



ESTATE PLANNING – A BRIEF STUDY

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ESTATE PLANNING



Estate Planning is a process of arranging and planning succession and financial affairs.

The Plan incorporates your wishes regarding your Estate.

The Estate Plan could be regarding

- ✓ **Estate Management**
- ✓ **Estate Preservation**
- ✓ **Estate Legacy**

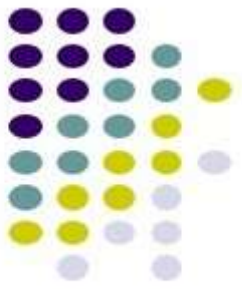
... during your lifetime and after

What is an Estate?

An Estate is the total property which includes entire movable and immovable property owned by an individual.

Examples of Estates are:

- ✓ Ownership of businesses
- ✓ A share in Joint Family Business (HUF)
- ✓ Investment by way of holding majority stakes in private and public Companies
- ✓ Shares, Debentures, Units of Mutual funds and any other securities
- ✓ Intangible assets
- ✓ Immoveable properties
- ✓ Bank Deposits
- ✓ Paintings, Fine Art, Sculptures, Antiques
- ✓ Gold, Silver, Precious Stones and Jewellery
- ✓ Life Insurance Policies



Modes of Estate Planning

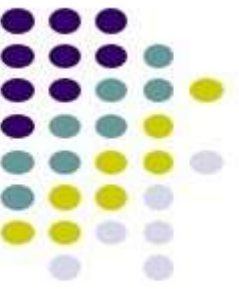


By preparing a Will or a Trust

✓ **WILL** is a legal declaration of a person's intention with respect to his property which he desires to be carried into effect after his death. Thus a Will operates only after the death of the person.

✓ **TRUST** involves transferring of one's estate to a Trustee for the benefit of certain beneficiaries. Trust provides for management of the estate during one's lifetime and also provides for distribution and management of one's wealth post demise.

Concerns Faced by Individuals



Personal Concerns

What will happen if I get **incapacitated** or **demise unexpectedly**?

Succession Concerns

How do I ensure **amicable disposition** of my wealth?

Estate Management Concerns

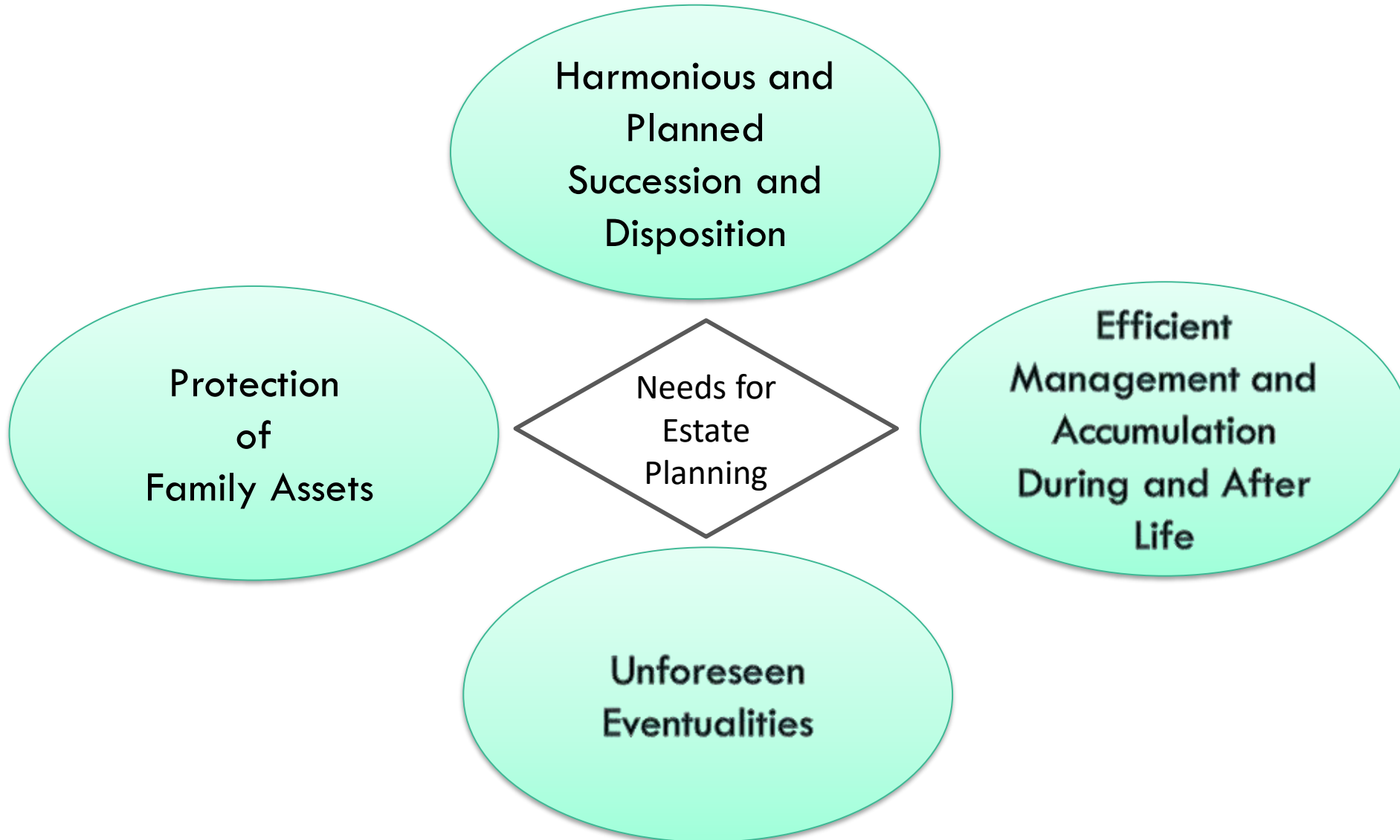
How do I ensure **cashflow management** to meet **family needs** during my lifetime and after?

