5. Unforeseen Eventuality i.e. If the Legatee (the Beneficiary) is no more
6. Executor (if necessary)
7. Declaration for being of sound mind
7. Witnesses

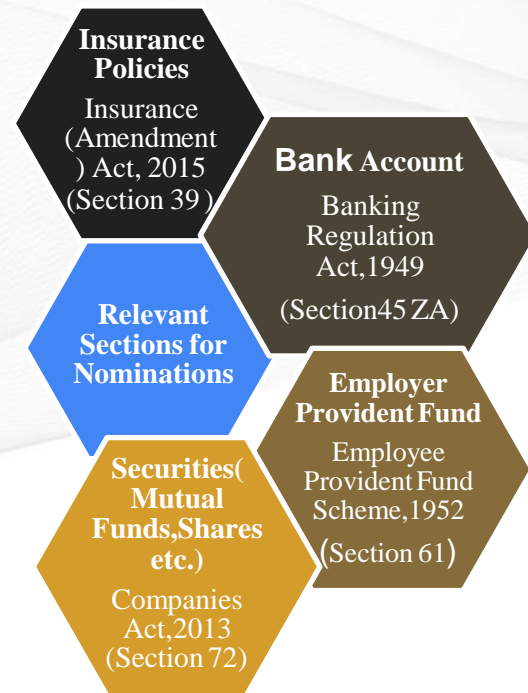
Probate & Registration

- A Probate is the certificate of the Court stating that ‘it is the last and final WILL’ of the deceased
- Probate is a must in the cities of Mumbai, Chennai & Kolkata only if immovable property is passed on through the WILL
- In all other cities in India, Probate may not be insisted upon, though it may be asked for if the Sub-registrar deems fit
- Even though registration is not mandatory, it is advisable to get the WILL registered as the authenticity of the person signing the WILL is not questionable

Synchronize nomination with the WILL

Nomination laws in India are inconsistent, hence, it is necessary to ensure that nominations and WILL are in sync otherwise it could trigger a legal dispute:

Instrument	As per the relevant Statute
Bank Account	Custodian
Public Provident Fund	Owner
Employees Provident fund	Owner
Securities (MF, Stocks etc)	Owner
De-mat securities	Owner
Insurance policy: Beneficiary Nominee – parents, spouse and children Collector nominee – any person than Beneficiary Nominee	Owner Custodian



Nomination Form – SH 13 Private Ltd. Cos.

Step 01 Nomination form SH-13 to be signed by the shareholder(s)

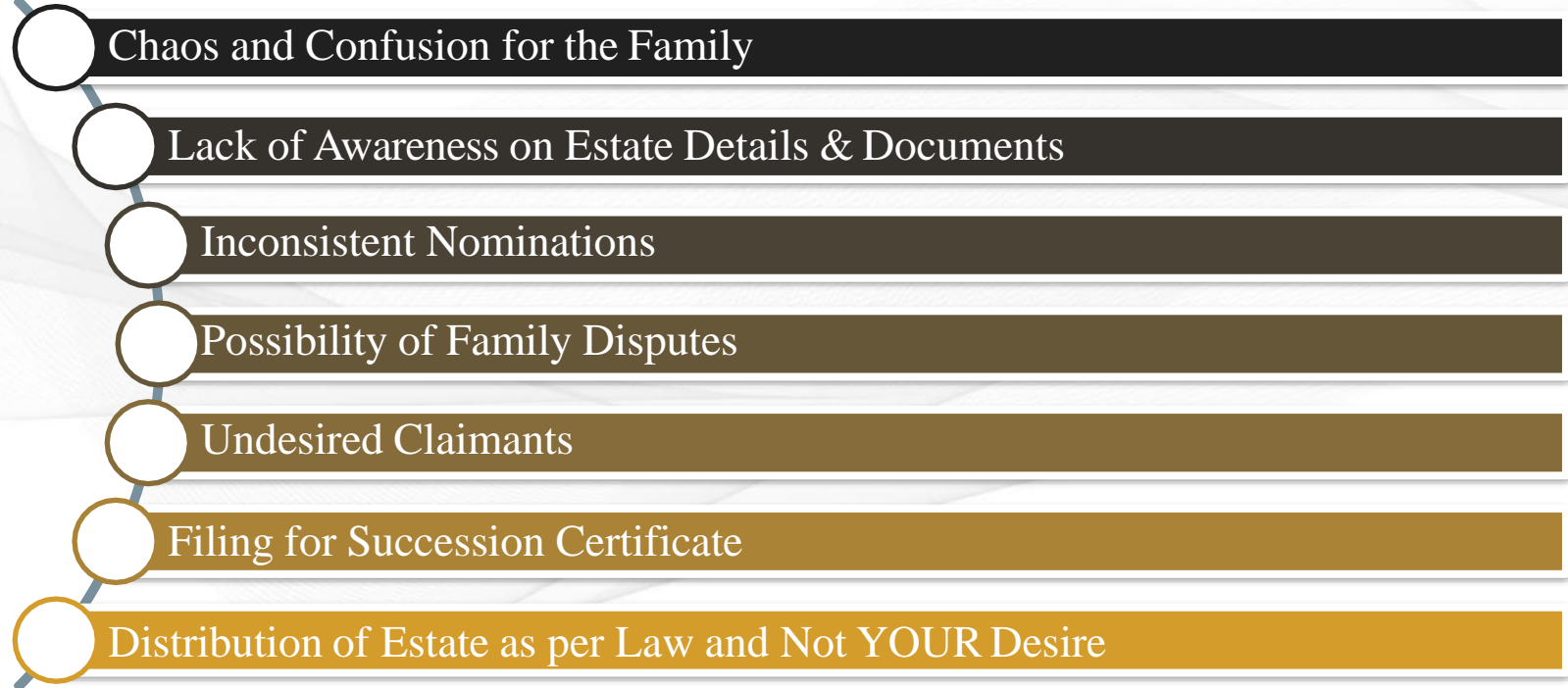
Step 02 The form must be duly witnessed by one witness

