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# TESTAMENTARY TRUSTS

## WHAT IS A TESTAMENTARY TRUST?

A trust is created when one person (known as the Trustee) holds the legal ownership of certain property or assets on behalf of another person (known as the beneficiary). The Trustee must use the property or assets for the benefit of the beneficiary and not for his or her own profit.

A Testamentary Trust is one created by a Will and it does not therefore come into effect until after the death of the person who makes the Will. Often it is a “discretionary” trust and the Trustee has a discretion over which beneficiaries will receive the income or capital of the trust and how much they will receive. For obvious reasons therefore the choice of trustee is important.

## WHY CREATE A TESTAMENTARY TRUST?

One of the aims of a Testamentary Trust is to protect your assets by separating their ownership from their benefits. Your trustee owns the assets while the beneficiary receives the income derived from them. Your assets are thereby protected from any creditors of your beneficiaries.

However probably the principal purpose of a testamentary trust is to gain taxation advantages for beneficiaries who are not yet 18 years of age. Income received by children normally attracts penalty rates if it exceeds the tax-free threshold. However income received pursuant to a Testamentary Trust is taxed at the same rate as that of adults and attracts a similar tax-free threshold. If properly applied therefore the discretion of the Trustee will provide a more tax efficient method of distributing income, franked dividends and capital between your beneficiaries.

## HOW DO I CREATE A TESTAMENTARY TRUST ?

As indicated earlier, a Testamentary Trust can only be created as part of your Will, and it is essential that you seek professional advice about who to appoint as Trustee and what powers to give him or her. It is possible and sometimes necessary to create a number of Testamentary Trusts each with different Trustees.



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