Trusts practitioners often have an undeserved reputation of offering a trust as the solution to every succession planning problem! There are many benefits to using a trust but it is evident that a trust should never be regarded as the only solution.

A trust will often be used as part of the planning for a client or may, in fact, not be the correct option at all. Corporate, fund, and insurance solutions need to be more readily considered by private wealth advisors – sometimes in combination with a trust; sometimes not.

Some of the issues against a trust are:

1. Would-be settlor cannot understand the concept;

2. If the main advantages are achieved on settlor's death, settlor cannot justify annual fees for potentially several decades;

3. Would-be settlor wishes to retain too much control (whether expressly or via a nominee);

4. Unclear or undesirable taxation treatment for settlor, beneficiaries, trustee;

5. Unclear or undesirable regulatory treatment for CRS/ FATCA/beneficial ownership;

6. Assets not being suited for trust ownership. This could be due to factors such as the situs, the type of asset and/or relevant counterparties / regulators not being familiar with trusts;

7. A "discretionary" trust does not sufficiently "incentivise" the beneficiaries who for example work in the family business but don't see a direct return.

The potential issues against individual ownership are well-known. Death, divorce, incapacity are the obvious ones but also as generations come and go, there will most likely be an increase in the number of owners and their willingness and ability to be involved in the business will vary. If we are dealing with a company a number of solutions can assist.

1. **Different share classes.**

a. Share classes can be created with different rights.

b. This would be frequently a combination of some/ all of the following:

i. the right to vote (on some/all matters including a right of veto);

ii. the right to dividends (including in preference to other classes);

iii. the right to participate in a return of capital;

iv. rights to information;

v. transfer rights (including pre-emption rights);

vi. redemption rights;

vii. repurchase rights;

viii. “drag” and “tag” rights.

c. Providing there is certainty, these rights can be different depending on certain events. This could be the death / loss of capacity of the patriarch/ matriarch. For example, a class of shares held by the patriarch could have voting rights whilst he is alive/ of capacity and another class of shares held by the patriarch’s (adult) children have voting rights after the patriarch’s death / during incapacity.

d. In this way, ownership of the company can be structured to separate “control” from economic participation. There can also be mechanisms for certain family members to exit. Ultimate control could, if needs be, kept in a trust to ensure that the legacy continues. Family members can also be given some “equity” but with restrictions on transfer etc.

e. If funding is needed to buy-out shares from the estate of deceased members, then insurance can be utilized. Or if the company is suitably solvent, the shares could be repurchased. In both cases using a pre-agreed valuation method.

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2. **Own the company through private placement life insurance ("PPLI")**

a. In this case the company shares are held by the insurance company.

b. There can be elements of control introduced into the policy – by way of arbiter.

c. Insurance more easily understood by some clients.

d. Potentially clearer tax and reporting treatment.

e. Potentially access to DTAs.

3. **Use a foundation / foundation company / LLC**

a. Many jurisdictions offer legal entities which can own assets and which can also enable control and economic enjoyment to be separated.

b. These may be more familiar to clients and tax authorities in certain jurisdictions.

c. Even in a common law jurisdiction a Cayman Islands foundation company is a company but unlike an ordinary company may be "ownerless" for a time. Thus, estate administration can be avoided on death. Likewise, an interest in an LLC can be extinguished on death or created on death thus achieving a "transfer" outside the traditional court sanctioned approach.

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Just as there is no “one size fits all” for trusts, there should not be a default structure until a full analysis has been undertaken.

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