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A Professional Advisor's Toolkit for Estate and Succession Planning

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Outline

- Importance of Estate and Succession Planning
- Broaching the subject
- Key considerations
- Devising the structure
- Other issues

Importance of Estate and Succession Planning

Why estate and succession planning is important for families

Benefits of having a structured estate plan

- Keep cohesiveness in family and avoid future unpleasantness / disputes
- Continuation and stability in business
- Assets can be ring-fenced from liability and other claims
- Effective tax planning
- Opportunity to appoint trusted people as executors/trustees/guardians etc. to manage estate
- Time of distribution can be pre-decided
- Enumeration of assets for reference of heirs

In absence of a succession plan

- Assets devolve by intestate succession
- Fragmentation of assets and loss in value
- Strained personal relations and business disruption
- Disputes!

Broaching the subject

Broaching the subject

- Low priority and lack of awareness
- Usual for clients to approach their tax advisors / accountants / wealth planners first
- Discussions are sensitive
- Broach the topic with empathy
- Understand family dynamics
- Remember the broader picture (not merely monetary considerations; there are relationships at play)
- Understand key considerations

Key considerations

Key considerations

Preservation of assets

- Consolidation
- Legacy
- Stability and long-term sustainability

Protection from external forces

- Ring fencing from creditors
- Matrimonial claims protection
- Possibility of migration abroad

Monetary considerations

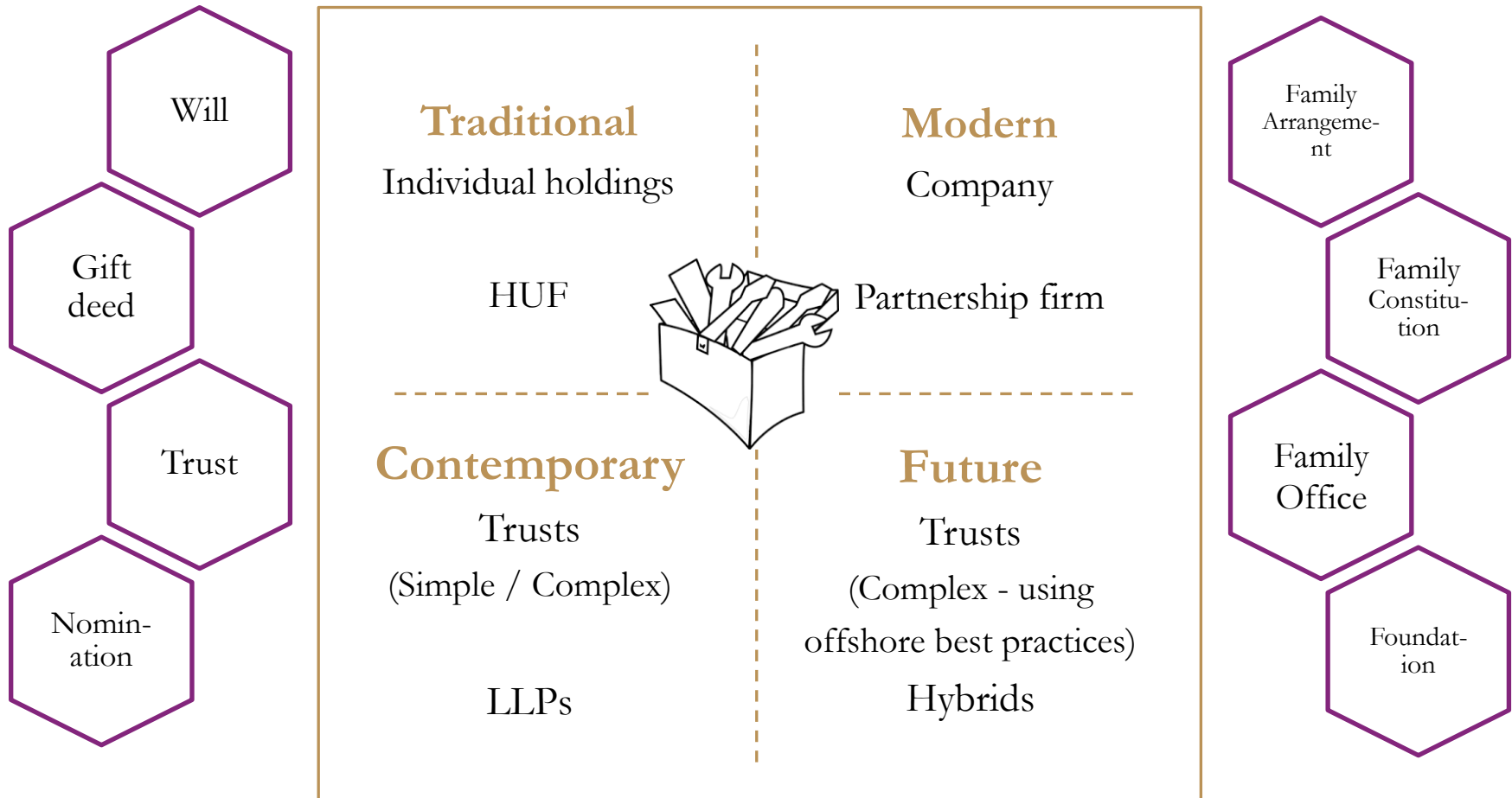
- Tax efficiency
- Estate Duty (?)
- Stamp duty