Step 03 Soon after the form has been signed, the Company should record the nomination in the Nomination Register giving details of the shareholder, nominee, date of the nomination, etc.

Step 04 The Company must pass a Board Resolution for the same.

Absence of WILL is Fertile Ground for a Crop of Disputes

Your Estate



Your Family

WHAT HAPPENS –WHEN THERE IS NO WILL

Here's what happens :

Hindu Succession Act, 1956

- Applies to you if you are a Hindu, Buddhist, Jain and Sikh

Indian Succession Act, 1925

- Applies to you if you are a Christian or Parsi

Shariah Law

- As per Shariah law, the wealth of the person will be distributed in a pre-determined share to family members

In Summary

Hindu Succession Act, 1956

- In case of the death of a male member, then the wealth will be passed on equally between the wife, mother and children.
- In case of the death of a female member, then the wealth will be passed on equally between husband and children.

Indian Succession Act, 1925

- If a Christian dies Intestate, then 1/3rd of his/her assets will go to the spouse and 2/3rd to lineal descendants
- If a Parsi dies intestate, his/her assets will be passed on to the spouse and children equally. However, if the parents of deceased are alive, then each parent will receive a share equal to half the share of each child.

In Summary (cont.)

- Shariah Law
 - If a deceased is survived by a wife and children, then $\frac{1}{8}$ th share of the wealth will go to the wife and the remaining $\frac{7}{8}$ th share will be distributed in the ratio of 2:1 between the son and daughter. If the parents of the deceased are alive, then each parent gets $\frac{1}{6}$ th share of the wealth

List of Heirs

Primary Heirs:

- **SPOUSE** (Husband or a maximum of four Wives)
- **CHILDREN** (Sons and Daughters)
- **PARENTS** (Father & Mother)
- **GRANDCHILDREN** (Sons's SON or Son's DAUGHTER only -in the absence of SON)

Secondary Heirs:

- **GRANDPARENTS** (Paternal and Maternal)
- **BROTHERS** and/or **SISTERS** (In the absence of Father and Son ONLY)
- **UNCLES** and/or **AUNTS** (In the absence of Grandparents ONLY)
- **NEPHEWS** and/or **NIECES** (In the absence of Brothers and Sisters ONLY)

- If there is no male primary heir, then Secondary heir will get a share
- Illegitimate, step and adopted children have no share in inheritance

