

TRUST QUARTERLY *REVIEW*

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*FAMILY TRUSTS: A GUIDE FOR
BENEFICIARIES, TRUSTEES,
TRUST PROTECTORS AND
TRUST CREATORS*, BY HARTLEY
GOLDSTONE, JAMES E HUGHES JR
AND KEITH WHITAKER

FAMILY TRUSTS: A GUIDE FOR BENEFICIARIES, TRUSTEES, TRUST PROTECTORS AND TRUST CREATORS

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REVIEWED BY CHRISTIAN STEWART

Imagine a successful wealth creator with significant financial capital and young children. This individual seeks your advice on the establishment of a family trust. He is anxious the money might take away his beneficiaries' incentive to work and lead productive lives. He wants you to help him design the trust in such a way as to avoid creating 'trust fund babies' and to overcome the universal proverb 'from shirt sleeves to shirt sleeves in three generations'.

The assumption that is hard wired into the above scenario is that we, as trust expert advisors, can somehow fix things for families through the clever design of trust structures. The authors of *Family Trusts: A Guide for Beneficiaries, Trustees, Trust Protectors and Trust Creators* point out that, in their collective experience in the US context, 80 per cent of beneficiaries they have surveyed see

their trust as a burden, not as a blessing, and the problem of trust 'remittance addiction' is rampant.

The authors have written a book that, while appreciative and respectful of the technical aspects of trust establishment and administration, stresses the importance of qualitative issues. *Family Trusts* provides simple tools for addressing relationship issues. It also provides a model aimed at (i) enhancing the relationship between the trustee and the beneficiary; and (ii) designing trusts that have a positive impact on the family human capital.

The authors say it is important to see trusts first as involving a human relationship, and then second as a legal relationship. If you consider a trust as involving investment, distribution and administrative functions, which of these three functions is going to have the biggest impact on the maturity and success in life of the beneficiaries?

The answer is the distribution function, and the authors suggest this is an area in need of attention and innovation.

Turning back to the initial example, your response to the client could be as simple as giving them a copy of *Family Trusts* to read. Indeed, the book has been written to explain trusts and family wealth in plain language to non-professional readers.

Next, ask the client about their intention. Is it to create a monument to themselves? Is their motivation simply to make a transfer to avoid taxes? Or do they want to establish a structure to enhance the lives of the beneficiaries? The mission or the purpose of the trust should be clearly stated.

The next question is whom to use as a trustee. From their US context, the authors acknowledge that often there will be a trusted family member or advisor who will be considered for this role. The approach they suggest is to consider a corporate trustee, or, in the case of a very wealthy family, a private trust company (PTC). A professional corporate trustee may have advantages over using individuals as trustees when it comes to the administrative and investment functions.

Individuals who might have been possible candidates for the trustee role can instead be asked to act as the protector. For the protector role, select those who have the capacity to give the protector ‘hat’ priority over any other hats (e.g. family, friend or advisor to the grantor) they may possess.

The protector function should be limited to the role of acting as the ‘judicial branch’ of the system, helping to resolve conflicts between the trustee and the beneficiaries. The protector does not get involved in the administration of the trust unless asked to intervene by either the beneficiaries or the trustee.

One major innovation recommended is that the trust should have a distribution committee (DC) to advise the trustee on distribution requests. The DC is appointed by the trustee (who can consult with the beneficiary) and remunerated out of the trust

fund, but the actual distribution decisions are still made by the trustee. DC members can develop a closer, more personal relationship with the beneficiary and seek to understand how distributions are impacting on their growth and development.

In international trusts, this function of bridging between the trustee and beneficiary is often given to the protector. However, the approach advocated in *Family Trusts* has the benefit of offering greater role clarity as well as building checks and balances into the ‘trustscape’ – albeit with more people involved in the system.

Beneficiaries have responsibilities too. They have to be prepared to receive the assets well, if the trust were to terminate. A second major innovation is the ‘office of the beneficiary’ (OTB). The OTB is assembled and paid for by the beneficiary; it is not part of the trust. Its membership can change as the learning needs of the beneficiary evolve. The OTB would work with the beneficiary to map out a path of personal development and learning, and help mentor the beneficiary.

The OTB is the concept furthest from my own experience. However, perhaps the lesson here is that top-down governance and structure design is not sufficient to achieve the goal of trusts that are seen as a blessing, not a burden. The OTB is a bottom-up approach encouraging beneficiaries to proactively take responsibility for their own role in the trust.

The international trust industry is currently facing enormous pressure for change. *Family Trusts* is an important book at this time because it points the way to using trusts as a positive wealth-management tool in a transparent world. It proposes a model for trustees who are looking to innovate and evolve.

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