Business Concerns

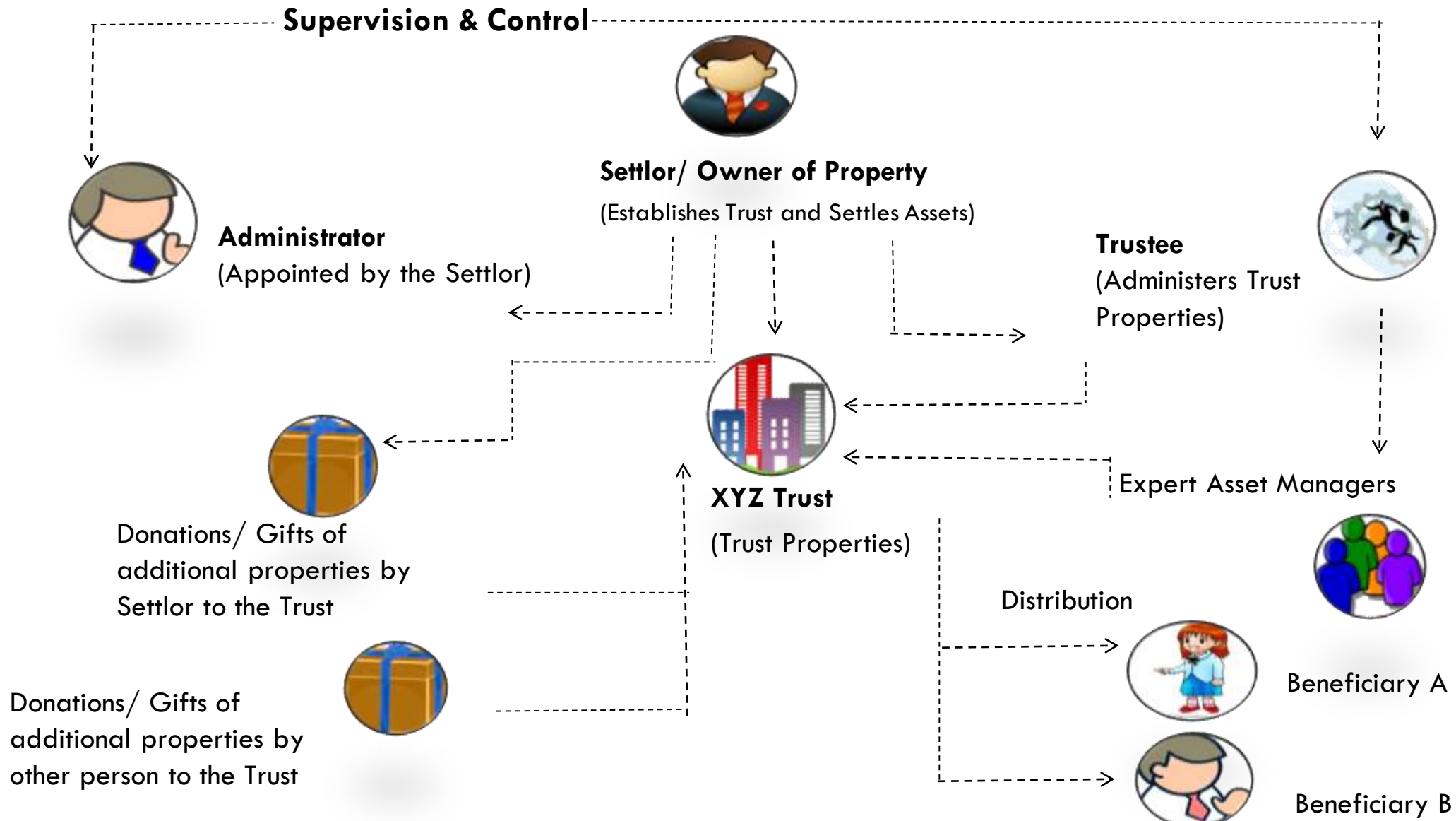
What if my **business** makes **losses**?

