



**'BAMFORD' TRUST AMENDMENT ORDER FORM**

NAME: .....  
FIRM: .....  
PHONE: .....  
E-MAIL: .....

**FREECALL 1800 773 477**

NAME OF TRUST \_\_\_\_\_

Date of Original Deed \_\_\_\_\_ Date of Last Amendment \_\_\_\_\_

Please submit a copy of the original trust deed (and any documents that have amended it) together with this order form

**CURRENT TRUSTEE/S**

CORPORATE TRUSTEE/S \_\_\_\_\_  
*(if applicable)*  
ACN \_\_\_\_\_

Names of ALL Directors \_\_\_\_\_  
*(1st listed to be Chairman & signatory/s)*

INDIVIDUAL TRUSTEE/S \_\_\_\_\_  
*(1st listed to be Chairman & signatory/s)*

Address of Trustee/s \_\_\_\_\_

**PRINCIPAL / APPOINTOR / UNITHOLDER**

Full name \_\_\_\_\_

Address \_\_\_\_\_

Full name \_\_\_\_\_

Address \_\_\_\_\_

**IMPORTANT NOTES**

This trust's deed will be amended to:

- insert a new definition of income;
- insert a discretion for the trustee to determine the nature of receipts and expenses and whether they are applied to the income account or to capital account;
- insert a power for the trustee to distribute specific categories of income to particular beneficiaries;
- remove provisions which treat unpaid trust entitlements as loans;
- update the trustee's powers to reflect our current provisions.

**NOTE:** While we do not provide an opinion on possible resettlement issues, if such an issue is identified, we will refer it you for instructions.

**PAYMENT DETAILS:** Please debit the following card details by the amount of \$ \_\_\_\_\_

**TYPE OF CARD:** Visa  Mastercard  \*Diners Club  \*Amex  \* 3% surcharge applies.

**CARD NUMBER:** \_\_\_\_\_ **EXPIRY DATE:** ( / )

**NAME ON CARD:** \_\_\_\_\_ **SIGNATURE:** \_\_\_\_\_

Please return this form and any documents requested above to ACIS by:

**Post:** Locked Bag 1 Fortitude Valley BC Qld 4006

**Courier:** Level 1 The Portal 1 Breakfast Creek Road Newstead Qld 4006

## **THE HIGH COURT DECIDES BAMFORD**

Since the High Court handed down its decision in the Bamford case on 30 March 2010, ACIS have looked carefully at the decision with our lawyers.

The decision of the High Court supports the view that:

1. The term "share" in section 97 of the Income Tax Assessment Act 1936 (the "Act") means a "proportion" of the net income of the trust. The court rejected the notion that the term should refer to a quantum of income distributed to a beneficiary. In other words, a beneficiary might be liable for tax on amounts not received or distributed to it. This is particularly relevant where the Commissioner issues an amended assessment which increases the net income of the trust. The proportionate approach means that each beneficiary will bear tax on the increased amount in the proportion that their distribution bears to the net income of the trust determined before the increase in net income.
2. The trust deed for the trust can define what income is. This means that, provided the trust deed has an adequate definition of income and the trustee has the discretion to determine what is or is not income at any time, the trustee can include in income items that might not otherwise be income (e.g. capital gains).

There are 2 other issues that practitioners must also be aware of:

1. The Commissioner issued a Decision Impact Statement and Practice Statement (PS LA 2010/1) which deal with the ATO's interpretation of the decision and how the ATO will apply that decision.
2. There are a number of issues that the High Court did not address and which are still open for discussion.

Many older trust deeds do not have the necessary provisions to enable them to take advantage of the Bamford principles. Without those provisions:

- the trustee may not be able to determine how income is to be determined in any financial year;
- the trustee may not be able to attribute particular expenses against income of a particular category;
- the trustee may not be able to distribute specific categories to particular beneficiaries;
- some beneficiaries may be required to pay tax on amounts they are not entitled to and have not received.

Where you have determined that changes to the trust deed are necessary or desirable, ACIS will provide a deed of amendment to incorporate our post-Bamford changes.

### **Important Note**

Great care needs to be taken when amending trust deeds to incorporate these changes, as the trustee must exercise caution to ensure that the trust is not resettled. Resettlement may result in capital gains tax or stamp duty liabilities.

While we do not provide an opinion on possible resettlement issues, if such an issue is identified, we will refer it to you for instructions.