Share as per Islamic Inheritance

Relationship	Share
Husband (if no child)	$\frac{1}{2}$
Husband (if there is child)	$\frac{1}{4}$
Wife (if no child)	$\frac{1}{4}$
Wife (if there is child)	$\frac{1}{8}$
Wives (if more than 1 wife – max of 4 wives)	$\frac{1}{8}$ divided equally amongst them
Son	Twice as daughter
1 Daughter (if no son)	$\frac{1}{2}$
1 daughter (if there is son)	Ratio 2:1
2 or more daughters (if no son)	$\frac{2}{3}$ equally
Father (if no male descendants viz; sons, son's sons)	$\frac{1}{6}$ + residue
Father (if there are descendants viz; sons, daughters, son's sons, son's daughters)	$\frac{1}{6}$
Father (if no descendants)	Residue
Mother (if no descendants viz. father, brother/sister, spouse)	$\frac{1}{3}$
Mother (if there are descendants viz. brother, sister)	$\frac{1}{6}$
Son's Son	Twice as son's daughter
Son's daughter (if there are no sons, daughters, granddaughters, grandson)	$\frac{1}{2}$
2 or more Son's daughter (if there are no sons, daughters and grandson)	$\frac{2}{3}$ equally
Son's daughter (if there is one daughter and no sons, grandson)	$\frac{1}{6}$

What is safety-net

- It is that portion of your Wealth that is kept in a ‘Liability-free’ entity
- Assets in such an entity is not attachable provided it is not formed with a malafide intention

Why is safety-net necessary

- Unpredictable & unforeseen adversities could arise where personal assets could be attached

Examples:

- Personal liability of a CEO
 - Personal guarantee invoked due to unexpected business losses
 - Any act of God, and by definition many of them cannot be anticipated
- If a portion of your Wealth is in a safety-net, it would help your family maintain the same lifestyle
- Maintain self discipline by keeping Trust Corpus away from the business capital needs

Purpose of a Trust

Objective 1 – Ring Fencing

<p>Any negative act of God cannot be anticipated</p>	<p>Unpredictable & unforeseen adversities could arise where personal assets could be attached</p>	<p>If a portion of your wealth is in a Safety-Net, it would help your family maintain the same lifestyle and protects your wealth from any unanticipated liabilities*</p>
---	--	--

**Provided there is no malafide intention & 2 years has passed since gifting to the Trust*

Purpose of a Trust

Objective 2 – Estate Planning

Unlike a WILL, where the transmission of wealth is done after lifetime, a **Trust enables transmission of your Wealth during your lifetime**