How do I plan my **business succession**?

Need for Estate Planning Through Trust Structure



Estate Planning by Trust Structure



Advantages of Estate Planning by Trust Route



- ✓ **Estate Protection** because a Trust is a bankruptcy remote structure
- ✓ **Customized** to specific family needs and desires
- ✓ **Self beneficiary**- The person who creates the Trust can himself be one of the beneficiaries and enjoy the benefit of his own estate during his lifetime.
- ✓ **Efficient Succession Planning** by protecting and preserving assets for children, grand children and great grand children
- ✓ **Management of all types of assets** through expert advisors
- ✓ **Accumulation** of the Estate during the lifetime and post death through the hands of Trustees
- ✓ **Avoidance of family disputes** leading to disintegration of family businesses
- ✓ Trust can be **created by any entity** who wants property viz. individuals, companies etc.
- ✓ **Flexibility**- Trust deeds can be typically be amended, modified, revoked depending on the type of the Trust

Advantages of Estate Planning by Trust Route



- ✓ Protects your family **privacy and confidentiality**, as obtaining a probate is not required
- ✓ **Causing efficient management** of the Estate as Trust can be made operational during the lifetime and post death of the client
- ✓ **Providing for future administration** of assets to protect against future incapacity
- ✓ **Administration of property** for incapable beneficiaries
- ✓ To make provisions for **religious or charitable purposes**
- ✓ **Low Contestability** as compared to a Will
- ✓ **Protects from imposition** of Estate taxes if re-introduced.

