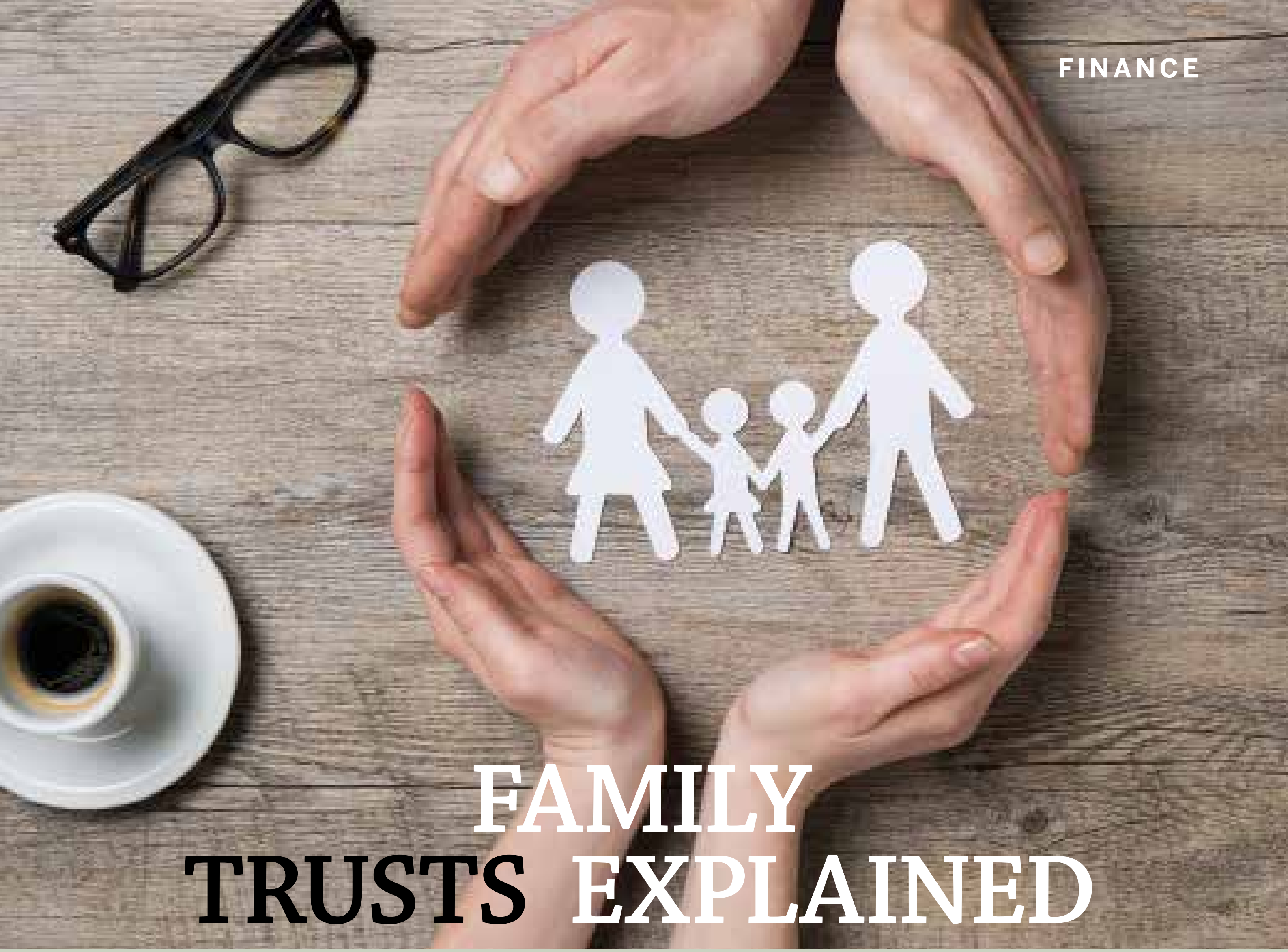

FAMILY TRUSTS EXPLAINED

The complexities of a trust can sometimes discourage people from creating one. But don't let it put you off. Call in the experts and protect your family.

BY JESSICA ABELSOHN

Family trusts can be confusing. They can be complex. But they can also be a wonderful way to protect your assets, help with succession planning and look after your family. The important thing is that they are set up and managed correctly.

WHAT IS A FAMILY TRUST?

Also known as a discretionary trust, a family trust holds a family's assets or business for the benefit of one or more family members. It's a legal agreement set out in a trust deed, the document that explains the key details of the trust and how it operates. In a family trust situation, beneficiaries do not have a fixed entitlement or interest in the funds. Rather they receive capital and income from the trust. This is at the discretion of the trustee.

According to Simon Creek, Managing Director of HHG Legal Group, there are several main reasons for setting up a family trust. "Family trusts are considered popular structures for the management of family businesses and assets across multiple generations of family members," he explains. "This is primarily because of income tax advantages, asset protection and the discretionary nature of a family trust."

THE PROS AND CONS

Of course, there are advantages and disadvantages to family trusts. Suzanne Haddan, Managing Director of BFG Financial Services, says the main advantages are tax benefits, flexibility and protection of assets. "Income and capital gains can be distributed to beneficiaries and the amount distributed can be varied each year," she says. "Distributing income in this way can reduce the tax payable if there are family members on different marginal rates."

In terms of the protection of assets, Haddan and Creek agree that is a major selling point. "Assets in the trust can be protected from potential creditors and other legal claims," Creek says. A trust can also provide protection against family law claims, especially in cases of a relationship breakdown. "Because the assets are not given to your children and » grandchildren, a trust structure may protect the assets from a claim upon a breakdown of a relationship, preserving the assets for the benefit of your children and grandchildren."

On the flip side, the disadvantages include the cost, complexities involved and the losses that may be incurred. While there are set up costs, there are also maintenance and running costs and these can be quite high depending on the complexity of the family trust.

> **"Assets in the trust can be protected from potential creditors and other legal claims."**

SET UP AND MAINTENANCE

Before starting the process, it's crucial to decide whether a family trust is the best structure for you. "An analysis of the costs versus the benefits is essential," Haddan says. "And also whether the additional complexity and administration burdens make it worthwhile."

Creek also says you'll need to decide who plays the important roles of appointer and trustee, and which assets are going to be included. The beneficiaries will also need to be decided. The administrative steps and keeping the trust deed up to date should be handled by the professionals; namely an accountant and/or solicitor.

When in doubt, always consult the experts. ••

STEP BY STEP

Simon Creek, Managing Director of HHG Legal Group, provides a step-by-step explanation of setting up a family trust.

1 Decide who the trustee and the beneficiaries will be. The trustee in particular needs careful consideration as they legally own the trust assets and are responsible for the day to day management.

2 Draft the trust deed. This will provide key details including the date on which the trust will fully distribute its assets, remuneration of the trustee and indemnification of the trustee from the trust assets.

3 Settle the trust, which essentially means nominating a settlor to sign the trust deed. This person should be unrelated to the beneficiaries. It's usually an accountant or a lawyer.

4 Sign on the dotted line. The settler and the trustee must sign the trust deed, agreeing to all the terms and rules.

5 Open the accounts. The trust should apply for a tax file number, an ABN and open a bank account specifically for the trust.