

# Discretionary trust instruction sheet – 4.1

Unit trusts will not be considered a fixed trust or a trust where there are absolute entitlements to income and capital for various Federal and State purposes. If you have any particular requirement for a fixed trust you should contact Sladen Legal for specific advice.

Attention:

Fax: 03 9620 9288

Email:

<b>Trust Name</b> (eg <i>The Brown Family Trust</i> )	
<b>Contact</b> (enter your contact details here)	
Name	
Firm	
Tel	
<b>Client</b> (enter your client's contact details here)	
Full name	
Address	
Tel	
<b>Settlor</b> (not to be a beneficiary or trustee)	
Full name	
Address	
<b>Trustee</b>	
Full name	
ACN	(if applicable)
Address	
Directors	(if applicable)
Chair	(chair of directors /trustees)
Trustee will execute documents as:	
Natural person	<input type="checkbox"/>
A company will execute documents in one of the following ways in accordance with its constitution:	
Director and second director or secretary	<input type="checkbox"/> With seal <input type="checkbox"/> Without seal
Sole director and sole secretary	<input type="checkbox"/> <input type="checkbox"/>
Sole director and no secretary	<input type="checkbox"/> <input type="checkbox"/>
<b>Settled Sum</b>	<b>\$</b>
<b>Primary Beneficiaries</b> (usually husband and wife and children)	
Full names	
Address	
<b>Appointors</b> (this should be discussed with us if in doubt and provision may need to be made for replacement appointors on the death of the original appointors)	
Full names	
Address	
<b>Distribution restrictions</b> (these restrictions require appointor consent to capital distributions and limit the range of beneficiaries if a Family Trust Election is made)	
<input type="checkbox"/> apply <input type="checkbox"/> not to apply	

## NON-FOREIGN TRUST ELECTIONS

Is the trust deed to include provisions regarding non-foreign trust elections?  Include  Do not include

*There is an additional price of \$330 inclusive of GST for the inclusion of the provisions allowing for non-foreign trust elections.*

The **default position** is that each non-foreign trust election will be nominated at the time of establishment of the trust as **not in force**.

If you do want an election to be in force please select from the below which elections should be in force.

### Non-foreign trust elections

Non-foreign trust for the Victorian Duties Act	Election in force <input type="checkbox"/>
Non-absentee trust for the Victorian Land Tax Act	Election in force <input type="checkbox"/>
Non-foreign trust for the NSW Duties Act and NSW Land Tax	Election in force <input type="checkbox"/>
Non-foreign trust for the Queensland Duties Act and Queensland Land Tax Act	Election in force <input type="checkbox"/>
Non-foreign trust for the South Australian Stamps Act	Election in force <input type="checkbox"/>
Non-foreign trust for the Tasmanian Duties Act	Election in force <input type="checkbox"/>
Non-foreign trust for the Western Australian Duties Act	Election in force <input type="checkbox"/>
Non-foreign trust for the Australian Capital Territory Land Tax Act	Election in force <input type="checkbox"/>
Non-foreign trust across and States and Territories in Australia	Election in force <input type="checkbox"/>
Non-foreign trust for the FIRB	Election in force <input type="checkbox"/>
To remove all FIRB foreign persons as beneficiaries of the Trust	Election in force <input type="checkbox"/>

Set out below is a brief summary of the effect of these elections.

Relevant Election	Summary of consequence
Election to be a non-foreign trust for the Victorian Duties Act	No more than 50% of the ordinary concepts capital can be distributed to the following persons: <ol style="list-style-type: none"> <li>1. A Foreign Corporation (as defined in the <i>Duties Act 2000</i> (Vic) - <a href="#">foreign corporation</a>)</li> <li>2. A Foreign Natural Person (as defined in the <i>Duties Act 2000</i> (Vic) - <a href="#">foreign natural person</a>)</li> <li>3. A person who is the trustee of a Foreign Trust (in that capacity) (as defined in the <i>Duties Act 2000</i> (Vic) - <a href="#">foreign trust</a>)</li> <li>4. Any Associated Person (as defined in the <i>Duties Act 2000</i> (Vic) - <a href="#">associated person</a>) of any of the above</li> </ol>
Election to be a non-absentee trust for the Victorian Land Tax Act	Any person who is an “absentee beneficiary” (as that term is defined in the <i>Land Tax Act 2005</i> (Vic) - <a href="#">absentee beneficiary</a> ) or any other person who, if income or capital is distributed to them, would cause the trust to be an “absentee trust” (as that term is defined in the <i>Land Tax Act 2005</i> (Vic) - <a href="#">absentee trust</a> ) are excluded as beneficiaries of the trust and no income or capital may be distributed to those persons.
Election to be a non-foreign trust for the NSW Duties Act and the NSW Land Tax Act	All Foreign Persons (as that term is defined in the <i>Duties Act 1997</i> (NSW) - <a href="#">foreign person</a> ) are prohibited from being or becoming a beneficiary of the trust.  No amount of the of income, property or capital of the Trust can be distributed or applied for the benefit of any Foreign Person or any other person if such a distribution or application would cause the Trustee to be a Foreign Person.  This election is irrevocable.