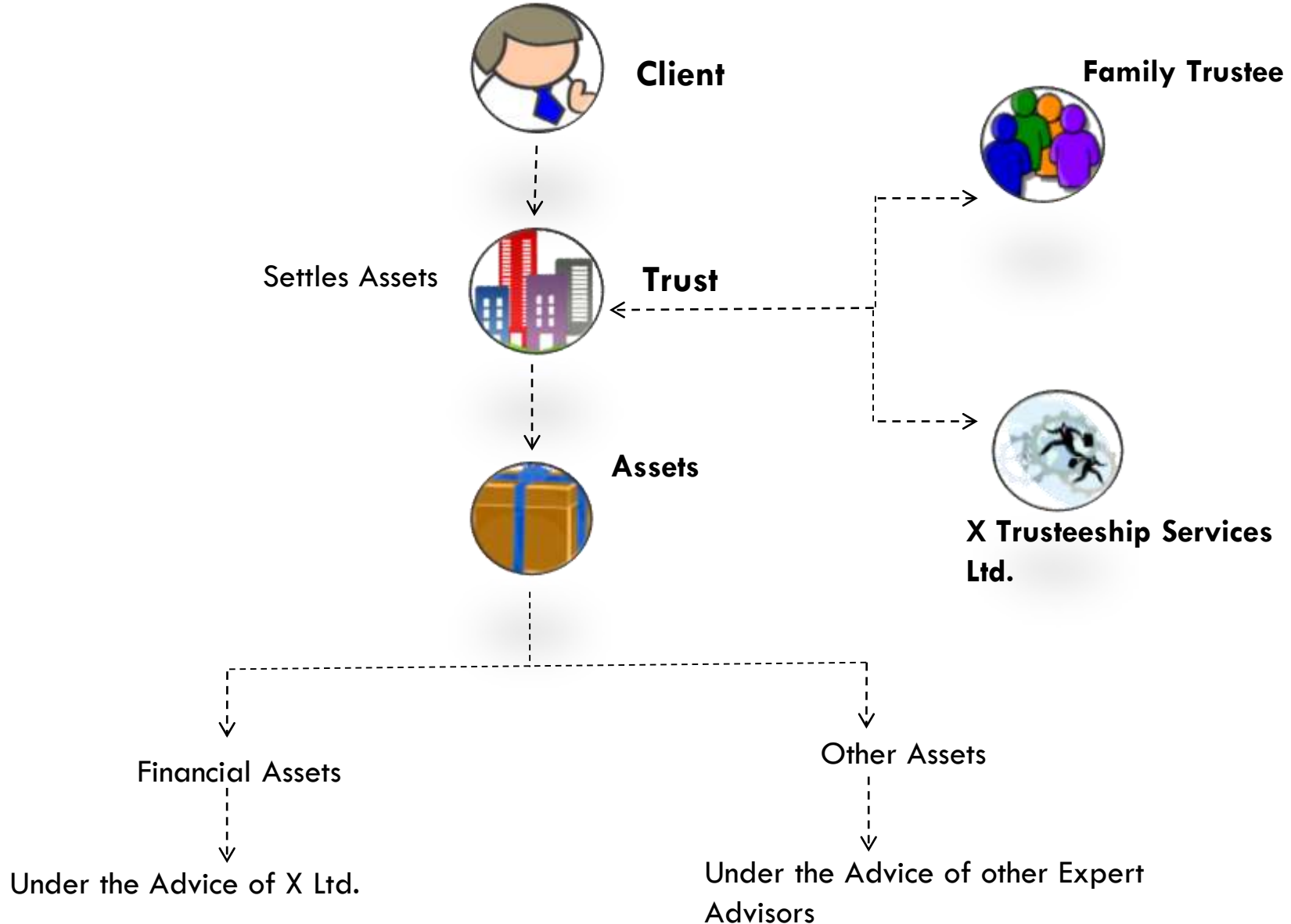
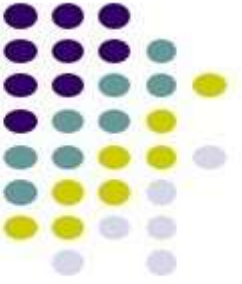
Estate Planning

Estate Planning shall be:

- ✓ Trust Structuring
- ✓ Drafting & Execution of Trust Deeds



Trust Structure





Process of Estate Planning



STEP I

- Meet & brief client about Estate Planning
- Assist client to decide on developing instructions for Estate planning;
- Review instructions from tax and legal angle

STEP II

- Finalizing a draft of the Estate Planning structure & advise on other issues & concerns

