

TRUSTS

The concept of a Trust is not unique to English Law or to those jurisdictions around the world which follow English Law and it has been suggested that roughly 50% of the independent wealth globally is held in one form of trust or another.

Trusts are recognised as one of the most flexible and versatile vehicles for holding and managing assets and it is therefore hardly surprising that many countries which have not inherited the tradition of English Law, have none the less, opted to create their own trust legislation modelled closely on English standards. Trust Funds are often and quite wrongly associated only with the wealthy. In reality a trust fund can be an effective financial tool for lots of people in a huge number of scenarios.

WHAT IS A TRUST?

A trust is a separate legal entity that holds property or assets of some kind for the benefit of a specific person, group of people or organization known as the **beneficiary or beneficiaries**. The person creating a trust is called the **grantor, donor or settlor**. When a trust is established, an individual or corporate entity is designated to oversee or manage the assets in the trust. This individual or entity is called a **trustee**. A trustee can be a professional with financial knowledge, or even a relative or loyal friend. It can also be a corporation. There are pluses and minuses to each type of trustee. An individual trustee may provide a more personal touch. A corporate trustee may be less personal but provides experience, investment skills, permanence and impartiality. More than one trustee can be named by the grantor if he or she wishes.

BENEFITS OF ESTABLISHING A TRUST

Whether it is advisable to establish a trust will depend on your own circumstances. Some common reasons for setting up a trust include:

- To provide for children or family members who lack financial experience or who are unable to manage their assets
- To provide for management of your assets should you become unable to oversee them yourself
- To avoid probate and transfer your assets immediately to your beneficiaries upon death
- To reduce estate taxes or provide liquid assets to help pay for them.

TYPES OF TRUST

There are two basic forms of trusts: after-death (or testamentary) and living (or inter vivos).

An after-death trust will come into existence, usually by virtue of a will, after a person's death. The assets to fund these trusts must usually go through the probate process. An example of an after-death trust would be a mother leaving land to a trust benefiting a young son in her will. The will establishes the trust to which the land is transferred, to be administered by a trustee until the boy reaches a stated age, at which point the land is transferred to the son outright.

A living trust, on the other hand, is a trust made while the person establishing the trust is still alive. In this case, a mother could establish a trust for her son during her lifetime, designating her as trustee and her son as beneficiary. As the beneficiary, her son does not own the property but can receive income derived from it.

Living trusts can be revocable or irrevocable. The most popular type of trust is the revocable living trust, which allows the individual to make changes to the trust during his or her life. Revocable living trusts avoid the often lengthy probate process but, by themselves, don't provide shelter for assets from taxes.

When an irrevocable living trust is set up, ownership of the assets is turned over to the trustee. The trust becomes, for tax purposes, a separate entity, and the assets cannot be removed, nor can changes be made by the grantor. This type of trust often is used by individuals to reduce taxes and avoid probate. However, if the grantor names himself or herself as trustee or is entitled to trust income, the tax benefits will be lost.

SPECIFIC USE TRUSTS

Before you set up a trust, ask yourself what you are trying to accomplish. Here are just a few of the many special uses for trusts:

A charitable trust is used to make donations and realise tax savings for an estate. Typically, there is a transfer of property such as art or real estate to a trust which continues to hold the asset until it is transferred to the charity, usually after death. The donor can continue to enjoy the use of the property, then the charitable gift may be deductible for estate tax purposes.

A 'spendthrift' trust can be a good idea if your beneficiary is too young or does not have the mental capacity to handle money. The trust can be established so that the beneficiary receives small amounts of money at specified intervals. It is designed to prevent that person from squandering money or losing the principal in a bad investment.

Trusts are often used in conjunction with Offshore Companies to maximise tax benefits available from transferring assets offshore.

ESTABLISHING A TRUST

Establishing a trust requires a Trust Deed to be drawn up which specifies your wishes, lists grantor, beneficiaries and trustees to manage the assets and describes what the trustee or trustees may and may not do. The Trust document may also name a Protector who whilst having no responsibility for the day to day running of the Trust, can have the power of veto over Trustees decisions and also the power to dismiss and appoint new Trustees.

Once the trust is set up, you may transfer assets to the trust. It should be borne in mind that, in the case of certain assets, such as property, you might incur stamp duty and capital gains liability at the time of transfer

In certain jurisdictions you may be required to register a Trust; this will depend upon local legislation. Generally speaking however there is no legal responsibility to register.

THE ROLE OF THE TRUSTEE

The person who manages a trust, the trustee, has a legal duty to manage the trust's assets in the best interests of the beneficiaries. This might include managing rental properties, investing funds or paying income to the beneficiary.

How much a trustee is required to do and how much access he or she has to the funds should be specified in the trust. A simple or mandatory trust requires the trustee to distribute income to the beneficiary. A complex or discretionary trust may afford the trustee discretion over the principal and income to be distributed.

Trustees may and often are paid for their services because of the amount of work involved in managing a trust and the threat of potential liability if assets are mismanaged. How much a trustee is to be paid should always be agreed upon in advance.

When appointing a Trustee, be sure that the individual or corporate entity will agree to serve as trustee and can and will comply with the terms of the trust. Because there is generally such a high standard of duty and liability imposed on trustees many elect to use the services of a corporate trustee which company should be checked out to verify their ability to perform the task in hand as well as their respectability and whether they are likely to be around in the long term

PROVIDING PEACE OF MIND

It's possible that a trust may be the answer to your planning needs. Take the time to evaluate carefully what you are trying to accomplish, then either consult a solicitor experienced in estate planning, or alternatively call Turner Little Limited. We have considerable experience in this field as well as Offshore and UK Corporate structures generally. A well-written trust can help to provide peace of mind for you and your beneficiaries.

Turner Little Limited produced this narration dealing with the Establishing of a Trust Fund in conjunction with their legal advisers. It is for guidance only and should not be relied upon as being definitive or complete or applicable to every scenario. It is strongly recommended that anyone considering the setting up of a Trust should take independent advice before doing so.

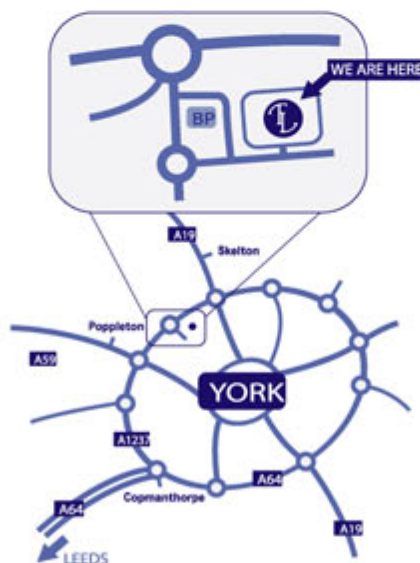
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