Trust Deed Amendment Instruction Sheet

(Foreign Exclusion Variation - Discretionary Trust)

*Acknowledgment*

In placing this order I acknowledge that:

1. It is my responsibility to ensure that the order form is complete and correct. I also agree to supply, at my or my client’s cost, a copy of the deed of the trust.

2. The documents I will receive are in a standard form prepared by solicitors for NTAA Corporate.

3. If new documents have to be prepared as a result of errors, omissions, or if further work is required to attend to errors or omissions in respect of the documents provided, a further fee will be payable. Furthermore, NTAA Corporate may reject the order if all the relevant documents cannot be produced, the documents are faulty, or if it requires rectification.

4. Stamp duty may apply in relation to the deeds. NTAA Corporate is not liable for advising on stamp duty, paying the stamp duty or arranging for lodgment of the documents for stamping. In some states, there may be adverse stamp duty consequences as a result of these changes.

5. We cannot guarantee that the enclosed deed of variation will have the desired effect of providing that the Trust will not be subject to the stamp duty and/or land tax surcharges, especially as we are not experts on stamp duty or land tax (which are state-based taxes). It may be appropriate for you or your client to obtain advice in relation to the deed of variation from stamp duty and land tax experts based in the relevant state.

6. Also, there is at least some risk that this amendment to exclude foreign beneficiaries could constitute a resettlement of the Trust, which could have serious stamp duty and capital gains tax implications. If this is a concern, you or your client should obtain detailed legal advice in this regard.

7. The documentation will be prepared based on the instructions contained in this order form. NTAA Corporate has not provided any legal advice to the parties in relation to the suitability of the documents. In particular, NTAA Corporate is not licensed to provide financial product (FP) advice under the Corporations Act 2001 (Cth) and I may consider taking advice from the holder of an Australian Financial Services Licence before making a decision on an FP. Furthermore, NTAA Corporate is not giving legal advice in arranging for the supply of these documents and if either I or my client requires legal advice in relation to this matter that will be arranged separately.

Person ordering deed

Person ordering:

Firm:  NTAA Member Number:

Phone:  Email:

*By completing these instructions and sending them to NTAA Corporate, I/we and our client(s) hereby acknowledge
and agree to the above terms and conditions and that I/we have read the explanatory material included in this form.*

|  |  |  |
| --- | --- | --- |
| Payment details Please tick the following products you require and provide credit card details for payment. For other payment options, contact us on 1800 700 666.  | **Deed of Variation:** |  |
| Foreign Exclusion (Deed prepared by DocsCentre) **$440 [ ]**  |  |
| **Please provide a scanned copy of the executed Trust Deed***Note: The documents will be sent to the nominated email address in PDF format.* |  |

[ ]  Mastercard [ ]  Visa [ ]  AMEX [ ]  On Account\*

Name on Card:

Credit Card No:

Expiry Date: Signature

*\* Note that our staff will call you to request the CVV when payment is processed.*

*\* On account option is only available if a 30 day credit account application has been completed and approved.*

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|  Email to info@ntaacorporate.com.au **** If you have any other queries, please call 03 9209 9799 or free call 1800 799 666 |

***PLEASE COMPLETE ALL CURRENT DETAILS THROUGHOUT THIS ORDER FORM (WHERE APPROPRIATE), NOTWITHSTANDING THAT YOU WILL ALSO PROVIDE A SIGNED COPY OF THE DEED***

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| **SECTION A – CURRENT TRUST DETAILS** |
| Name of Trust |  |
| Law Governing Fund | VIC [ ]  NSW [ ]  QLD [ ]  SA [ ]  WA [ ]  TAS [ ]  ACT [ ]  NT [ ]  |
| Date the original Trust Deed was executed/signed |  | Please include a copy (not original) of the deed (and details of any changes made since that deed was executed). Copies will not be returned unless requested. |
| Type of Trust: Discretionary Trust  |
| What is the clause number of the deed which permits the relevant change(s)?(leave blank if not known) |
| **SECTION B - TRUSTEE(S) DETAILS** |
| **CURRENT INDIVIDUAL TRUSTEES** |
| **TRUSTEE 1-** Full Name  |  |
| Residential Address |  |
|  |
| **TRUSTEE 2-** Full Name  |       |
| Residential Address |       |
|   |
| **TRUSTEE 3-** Full Name  |  |
| Residential Address |  |
|  |
| **TRUSTEE 4-** Full Name  |  |
| Residential Address |  |
|  |

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| --- |
| **CURRENT CORPORATE TRUSTEE** |
| Name of Corporate Trustee ACN |  |
| Address |  |
| Names of Director (1)  |
| Names of Director (2)  |
| Names of Director (3)  |
| Names of Director (4):  |

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| --- |
| **CURRENT APPOINTOR(S)**  |
| Appointor Name and address |  |
|  |
| Appointor Name and address |  |
|  |
| Appointor Name and address |  |
|  |
| Appointor Name and address |  |
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| **SPECIAL INSTRUCTIONS (IF ANY):**                |
|       |
| **How to complete THE order form for A TRUST deed AMENDMENT** |

***This section must be read in conjunction with the above order form***

PLEASE ENSURE YOU COMPLETE ALL REQUIRED INFORMATION, NOTWITHSTANDING THAT WE ALSO REQUIRE A SIGNED COPY OF THE TRUST DEED.

