

What is a Trust?

A Trust is a widely used and well established way of protecting and enhancing a family's wealth. Trusts also facilitate the safe and efficient passage of such wealth to the chosen beneficial class, which typically includes future generations of the family.

The origin of the modern trust is Anglo-Saxon, originating under medieval English law, and trusts have long been associated with the protection of assets.

During any absence from England on Crusade a knight would transfer ownership of his property and personal belongings to a "trusted person" so that he knew if he was killed his wife and children would inherit his estate.

Types of Trusts

There are many different types of trusts however, the Discretionary Trust is commonly the most effective and is the most widely used for international financial and estate planning.

The Parties to a Trust

A Trust enables the transfer of legal ownership of assets from one person to another for the benefit of nominated beneficiaries. The parties to a trust are the Settlor, the Beneficiaries and the Trustees.

The SETTLOR is the person who donates the assets to the Trust (there can be joint Settlers).

The BENEFICIARIES are the persons entitled to benefit from the trust. (NB: The Settlor can also be a Beneficiary)

The TRUSTEES are the appointed legal owners of the assets within the Trust. They have the responsibility of administering the Trust and the trust assets in accordance with the terms of the TRUST DEED and the prevailing trust law.

The Trustee's Responsibilities

The Trustees legally own the assets within the Trust, however they have no beneficial interest. The Trustees' responsibilities are as follows:

- The assets must only be used for the benefit of the Beneficiaries.
- The Trustees are only entitled to receive agreed trustee fees. They are not able to profit themselves from the assets.
- The assets are not available to the Trustees' own creditors.
- The Trustees must act in the best interests of the Beneficiaries.

The Settlor typically provides the Trustees with a “LETTER OF WISHES” regarding their desired wishes on how they would like the Trustees to execute their discretion with regard to the Trust Fund and distribution of the trust assets. The wishes contained will cover both the period during the Settlor’s lifetime and also after death. A Letter of Wishes is not a legal document (unlike the Trust Deed or a Will & Testament) and can be reviewed and amended from time to time. The Letter of Wishes does not form part of the Trust Deed.

Uses of Trust

Some of the advantages and benefits Trusts may provide to individuals are:

Preservation of Wealth

For the wealthy individual who wants to ensure his wealth can continue for the benefit of future generations, the Trust is ideal. He can effectively lock up the capital of the Trust and specify to whom of his family or other specified people the income and capital should be paid in the years to follow. He can also give the Trustees the discretion to pay capital to Beneficiaries if they think it appropriate. In such manner the Settlor can guard against or provide for, in particular, the following:

- Children under the age of majority who require provision for their maintenance and education until they come of age.
- Extravagant children who might otherwise fritter away capital given to them outright.
- Naive members of the family who could be taken advantage of by others.
- Members of the family with special needs such as mental or physical impairment.
- Family matters which need to be provided for in a discreet and confidential manner.
- Retired employees or servants and their dependants.

An Alternative to a Will

The proving and administration of a deceased person’s estate can be cumbersome and costly, often causing cash flow difficulties for the dependants of the deceased. Trusts do not require the formalities of probate administration in order to make distributions of income and capital following a death. The Trust may therefore own all the individual’s estate and replace his Will, or else own a part of it, with a view to assisting dependants while the deceased’s estate is administered.

The re-writing of Wills or drafting of codicils is both time-consuming and rigid in form. A discretionary trust requires only a fresh Letter of Wishes from the Settlor, signed by the Settlor without the need for witnesses, for the Trustees to be able to administer the trust in accordance with the Settlor’s revised intentions.

In certain circumstances an individual may die without being entirely certain as to his preferred beneficiaries or the fiscal climate at his death. Leaving such decision-taking to the Trustees of a discretionary trust can be an attractive solution for him.

Fiscal Benefit

Trusts, and in particular discretionary trusts, are generally taxed beneficially. The position will vary from country to country, but trusts can offer particularly attractive fiscal benefits.

Anonymity

A Trust does not require registration or production of the Trust Deed to any authority. It is also possible to draft the Trust Deed without the name of the intended parties appearing on the Deed itself, and to restrict who may be entitled to information relating to the Trust other than the Settlor.

Repatriation

Because the assets of a Trust are owned by the Trustees independently of the Settlor or Beneficiaries, it is not possible to enforce repatriation procedures against the Trustees (although if the assets in question are held in the enforcing jurisdiction it is sometimes difficult in practice to prevent such repatriation).

Asset Protection

If a Trust is set up specifically for the purpose of avoiding creditors, most jurisdictions will overturn the Trust and seize the assets for the creditors. However, if the Trust was not set up for such purpose, it is likely to provide protection in the event of later bankruptcy by the Settlor. Similar protection may also be available in a subsequent divorce.