Other intangibles

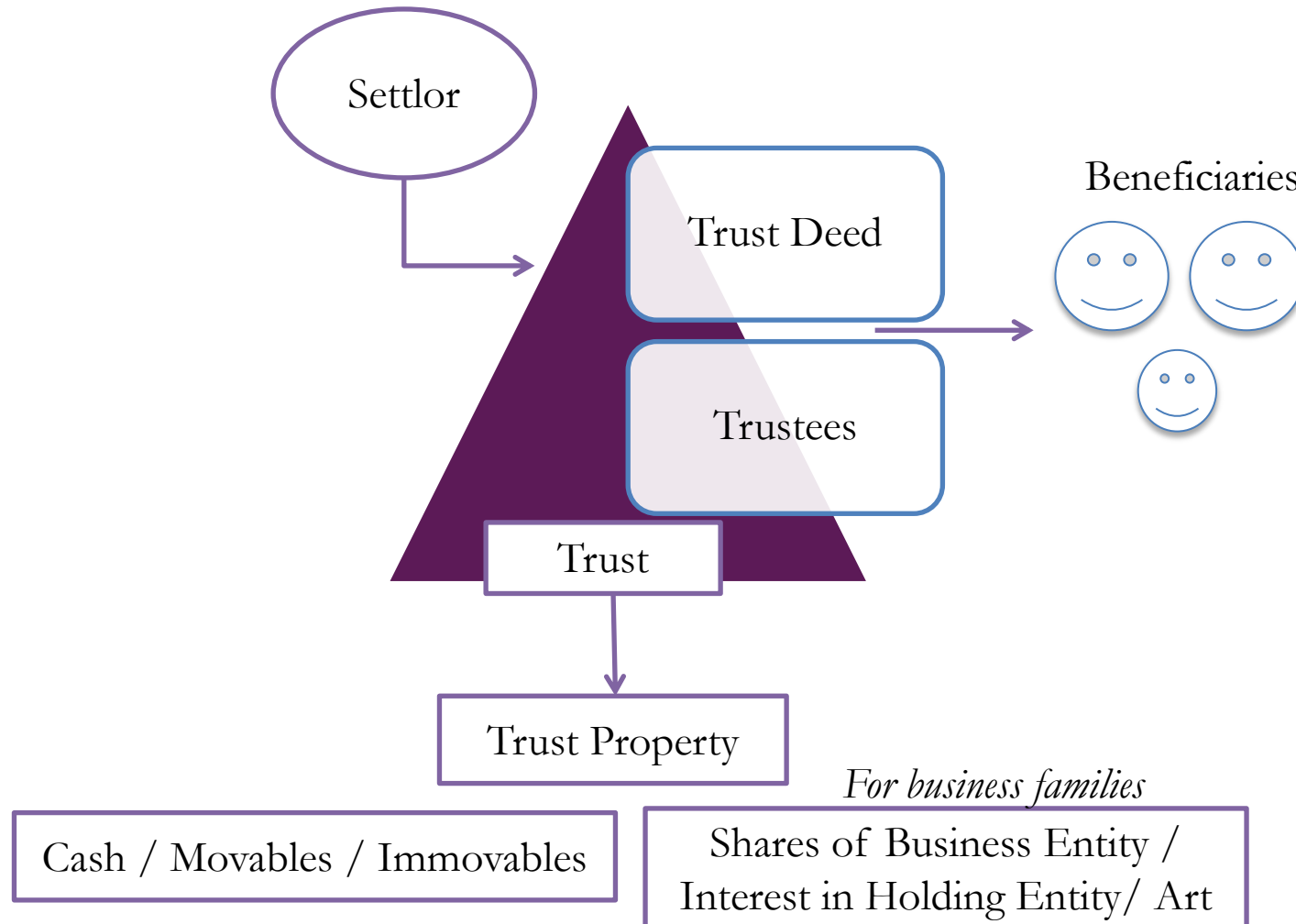
- Flexibility and control
- Confidentiality
- Protection of female members/
minors/dependents
- Possibility of existing or future disputes

Devising the structure

Toolkit for devising structures: A snapshot



Trust Structure



Why Trusts?