STEP III

- Creating a trust deed/ will

STEP IV

- Legal Vetting



TYPES OF TRUSTS AND TAXATION

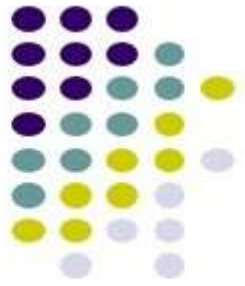
Types of Trusts



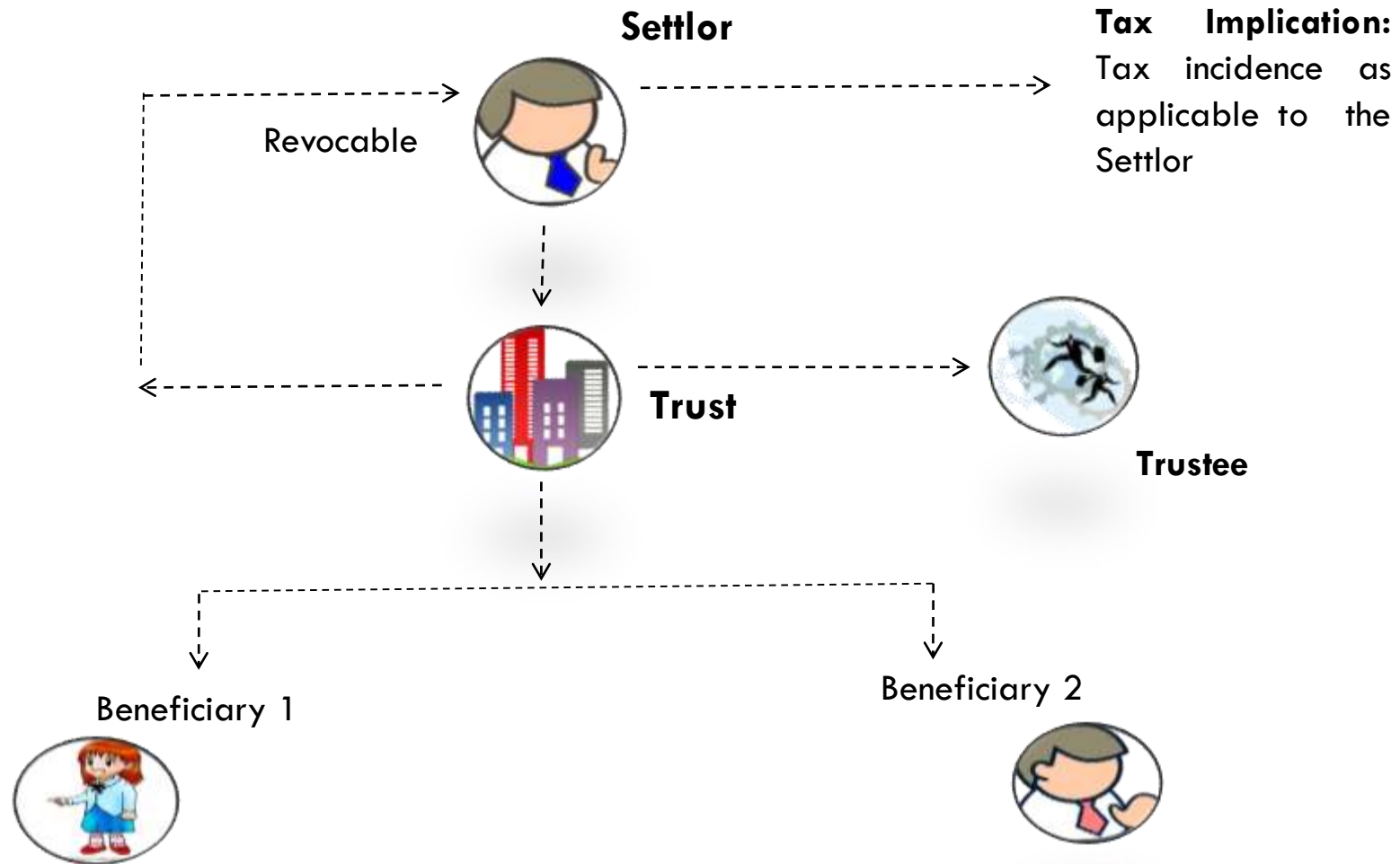
Revocable Trusts

- ✓ In a revocable Trust, the Settlor has the power to reassume control directly or indirectly over the income or the assets of the Trust
- ✓ The Settlor can even revoke the Trust created if he so desires and can also be a beneficiary of the Trust.

Trust Structure: Revocable Trust



- The Settlor has powers to reassume power directly or indirectly over the income or the assets of the Trust



