

5 ways how a Trust scores above Will as succession planning tool

Wealth and businesses take years, if not generations, for families to accumulate and set up. Taking concrete steps to protect this wealth and business from changing times, evolving laws and the vagaries and conflicts of successive generations, is no longer an indulgence. It is imperative.

Succession planning has become the mantra in the last few years. The COVID-19 pandemic destabilized lives globally and amidst such precarious circumstances, it became more important than ever, especially for HNI and UHNI families, to secure their wealth and plan for unforeseen circumstances.

An important aspect of planning ahead is an air-tight succession plan that can help with a smooth transition of power, wealth, and business control within a family. Traditionally, most business-owning families or HNI and UHNI individuals have opted for wills as a tool for succession planning. However, with the possibility of wills leading to long-drawn legal disputes among family members, with multi-jurisdictional family presence and the need to ensure continuity in business succession, many families are now considering the option of creating private family trusts.

In case of business families where multiple generations are involved, it becomes imperative to have a succession plan for not only the 'ownership' but also 'management' of the business. For instance, who will step into the shoes of key managerial positions, how should the next generation enter business, role of family members not directly involved in the business and so on. Some families prefer writing family charter/family constitution spelling out, inter alia, family values, family vision, decision-making process, conflict resolutions and exit policies. However, to ensure succession is also planned a Trust structure holding the business assets becomes vital.

Several family businesses have been wiped out and have not survived beyond the third or fourth generation due to the absence of a structured succession plan. Family conflicts and feuds have been witnessed due to the lack of clarity and transparency of a succession plan. In situations where there is a structured plan for succession, there is clarity on the interplay between 'family', 'business', 'ownership' and 'management' leading to longevity of family businesses.

Family trusts are effective and convenient, and if used prudently can provide various benefits as a holistic succession planning tool.

Advantages of setting up a Private family Trust Trust Ensure Smooth succession

A trust can help in consolidation and smooth succession of assets without any operation, administration and other hindrances and delays. Let's take an example of a business family consisting of a patriarch with his wife and two also involved in running the family business. The objective of the patriarch is to ensure i) smooth succession & harmony between the family members , ii) continuity of his business empire, iii) appropriately dealing with shareholding of his business which today is run by his daughter and creating effective estate taxes as his son is a US citizen. If the patriarch only writes down a Will,

most of his objectives may not be achieved. Whereas by putting in place an appropriate Trust structure keeping in mind inter alia business ownership and the US tax and estate tax implications for his son and separately for his daughter, he can meet all his objectives. The formalities of paperwork, court procedures, repatriation issues, valuation aspects, exposure to US tax implication on account of direct inheritance can be mitigated by putting in place a Trust structure.

A Will, on the other hand, requires a probate/other legal formalities to ensure smooth transmission of assets. Even with a joint account/nomination, operational activities need to be done by family members to effectuate a transfer of the accounts of the deceased to the relevant person. A nominee is legally a custodian and the final transfer of the assets has to happen to the legal heir. With a trust, we can do away with administrative and legal issues and ensure a hassle-free transfer of assets.

Abling the Disabled

A trust can help in protecting the financial interests of the family and making sure their lifestyle needs are met in the easiest possible manner in case of any unforeseen event. In case of an unexpected incapacity or health problem, a trust can help in planning cash flow requirements for the family.

Ring-fencing of assets

A trust structure can be planned to protect and ring-fence the assets against future liabilities/marital issues and possibly protect against any reinstatement of estate duty in India. Many families these days want to plan and put in place a safety pot to protect themselves and or lineal descendants from any unforeseen liabilities. An appropriately structured trust, which is discretionary in nature may be able to mitigate the risk of assets being attached in the name of an individual beneficiary.

Trusts Help Avoid Conflict

A well-executed trust deed helps bury potential conflicts, thus ensuring filial peace and continuity. One could even opt for getting the benefit of a professional corporate trustee so there can be ease in execution of investments, document maintenance, accounting, compliance, etc.

Critical factors to consider in trust formation

- While Trust brings many advantages, structuring the trust is a crucial activity that requires time and consideration of many factors that will ensure that the vehicle remains true to its purpose. Some of them are listed briefly below:
- Citizenship and residency of family members - it is important to understand and follow the laws relating to each of the jurisdictions where there are family members residing or where they have citizenship.

- Type of assets- Depending on the type of assets in the family, the plan will have to be structured. For example, you may have a specific plan for immovable property and different considerations for the shareholding of your company.
- Transition plan for assets - it is important to plan for how and when assets will be slowly transitioned into the trusts.
- Number and type of trusts - there are many options when it comes to trust structuring and depending on the requirements, a family may make revocable or irrevocable trusts or a combination of them. Many families also make separate trusts for each of their children. It all depends on what the family wishes to accomplish and their specific family dynamics and will face when establishing their trust is the selection of a trustee(s). While some individuals name themselves, a family member, or friend, others prefer to choose a trusted financial institution for this important role.