

Trusts

The use of offshore structures provides many opportunities for tax and estate planning. Corporations are one solution, but trusts provide a whole range of other opportunities. The trust is a concept becoming more and more widely known and used outside the traditional English speaking 'common law' countries, because of its considerable benefits in tax mitigation, asset protection and inheritance planning.

Our trust division establishes and administers trusts, which can be used to hold a variety of assets, from a simple shareholding in an offshore company to a complete estate. Trusts may be established as stand-alone solutions or as part of a structure.

About trusts

There are many forms of trusts. The defining factor of most is that a person (the settlor) transfers assets to the trustees, to be managed and controlled by them for the benefit of the beneficiary.

When a settlor places assets in a trust he generally ceases to have any interest in them. The benefit passes to the beneficiaries or is held on their behalf: the terms of the trust dictate when income or capital or other property is handed to the full beneficiary. Trustees may have partial or full discretion.

The settlor may have some influence on how the trustee is administered through the terms of the trust deed and a letter of wishes. The settlor must not control the assets. He can however also be a beneficiary.

Under trust law the trustees are responsible to the beneficiaries for the proper administration of the trust and have a strict legal obligation always to act in their best interests.

The legal ownership of the assets is vested in the trustee and the equitable or beneficial ownership is held for the beneficiary.

It is important to note that a trust is a relationship established between the trustees and the beneficiaries, not a separate legal entity as is a company.

Types of trusts

Though there are several types of trust structure, ILS normally establishes discretionary trusts – those where the trustees have full discretion in the administration and disposal of assets – for its clients.

Discretionary trust

A discretionary trust is a trust under which the trustees have discretion concerning distribution of trust assets. The trust deed will generally specify a class of beneficiaries and, in a typical case, the trustees will periodically decide whether to distribute trust income to one or more of the class or to retain it and add it to the capital of the trust fund. The trustees' discretion may also extend to the distribution of capital. In most cases, the settlor will provide a letter of wishes to the trustees indicating which of the beneficiaries he/she would most like to benefit (and how) during his/her lifetime and following his/her death. Whilst a letter of wishes can assist the trustees in deciding how to exercise their discretion, it cannot bind the trustees to act in accordance with its terms. The settlor can issue any number of such letters during the lifetime of the trust.

Interest in possession trust

An interest in possession trust or fixed interest trust is one under which a particular beneficiary is entitled to the net income of the trust for a specified period. In most cases, the entitlement or interest will continue for the rest of the life of the beneficiary (a life interest) and on his/her death the trustees will have discretion to distribute the trust income amongst a class of discretionary beneficiaries or retain it and add it to capital. It is possible to provide a further life interest in favour of, for example, the beneficiary's spouse to arise on the death of the beneficiary. A power to advance capital of the trusts fund to the person holding the life interest can also be included.

Purpose trusts

A purpose trust is a trust which does not have any beneficiaries and exists for a specific purpose. Purpose trusts are not trusts in the true sense and are designed to be used as adjuncts to tax planning structures in various ways. They have several significant advantages over conventional trusts in certain situations. An important factor is that there is a clearly defined trust deed and strong modern legislation supporting the structure.

Under Isle of Man law there must be two or more trustees to a purpose trust, at least one of whom must be a person in one of the categories specified by the act. To enforce the trust there must be an enforcer.

Uses include off balance sheet transactions, corporate finance and asset financing, division of voting and economic benefit, ownership of trust companies, securitisation, social benefits and investment in family companies. Its use in segregating assets, in dealing with fixed term events like loan repayment, in providing a layer of confidentiality and its flexibility are important considerations.

BVI VISTA trusts

The Virgin Islands Special Trusts Act 2003 gives its name to the VISTA trust. It has the unique advantage of eliminating conflicts between trustees and the directors of underlying companies. Where there is an active business, the constraints on the trustees under the prudent man of business rule may mean perhaps liquidating the company even though this is against the wishes of the settlor.

The VISTA trust provides a solution to these drawbacks. The trustee is no longer obliged to intervene, monitor and take management responsibilities for the underlying company, thereby eliminating the requirements of the prudent man of business rule.

Note that VISTA trusts may only hold shares in BVI IBCs or domestic companies. The trustee must be a licensed company. ILS Fiduciary (BVI) Limited holds a full trust licence.

