

Trusts – How to retain some control over your assets

Background

For many, the concept of a trust is either unfamiliar or difficult to understand.

A trust can best be described as a relationship: an arrangement whereby property or assets are transferred from one person (the “Settlor”) to another person (the “Trustee”) to hold for the benefit of others (the “Beneficiaries”).

When dealing with personal wealth, the idea of transferring legal ownership of assets to a Trustee can make people uneasy or suspicious – despite the high-level of fiduciary duties imposed on the Trustee by local regulatory requirements, equity and law. There are different ways to limit the “absolute control” which Trustees may be regarded to have to ensure balance and peace of mind for Settlers.

Non-Charitable Purpose Trusts – Enforcer

- In certain jurisdictions domestic trust laws allow for the creation of a specific type of non-charitable purpose trust (NCPT).
- The trust fund can be used for a purpose which is not charitable, provided that its purpose cannot be regarded as “impossible”, “against public policy” or “immoral”.
- The trust deed must state the purpose for which the trust has been created and must appoint an “Enforcer” to ensure that the terms of the trust are met.
- The Enforcer must be independent of the Trustees and will be able to police the Trustees to ensure that his/her wishes – set out in the trust deed – are carried out.
- NCPTs are especially popular with clients who wish to put the shares of a private company that owns a business into a trust, but who do not want to create the potential Trustee intervention on behalf of the Beneficiaries. The Trustee of a NCPT can hold the shares for the purposes of supporting the continuation and the growth of the business thereby acting neutrally and independently of the family.

Private Trust Companies

- Certain jurisdictions allow for the creation of a Private Trust Company (PTC) to act as the Trustee of the trust governed by local laws, provided that each Beneficiary of the trust is a person connected to the Settlor.
- PTC Boards usually comprises family members, advisors and specialists.
- A PTC is generally exempt from any trustee licensing requirements but must engage the services of a licensed trust company to provide administration services.
- PTCs provide the Settlor with a means of retaining a greater degree of control over trust assets without compromising its validity.
- PTCs are also preferred vehicles for establishing a family office structure.

Appointing a Protector

- A Protector is a person appointed under the trust deed to direct or restrain the Trustees (when necessary) in relation to their administration of the trust.
- The concept of a Protector developed in offshore jurisdictions where Settlers were (perhaps understandably) concerned about appointing a trust company in a small, distant country as sole Trustee of an offshore trust which is to hold a great deal of the Settlor's wealth.
- Protectors now form a part of mainstream trust and tax planning in most jurisdictions which recognise trusts.
- There are several reasons that a Settlor may wish to appoint a Protector in relation to a trust:
 - Protectors allow a great degree of flexibility when dealing with changes in circumstances, including both factual circumstances (death, premature divorce, previously unknown children) and legal changes (any legal changes, but most frequently changes to applicable revenue laws);
 - the Settlor may be concerned that the Trustee may not pay sufficient attention to his wishes;
 - the Settlor wishes certain powers to be withheld from the Trustees; or
 - the Settlor wishes a third party to act as a main point of contact.

Trustee Adviser or Advisory Committee

- A commonly used technique is to name a Trustee Adviser or trust Advisory Committee (TAC).
- A Trustee Adviser or the TAC can advise the Trustee without actually making decisions.
- In most cases, the independent Trustee will rely on the Trustee Adviser for advice concerning distributions, to ensure that proposed distributions are not improper.
- The TAC may consist of three to five individuals, which may include a parent or other family member, an attorney, a social worker, a care manager, an accountant, a nurse, a physician, or any combination thereof.
- The TAC can even be given authority to remove and replace the professional Trustee. Where both parents serve as members of the TAC, it is common to have them divide one vote.

How can Corpag help you?

As a Settlor of an (offshore) trust there are various ways to retain a certain level of control over your assets.

Corpag is a vastly experienced provider of (offshore) trustee services and holds domestic trust licenses in several well-renowned jurisdictions for the establishment of trusts.

Corpag also works closely with specialist trust and tax lawyers in each of these jurisdictions to ensure that the structures we manage are legally sound and tax compliant.

We would be glad to assist you with establishing an offshore trust and any of the jurisdictions we operate in and offer local support to help you navigate the complicated evolving landscape.

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