Should I register a family trust now or rather provide for a testamentary trust in my will?

A testamentary trust is created in terms of the provisions of a will after the death of the deceased. A trust inter vivos, on the other hand, is created whilst the donor is still alive.

The trust inter vivos can be used by the donor, who would normally also be a trustee and a beneficiary, for estate planning purposes. From a risk management point of view the trust assets do not form part of estate of the donor, the trustees or the beneficiaries. Creditors can therefore not attach these assets where one of them should have financial problems and might even be declared insolvent.

From an estate duty point of view the assets also do not form part of the donor's, the beneficiaries' or the trustees' deceased estate. These assets therefore do not attract estate duty.

In respect of income tax, savings can be achieved by dividing the income of the trust, for example rental received in respect of the trust assets rented out, to the various beneficiaries, for example the donor's spouse and children, who would probably be taxed at a lower rate.

Finally such a trust can also be used for minor children to ensure that cash inheritances are not paid into the Master's Guardian Fund for payment to the minors when they reach the age of 18.

These advantages must be weighed up against the costs implications of the registration of the trust and the transfer of assets of the donor to the trustees.

A trust is therefore not the appropriate vehicle for every estate planner.

A testamentary trust is primarily used for minor children to prevent cash inheritances from being paid to the Guardians Fund and also to protect the minors against themselves.

Volker Krüger

You can complete the will instruction sheet here: Testament Instruksievel / Will Instruction Sheet