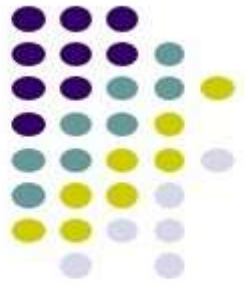
Types of Trusts



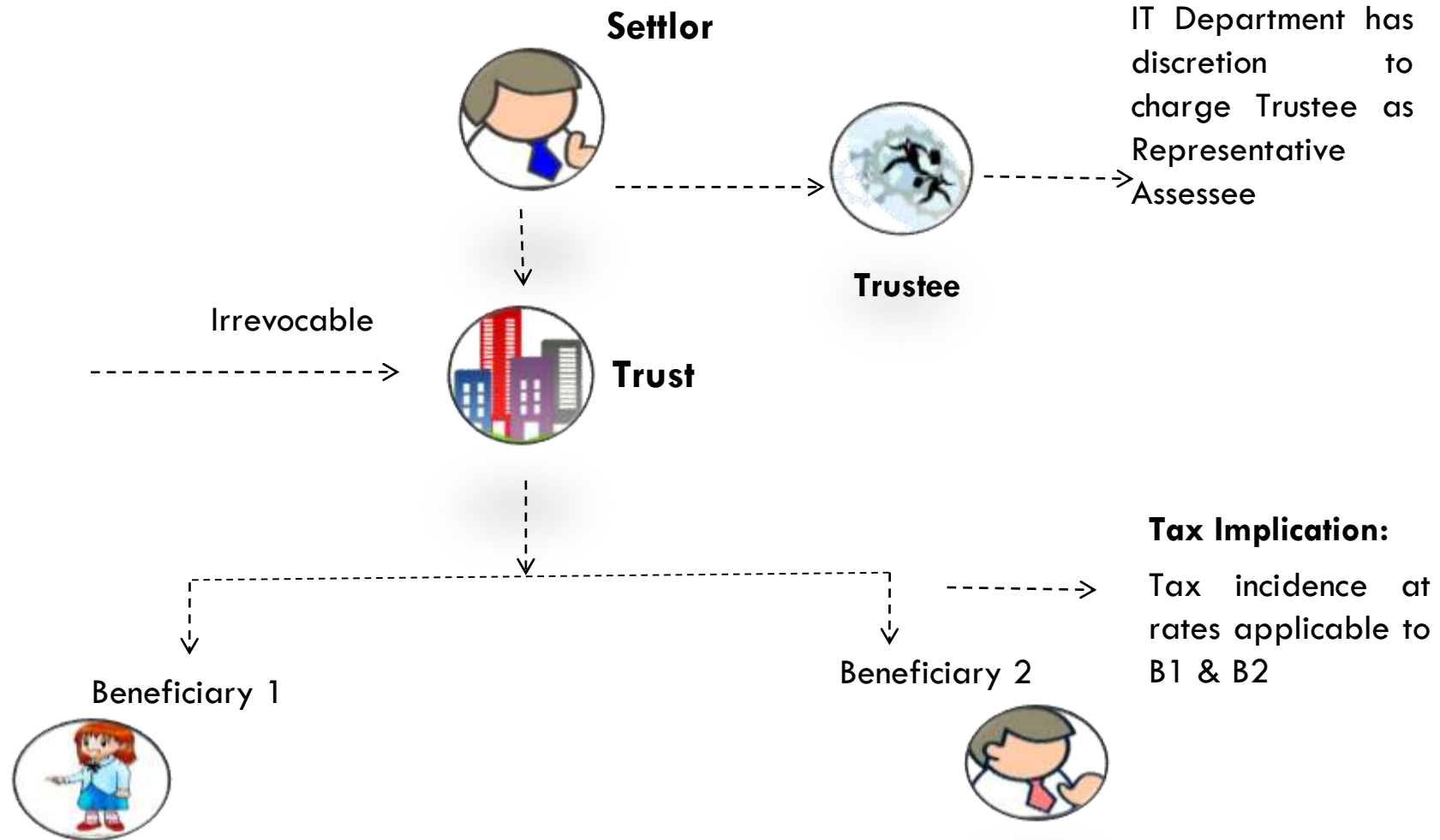
Irrevocable Trusts

- ✓ In an irrevocable Trust, the trust once created survives till the date of dissolution of the Trust and the Settlor cannot reassume power directly or indirectly over the income or assets of the Trust
- ✓ The Settlor however subject to the above can retain certain rights like amendment of the Trust Deed, requirement of consultation prior to any investments, sale, disposition of the Trust Assets
- ✓ An Irrevocable Trust could be a determinate or Discretionary/ Indeterminate Trust and the powers of the Settlor would differ in both the types of Trusts

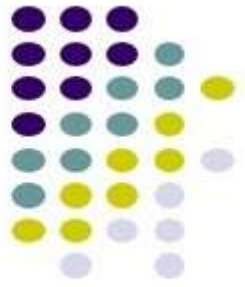
Trust Structure: Irrevocable Trust- Determinate