Benefits for the family

- Creates a defined estate planning arrangement
- Consolidation of holdings/ avoids fragmentation
- Ring fencing of assets
- Tax pass through (if determinate)
- Flexibility
- Externalization of holding structures
- Confidentiality

Other benefits

- Globally, very common
 - so best practices available
- Many professional trustees in market

Types of Trusts

Determinate and Discretionary Trusts

Determinate Trusts

- Names of the beneficiaries and their individual shares/interest in the trust fund are specified in the trust deed
- The trustees have no discretion in deciding to whom, and in what shares, the distribution of the trust fund would take place

Discretionary Trusts

- Individual shares of the beneficiaries are indeterminate
- The trustees have the discretion to decide which beneficiaries should benefit (or no distributions will be made to one or more beneficiaries) from the trust fund, extent of the distributions etc.
- Beneficiaries may be added / removed

Types of Trusts

Revocable and Irrevocable Trusts

Revocable Trusts

- Settlor retains the right during his lifetime to revoke the trust or reassume/retransfer to himself any part of the trust income/assets at his discretion.
- On revocation, assets revert back to the settlor instead of the beneficiaries
- Uncommon

Irrevocable Trusts

- Settlor does not have such a power to revoke the trust or reassume power over its assets

Lifetime and Testamentary Trusts

Lifetime Trusts

- Created during Settlor's lifetime

Testamentary Trusts

- Created under Settlor's Will

HUF v. Trusts

- **Creation & membership**
 - HUF: Hinduism specific. Trusts are religion-neutral
 - Trusts are created by agreement, HUF is a creature of law
 - Wives cannot be coparceners but can be beneficiaries
 - Self acquired property of an individual will need to be blended in coparcenary to make it coparcenary property
- **Ring Fencing**
 - HUF: Undivided interest in a coparcenary can be attached, unlike beneficial interest in discretionary trust
- **Administration**
 - Karta plays the role equivalent to trustee
- **Succession**
 - HUF: Succession of HUF interest as per succession laws
 - Trust: succession laws do not apply to trust property (no probate required)
- **Perpetuity**
 - HUF may be perpetual (although shares always changing). Trust cannot be perpetual

More Tools for Estate and Succession Planning

Individuals

- Will
- Gift deed

Families

- Family arrangement
- **Family constitution**
- Family office

Family Charter is a family governance document, which sets out:

- Family's vision
- Important family values
- Structure and principles of family
- Use of family assets (eg. Charter plane)
- Resolving conflicts and maintaining harmony
- Interaction of family with business

Useful, but not a tool

- Nomination (except life insurance)

Philanthropy

- Foundation

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Family Offices are vehicles for :

- Joint family investments
- Family philanthropy
- Family private equity and venture capital investments
- Tax and legal advice to shareholders, tax-return preparation
- Planning and execution of family-council meetings and shareholder meetings
- Administration of shared assets

Eg. Premjis, Piramals, Patnis, Narayan Murthy family

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Useful, but not a tool

- **Nomination** (except life insurance)

- Nomination facilities available for flats, bank accounts, demat accounts, insurance, etc.
- Nomination does not constitute nominee the owner
- Nominee is trustee for heirs
- Except in case of life insurance proceeds, where family member nominee takes proceeds

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Options:

- Public charitable trusts
- Societies
- Section 8 companies

Other issues

Other issues to remember

- **SEBI** – Takeover Code requires open offer to be made if a person holding (alongwith persons acting in concert) more than 25% shares of a listed company acquires more than 5% in a financial year
 - There are some automatic exemptions (eg. inter se promoter transfers)
 - SEBI exemption may have to be sought if no automatic exemption
 - SEBI takes approximately 10 to 15 months to grant an exemption order
- **FEMA** – If any family members are non-residents, then check for potential issues under the Foreign Exchange Management Act, 1999

Finally..

Remember to advise the client to **reassess** the structure every few years – change in circumstances (personal / legal / taxation) may require that the structure be tweaked

QUESTIONS?



THANK YOU