Uses and advantages of a trust

Confidentiality

There is no requirement for an Isle of Man Trust to be a matter of public record, although it is possible to register a trust at the deeds registry should a client desire this.

Tax mitigation

The settled assets of the trust are generally subject to the taxes in the country of residence of the trustees. The settlor, who no longer owns the assets, may therefore be able to reduce his liability

to capital and inheritance taxes through the use of trust structures.

Continuity

Assets in an anonymously held bank account may be lost on the death of an account holder. If the account is held by a trust, continuity beyond death is assured and it will not be necessary to prove ownership. The use of a corporate trustee prevents problems should an individual trustee die.

Asset protection

Once assets have been properly transferred into a suitable trust, those assets are fully protected from attack by future creditors. Special forms of trust exist designed specifically to protect assets from attack and such trusts provide extremely effective and robust protection.

Trusts are excellent asset protection vehicles and are thus valuable devices in times of political and economic instability.

Inheritance planning

The assets of the trust are not included in the settlor's will as they are not his legal property. This gives the opportunity to make specific transfers of assets to beneficiaries outside the rules applied in some countries as to who may inherit (forced heirship).

Probate – the normal means of dealing with a will takes time and may involve public knowledge of the deceased's assets, including perhaps their offshore arrangements. A trust allows distributions to be made to beneficiaries simply, quickly and confidentially.

It is possible to make specific provisions in the event of death as to children's education and income, life income for the widow, establishment of contingency funds etc.

A trust prevents the division of assets amongst heirs at the time of death so that the fund can be protected and accumulated. Assets may be preserved for later generations. A trust may also prevent the forced sale of a family business. Payments may be made but continuity is assured. Provision can also be made for a fund for disabled or disadvantaged members of the family.

Assets can be protected for children until they reach the age of majority.

Commercial uses

A trust may be used for commercial purposes as, for instance, in unit trusts, where the assets are held by trustees and managed by the fund managers for the benefit of the investors.

Certain types of trust can be used to keep high risk/value items away from the parent company's balance sheet and offer protection to lenders.

Trust as owner of an offshore company

Where the assets of the trust are actively trading or constantly moving a trust may be a cumbersome means of operation. In this case it may well be beneficial to have the assets held in a company where day-to-day operation can be effected by the directors, whilst having the ownership in the trust.

The use of a trust removes any questions about beneficial ownership of companies and the location of the ownership and control for tax purposes.

Where to establish the trust

Apart from the BVI VISTA trust mentioned above, we favour the use of the Isle of Man as the premier trust jurisdiction.

The Isle of Man is politically and economically stable British Crown Dependency only 31 miles from the coast of England. As a major international finance centre it has excellent resources available in terms of professional and financial services – legal and accountancy advice as well as sophisticated investment and banking facilities.

A modern trust law regulates the actions of trustees and there are criminal penalties for abuse of trust.

The existence of an Isle of Man trust is not a matter of public record.

An Isle of Man trust is not subject to income tax, capital gains tax and inheritance tax in the Isle of Man, provided beneficiaries are not resident in the Island.

Why ILS?

ILS has extensive offshore experience in both corporate and trust work throughout the world and our highly trained senior personnel administer trusts through ILS Trustees Limited.

ILS is a respected offshore corporate services group established for 30 years and with offices in the British Virgin Islands, Dubai, Hong Kong, Isle of Man, Lithuania, London, Portugal, Scandinavia, South Africa, South America, Spain, Switzerland and Turkey.

Group companies are licensed by the authorities in the Isle of Man, Hong Kong and the BVI.

Our experience and integrity are your safeguard of safe and confidential handling of your affairs.

What can ILS provide?

- Arranging drafting of the trust deed
- Providing a designated trustee
- Establishing related corporate structures
- Maintaining trust accounts
- Arranging banking facilities

Fees

We charge initial fixed fee to establish and structure the trust, including the drafting and settling of the trust deed.

A fixed annual fee is charged for basic maintenance of the trust.

Administration fees are charged for extra work on a time basis according to the amount of work involved. We shall be happy to estimate costs.

Information on trust fees is available from any ILS office.

Please note that ILS (Isle of Man) Limited does not offer tax advice. If you are not professionally qualified to give tax advice, we will be happy to make an appropriate introduction.