**SECTION A – CURRENT TRUST DETAILS**

This section refers to the details of the trust as it is currently in place.

If you are aware of the clause number which permits the variation to take place, please complete. If you do not know, or you are unsure, please leave this blank.

**SECTION B – CURRENT TRUSTEE DETAILs**

If appropriate, please indicate the names, residential addresses of all current individual trustees.

If appropriate, please indicate the name, ACN and address of the corporate trustee as well as the names of the directors.

**SECTION C – CURRENT APPOINTOR**

Please indicate the names and residential addresses of all individual appointors.

**SCOPE OF THIS PACKAGE**

The Docscentre Foreign Persons Exclusion Deed of Variation package (“this/the package”) is designed to

specifically exclude “foreign persons” from the class of beneficiaries of a discretionary trust or hybrid trust

with reference to the following acts only:

a) *Duties Act 2000 (VIC);*

b) *Duties Act 1997 (NSW);*

c) *Land Tax Act 1956 (NSW);*

d) *Duties Act 2001 (Tas)*; and

e) *Foreign Acquisitions and Takeovers Act 1975 (Cth)* (only to the extent that it is referred to under the NSW

legislation at points b) and c) above)

Note that although the *Foreign Acquisitions and Takeovers Act 1975 (Cth)* is referenced above, this package is

not designed for, nor is it of any relevance to, any Foreign Investment Review Board functions, applications or

determinations. The Foreign Investment Review Board’s regulation and application process is an entirely

separate matter to that which this package is designed for.

**WHAT ARE THE LIMITATIONS OF THIS PACKAGE?**

This package is designed to **only** exclude “foreign persons” as they are defined in the above acts. As such, the

variation documentation is designed specifically to provide relief from the **surcharge land tax** in relation to

trusts holding certain *land#1* in New South Wales, the **surcharge purchaser duty** in relation to the acquisition of

residential land#2 in New South Wales and the **foreign purchaser additional duty** in relation to the acquisition

of residential land#2 in Victoria and Tasmania by trustees of trusts.

If you have questions in relation to similar documentation requirements for, or your client has a trust, or is

transacting for their trust to hold land real property assets, located in any States and Territories that are not

referenced above, please contact our office before ordering the Docscentre Foreign Persons Exclusion Deed of

Variation package (note that we will only be able to provide general information regarding this package and

not legal advice – you will need to consider the general information we provide, and its validity for your client’s

circumstances, before ordering the package).

**WHAT IF A NAMED OR DEFAULT BENEFICIARY OR A CONTROLLER IS A FOREIGN PERSON?**

Further to the above, this package is **not** designed to be used if:

• the trust deed is a SMSF deed, a testamentary trust deed or a unit trust deed;

• any of the named/specified beneficiaries of the trust are foreign persons;#3

• any of the beneficiaries who are takers in default are foreign persons;#3 or

• any of the parties involved in decisions regarding the administration or conduct of the trust (for example, as

a director or shareholder of the trustee of the trust or as an appointor of the trust) are foreign persons.

If the trust has a named or default beneficiary, registered unit holder or a controller (as discussed above) who

is a foreign person, please do not complete this application form but instead contact our office.

#1 *land* in this context refers to the following in relation to “residential land” as defined in *Land Tax Act 1956 (NSW)*

#2 *residential land* in this context refers to the following in relation to additional stamp duty:

• “residential property” as defined in the *Duties Act 2000 (VIC)*

• “residential land” as defined in the *Duties Act 1997* (NSW)

#3 Contact us as this may give rise to potential taxation issues regarding resettlement of the trust

**WHAT IF YOUR TRUST DEED HAS A “TRUSTS AND/OR POWERS ONLY” VARIATION CLAUSE?**

Some variation clauses do not allow for the insertion of a new foreign person exclusion clause into the trust deed (e.g. a variation clause that allows for the “trusts” (i.e. generally the list of trust beneficiaries) and/or the “powers” (i.e. the powers of the trustee, and not of the appointor or guardian) in the trust deed to be varied and not any other clauses or the schedule of the trust deed).

If we identify that your trust deed’s variation clause is not sufficiently broad to allow for the foreign person exclusion clause to be inserted into the trust deed, we cannot offer to provide the foreign person exclusion deed of variation as our default documentation product.

Instead, you may either cancel your order (in which case you will be responsible for advising your client as to the most appropriate course of action for the trust given its taxation position and held land and other assets) or you may choose to order from us a deed of variation that seeks to insert the foreign person exclusion clause into the trust deed (subject to our disclaimers that you and your client accept full responsibility for the deed of variation being found to be invalid due to the limited variation clause) and which uses the variation clause to add a power for the trustee to exclude a “class” of beneficiaries, which will allow the trustee to then execute a further document we will provide as a deed of exclusion of foreign persons. Note that ordering this further document will incur an additional fee to our base fee for the deed of variation for foreign person exclusion.

Also note that neither the deed of exclusion nor the deed of variation in this case will insert a foreign person exclusion clause into the trust deed in accordance with the variation clause and this carries the risk that both the deed of exclusion and the deed of variation may not satisfy the requirements of a particular state or territory’s foreign person surcharge exemption requirements where those requirements include that a separate foreign person exclusion clause be inserted into the trust deed by the deed of variation.

If you have any questions regarding this procedure or if your trust deed has been identified as having the limited “trusts and/or powers only” variation clause you may contact us on 03 9209 9799 or at legal@docscentre.com.au to discuss.