Purpose of a Trust

Objective 3 – Mitigating the risk of Estate Duty

Create a Trust and transfer assets irrevocably while there is no Estate Duty

A Trust may help save one level of estate duty from one generation to the other

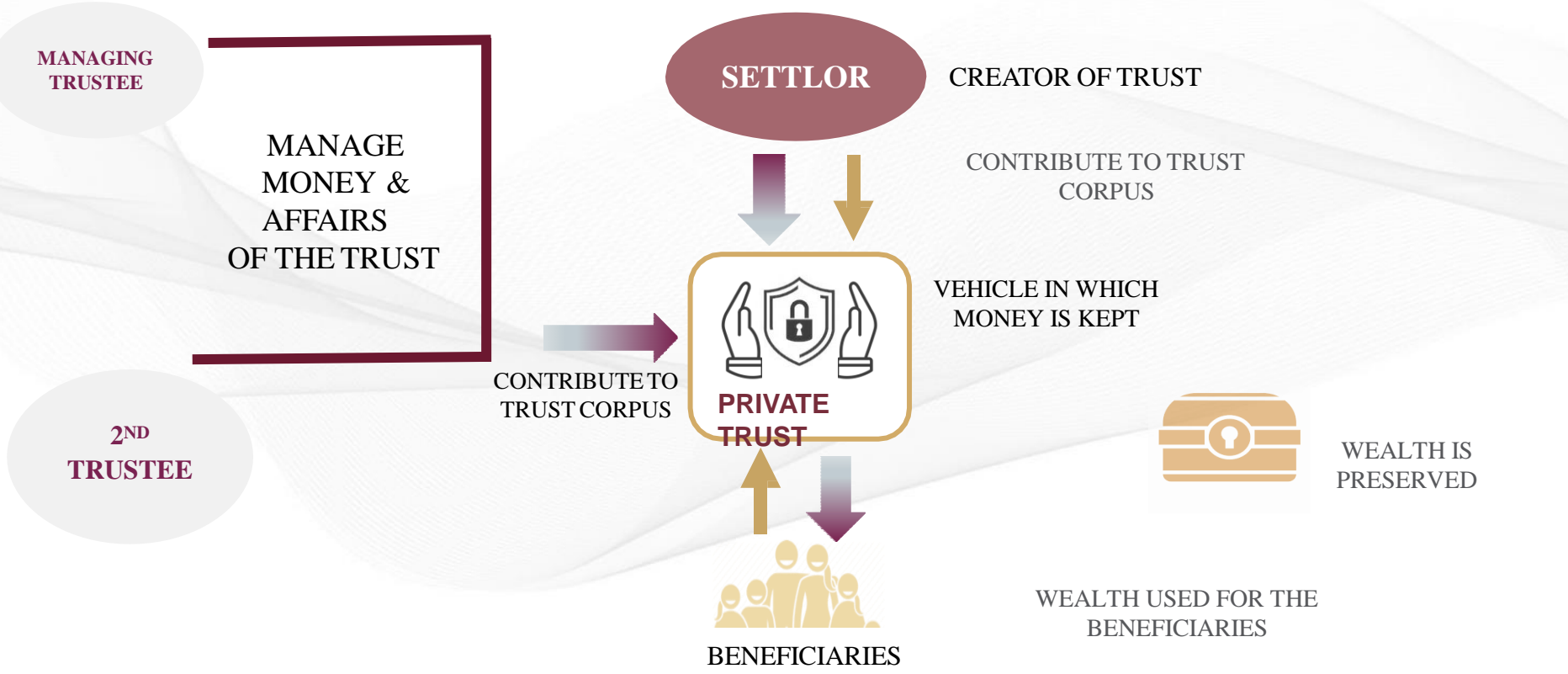
Purpose of a Trust

Objective 4 – Level Playing Field for NRIs

At present, **NRIs** wanting to invest in India **have certain restrictions**

A **Trust set up in India** is a resident Indian entity and hence can make **all investments that of a resident**

Structure of a Private Family Trust



Private Trust : Key Pointers

- Irrevocable Discretionary Trust
- Trust for only spouse and children
- Control of assets - YOU control your assets not outsiders
- Trust for 25-30 years OR till lifetime of the Settlor
- To have 1 Trust or Multiple Trusts
- Disadvantages of a Trust

Irrevocable Discretionary Trust

IRREVOCABLE

1. Assets are gifted Irrevocably by the Settlor to the Trust i.e. Settlor **relinquishes right on the Assets**
2. Since the Settlor cannot take back the assets, the same **cannot be attached** in an Irrevocable Trust
3. **Irrevocable Trust** helps in meeting the objective of Ring-fencing of assets

1. In a **Discretionary Trust** the share of Beneficiaries is not defined and is at the **discretion of the Trustees**
2. The share of the Beneficiaries is indeterminate

DISCRETIONARY

Trust For Only Spouse & Children

Settlor, as a husband, owes responsibility towards his wife

Settlor, as a parent, owes responsibility towards his children

- Adding many generations may lead to creation of a Trust where asset division may be complex, impractical and susceptible to interpretations
- A Trust created for 25-30 years is better than a Trust of 70 years including grandchildren since the family dynamics can change over a period of time
- Let your children decide for their children

Settlor should create a Trust for Spouse and Children and avoid including future generations

Control of Assets

You Control your assets, not outsiders

The control on your wealth has to be with you and after you, with the family

The Settlor should be the Managing Trustee and have control over the assets of the Trust and not any Third party

However, there is a legal requirement to have at least 2 Trustees

The second Trustee, should be a confidant, ideally a family member

Avoid Corporate Trustee due to lack of robust Corporate Trustee services in India

The control must remain within the family

Trust For 25-30 Years Or Till Lifetime

Duration should be such that when the Beneficiaries receive the distribution they should be of a mature age to manage wealth

Scenario 1: Where you have a confidant acting as a Trustee, then Trust should continue for a **fixed period of 25-30 years**

Scenario 2: Where you do **not have a confidant** acting as a Trustee, then the Trust should continue **till your lifetime, provided your children are of a matured age**

Ensure that you have confidant who can act as a Trustee

To have 1 trust or multiple trust

Option 1

- One common Trust for both the children

Option 2

- Two separate Trusts for two children

Why Option 2?

