

**MEMORANDUM**  
**explaining the use of a Trust/Limited Partnership structure**

**1. Trust combined with a Limited Partnership**

This Memorandum concerns and explains the reasons for and the benefits of a structure which combines a Trust with a Limited Partnership.

Samoa is the first jurisdiction to legislate for this structure by providing that, where a Trust governed by Samoan law holds the interest of a Limited Partner in a Limited Partnership, the Trustee of the Trust may retain the interest and is not liable for the acts or omissions of the General Partner of the Limited Partnership.

**2. Retention of control:**

Retention of control is the primary reason for the solution. Limited Partnership law is always statutory and always requires that the General Partner must control the day to day direction and management of the investments and businesses of the Limited Partnership.

Therefore, if the General Partner is corporate and can be owned and controlled by the clients but holds, say, a 1% interest in the Limited Partnership, the clients will retain day to day control this way. The 99% interest of the Limited Partner will be beneficially owned by a Trust for the family of the clients and this therefore has the value. Value has therefore been successfully dissected from control in a medium which is not trust law.

**3. Diagram:**

There is a diagram of a Trust/LP structure attached to this Memorandum.

**4. Holding of assets:**

By all Limited Partnership law, the assets of the Limited Partnership must be held by the General Partner for the partners of the Limited Partnership in the ratio in which they share their interests in the Limited Partnership. The Trustees are entitled beneficially to the value of interest of the Limited Partner. It is therefore impossible for the Trustees to misappropriate the assets.

**5. Benefits of the structure:**

5.1 Control as mentioned above.

5.2 Protection of the assets because they are held by the General Partner and not by the Trustees.

5.3 The usual benefits of a Trust:-

5.3.1 Family protection and succession;

5.3.2 Asset protection; and

5.3.3 Avoidance of Probate.

5.4 The dissection of control from value is not achieved in trust law but in partnership law. This avoids all arguments that such an exercise runs contrary to the essence of a trust. It is thus superior in that respect to other intended solutions such as VISTA (the Virgin Islands Special Trusts Act), LST (the Labuan Special Trust) and SISTA (the Samoa Special Trust Arrangement).

- 5.5 The solution is not jurisdictional specific. It is possible to have the Trust governed by one law, the Limited Partnership by another and the corporate General Partner by another. There is also usually a holding company owned by the General Partner for the Partners and this could be governed by yet another law. Laws and jurisdictions are chosen to suit the clients' needs and requirements and their respective tax status.

This assists in the protection and preservation of wealth.

- 5.6 Risk exposure can be minimised by having separate structures below the holding company or by having more than one Trust/Limited Partnership structure. Choice in this respect depends upon the nature of investments, businesses and assets, where they are situated and the taxation implications.
- 5.7 Tax mitigation: This can be achieved depending upon the tax status of those concerned and the nature and situs of the assets involved. Where appropriate, proper double taxation relief structures with appropriate substance may be used below the holding company.
- 5.8 Dissection of personal assets from business assets: In more advanced structures, this can be achieved by having two separate structures where one Trust and/or holding company may be Beneficiary or Beneficiaries of the Trust combined with the Limited Partnership.
- 5.9 Legal confidentiality: If there is a Holding Company, this not only provides more ring-fencing but, for accounting purposes, nothing below the Holding Company is consolidated upwards into the Limited Partnership. This provides a layer of privacy and means that the accounts of the General Partner, of the Limited Partnership and of the Trust are very simple and cost effective. The use of different jurisdictions can provide "firewalls".

## **6. Conclusion:**

This is frequently the best structure at present for addressing the needs of clients who have substantial estates with operating companies and who wish to retain day to day control.

**NOTE:** This Memorandum is provided for your assistance but you should always take professional advice before acting. Circumstances and needs differ considerably from one person or family to another.

**This Memorandum was last updated on 30<sup>th</sup> July 2015**