Election to be a non-foreign trust for the Queensland Duties Act and Queensland Land Tax Act	No more than 49% of the income or capital of the trust may be distributed to a taker in default (as that term is referred to in the <i>Duties Act 2001</i> (Qld) and <i>Land Tax Act 2010</i> (Qld) - <a href="#">taker in default</a> ) who holds a Foreign Interest (as that term is defined in the <i>Duties Act 2001</i> and <i>Land Tax Act 2010</i> (Qld) (Qld – <a href="#">foreign interest</a> ) in the trust and the trustee must not distribute income or capital to a holder of a Foreign Interest in the trust (and/or their Associate) if such a distribution would cause the trust to be a Foreign Trust.
Election to be a non-foreign trust for the South Australian Stamps Act	Any person who is a “Foreign Person” (as that term is defined in the <i>Stamp Duties Act 1923</i> (SA) – <a href="#">Foreign Person</a> ) is excluded from holding the position of trustee or appointor of the Trust, in addition to being excluded from being given a power to appoint under the Trust, from being an identified object (beneficiary) of the Trust, and from becoming a person who takes capital of the trust property of the Trust in default.
Election to be a non-foreign trust for the Tasmanian Duties Act	No more than 49% of the capital of the Trust may be distributed to a Foreign Person (as that term is defined in the <i>Duties Act 2001</i> (Tas) – <a href="#">Foreign Person</a> ) (either alone or together with another Foreign Person) or to a Foreign Person generally (either alone or together with another Foreign Person) if such a distribution would cause the Trust to be a Foreign Person.
Election to be a non-foreign trust for the Western Australian Duties Act	<p>No more than 49% of the income or capital of the Trust may be distributed to Foreign Persons (as that term is defined in the <i>Duties Act 2008</i> (WA) – Foreign Person), either alone or in combination and/or together with one or more Associates (as that term is defined in the <i>Duties Act 2008</i> (WA) – Associate), including in circumstances where the Foreign Person is a Taker in Default (as that term is defined in the <i>Duties Act 2008</i> (WA) – <a href="#">Taker in Default</a>). The Trustee must also not distribute income or capital to a Foreign Person (either alone, and/or together with their Associates) if such distribution would cause the Trustee to become a Foreign Person.</p> <p>Foreign Persons are also excluded from holding a position that would enable the person to influence (directly or indirectly) the vesting of the whole/part of any capital or income of the trust property if such a position would cause the Trustee to become a Foreign Person.</p>
Election to be a non-foreign trust for Australian Capital Territory Land Tax Act	No foreign persons can be beneficiaries, even if they are named beneficiaries (as that term is defined in the <i>Land Tax Act 2004</i> (ACT) – <a href="#">Foreign Person</a> ) and no income or capital may be distributed to those persons.
Non-foreign trust across all States and Territories in Australia	In effect, all limitations across the various States and Territories on distributions of income and capital, irrevocable elections made and relevant appointments as outlined above, to its greatest extent, will be adopted.
Election to be a non-foreign trust for the FIRB	No more than 19% of the income or capital of the trust may be distributed to a Foreign Person (as that term is defined in the <i>Foreign Acquisitions and Takeovers Act 1975</i> – <a href="#">foreign person</a> ) (and/or their Associate) or to a Foreign Person (and/or their Associate) if such a distribution would cause the trustee to be a Foreign Person.
To remove all FIRB foreign persons as beneficiaries of the Trust	Foreign Persons (as that term is defined in the <i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth) – <a href="#">foreign person</a> ) are excluded from being a beneficiary and general beneficiary of the Trust and may not receive any distribution of income or capital from the Trust. The Trustee must not distribute any income or capital to any other person if such a distribution would cause the Trustee to be a Foreign Person.

If you have any queries or concerns regarding the application of the non-foreign trust elections – more information is available on the [Sladen Legal website](#).