- Let's assume a person is 55 years old and has 2 children
- It is likely that his life span could be till 85
- If we assume that his Wealth is Rs. 25 crores today, which compounding at 12% p.a. is likely to be approximately Rs.749 crores in the next 30 years
- Hence, distribution of Rs.749 crores is better if made in 2 separate Trusts – as there is clear bifurcation of money

Sample : Criss Cross Trusts

Scenario 1: 2 children	Trust 1 – Child 1 Trust	Trust – Child 2 Trust
SETTLOR	You	Wife
MANAGING TRUSTEE	You	Wife
SECOND TRUSTEE	Child 2	Child 1
BENEFICIARIES	Wife & child 1	You & child 2
Scenario 2: 1 child	Trust 1 – Wife Trust	Trust – Husband Trust
SETTLOR	You	Wife
MANAGING TRUSTEE	You	Wife
SECOND TRUSTEE	Confidant	Confidant
BENEFICIARIES	Wife & child	You & child

Ring-fencing for both Husband and Wife, estate planning and control retained within the family in a criss cross Trust

Points that Simplify a Trust Deed

- Preamble, Definitions and Interpretation
- Name, Duration and Principal Place of Operations
- Purpose, Objects of the Trust & Corpus Fund
- Powers and Duties of Trustees
- Disqualification of Trustees
- Application of Income/Corpus fund
- Disposition of Net Worth

Things to do after trust is created

Step 1

- Once the Trust deed is registered, the Trust has to apply for a PAN card

Step 2

- Once PAN Card is received, open a Trust Bank Account

Step 3

- After opening the Bank Account, the Trust Demataccount can be opened.

Step 4

- Thereafter, Investments can be made through Trust

Step 5

- File the Income Tax Return for the Financial Year

Disadvantages of Trust

1

- While there are no tax disadvantages of a Trust, one potential advantage that a trust has is getting additional slabs from a surcharge point of view
- Special rate of taxation which is applicable for Capital Gains will continue to be applicable for Trusts

2

- Costs involved:
 - One time formation cost of, say, Rs.25,000
 - Accounting / tax filing cost of, say Rs.10,000 annually

TYPES OF TRANSMISSION LOSS

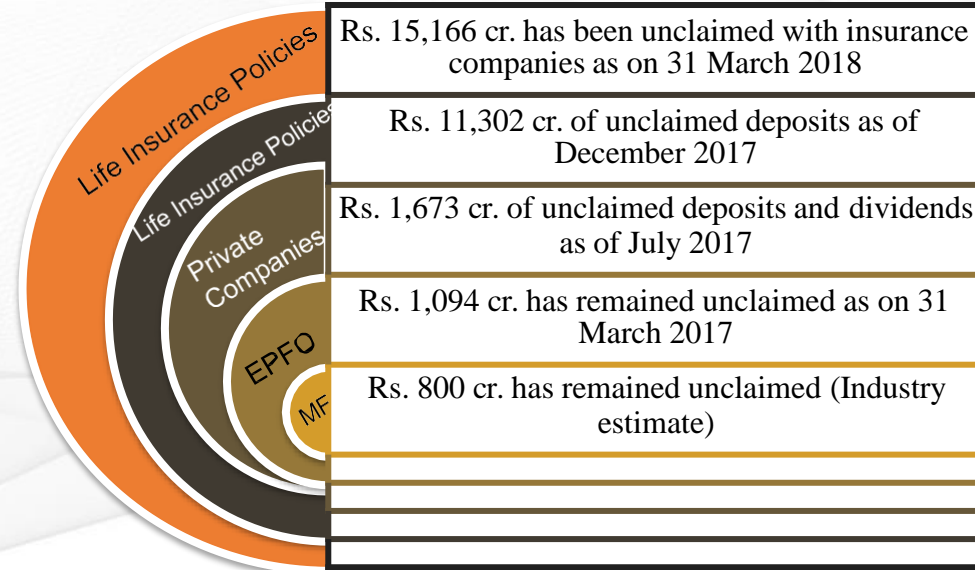
Dispute amongst possible successors/third parties

Lack of expertise of the beneficiary to manage funds

Inability to manage on account of geographical constraints

Assets not known to family members

Sources: <http://www.relakhs.com/unclaimed-investments>
<http://timesofindia.indiatimes.com/business/>



Thank You