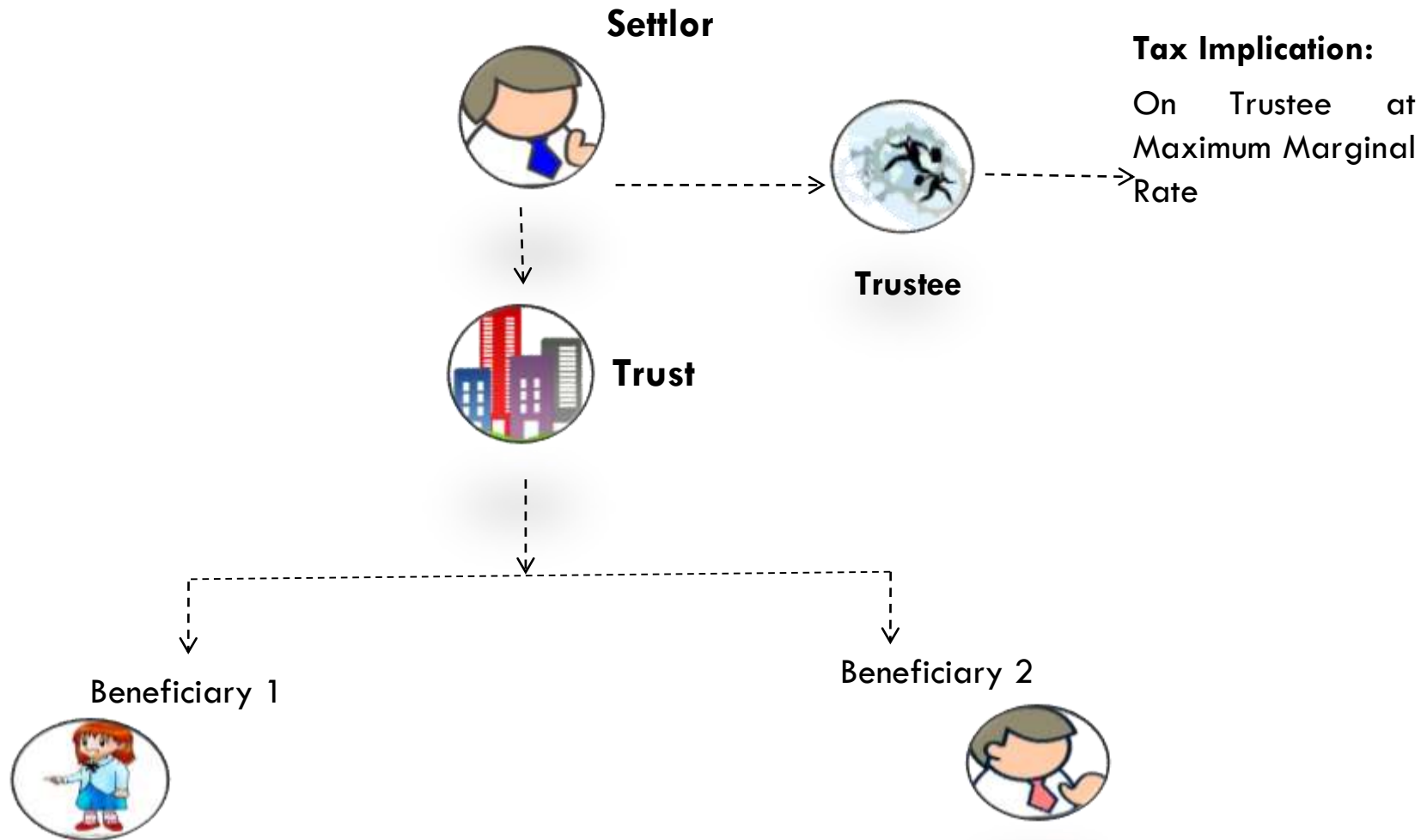
- Both beneficiaries and beneficial interest are defined



Trust Structure: Irrevocable and Discretionary Trust



- Beneficiaries or their beneficial interest is not defined



Trustee: Need for Corporate Trustee



Trustee

✓ The Trustee is the one who hold the title to the trust property and he holds the trust property for the benefit of the beneficiaries

Advantages of appointing a Corporate Trustee

- ✓ Continuity of administration
- ✓ Professional advice
- ✓ Avoidance of changes in the trusteeship and cost of such changes
- ✓ A large measure of security
- ✓ Keeping of proper accounts
- ✓ Review of investments at regular intervals by competent persons familiar with the business
- ✓ Impartiality whilst dealing with the beneficiaries
- ✓ The resources of the corporation are available to make good any breach of Trust

Estate Planning



Advisory

- ✓ Structuring of the estate plan for the benefit of future generations
- ✓ Advising based on the individual financial and family affairs
- ✓ Advising on Tax efficient structures for estate planning
- ✓ Advising on various legal issues relating to succession laws, companies act, takeover code, stamp laws, property laws and any other laws relating to each individual and his estate plan.

Drafting & Execution

- ✓ Facilitating drafting of Wills, Trust Deeds based on the client specific instructions
- ✓ Stamping, execution and registration of documents
- ✓ Any other ancillary documents that may be required

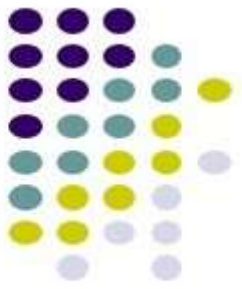
Comparative Study of Wills and Trusts

Wills

- The Will comes into effect on the death of the Client making the Will. The will specifies how the Estate of the Client will be distributed at his death.
- The Wills can be made by individuals.
- The Wills primarily provides for distribution of property after the death but not longer term management of property.

Trust

- The Trust becomes operational with immediate effect on execution of the Trust Deed. Trust like a Will also allows for the disposition of the Estate after the death.
- Trust can be formed by any entity who owns property viz. individuals or corporate.
- Client through Trust can prepare a plan for administration, growth and disposition of the Estate during his lifetime and even after his death



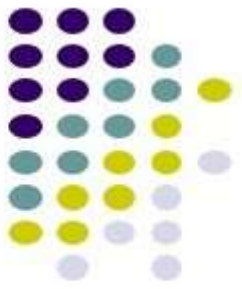
Comparative Study of Wills and Trusts

Wills

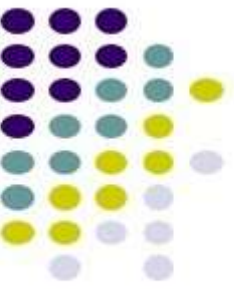
- Probate may be required to be obtained for establishing the rights of the Executor or the Beneficiaries under the Will in certain cases. Probate means a Will certified under the seal of the Court with the grant of administration to the estate of person who has made the Will .
- Wills may be easily contestable on various grounds and may lead to family disputes after the death of the Client.
- The Will can be modified or revoked during the life time of the Client any number of times as the Client pleases.

Trust

- Trust does not need any Probate.
- It is difficult to contest a validly created Trust.
- A Trust cannot be revoked unless the power of revocation is reserved by the Client in the Trust Deed or all the beneficiaries competent o contract consent to such revocation.



Comparative Study of Wills and Trusts



Wills

- Will can be kept confidential upto the death of the Client but becomes public during Probate and/ or any contestation of the Will.
- If the Client becomes insolvent the Will cannot be given effect as there may be no property left.
- Will leads to division of the Wealth on the death of the Client.

Trust

- Trust document can be kept confidential except where disclosure is required whilst dealing with third parties.
- Here the Client has transferred the property to the Trustee. Also there are no provisions for winding up or declaring a Trust as insolvent and hence insolvency of the Client 2 years after the transfer would not have any effect on the Trust property.
- Trust leads to augmentation of the wealth by adopting a proper estate plan for investments during the life of the Client and even after the death of the Client.

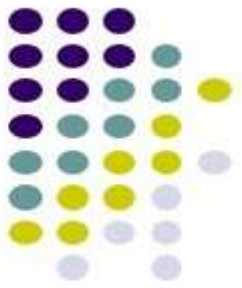
Comparative Study of Wills and Trusts

Wills

- Will does not require registrations or stamping through it would be advisable to register the same but probate fees are required to be paid.
- Will can be Mutual which means two persons confer reciprocal benefits upon each other. Mutual Wills become irrevocable after death of one of them if the person living has taken advantage of the benefits conferred by the Will

Trust

- Trust Deed is required to be stamped and if it relates to immovable property also is required to be required.
- There is no concept of Mutual Trust





THANK YOU