

OFFSHORE TRUSTS A MOORE STEPHENS GUIDE TO THEIR USES AND ADVANTAGES

Although as old as the British legal system itself, the trust and more particularly the offshore trust, has become an integral part of wealth and tax planning around the globe. What started as a simple arrangement between a wealthy landowner (**the Settlor**) and a trusted friend or relative (**the Trustee**) and the landowner's dependants (**the Beneficiaries**) has now become a sophisticated planning tool governed by modern laws tailored to meet the needs of settlors and beneficiaries employing professional trustees to protect their family or corporate wealth.

Principal characteristics of a trust

The crucial feature of a trust is that although legal title is passed to the trustee by the settlor, the trustee is obliged to look after the property transferred for the enjoyment and benefit of the beneficiaries. The trustee is a custodian who, other than charging a reasonable fee, cannot benefit personally from the trust assets. All the rights to the enjoyment of those assets belong to the beneficiaries who have legal right to force the trustee to act in accordance with the terms of the trust instrument and the laws governing trusts; but the trustees must never act illegally.

The first trusts were private arrangements between individuals. The trustee was usually a friend or family member. In today's commercial world, it is more usual to engage professional trustees, such as those provided by Moore Stephens, Jersey, who must exercise a greater degree of diligence than would be expected from an individual trustee; a fact which settlors and beneficiaries find reassuring.

Employing an international network such as Moore Stephens provides settlors with the peace of mind to know that the assets settled in trust will be administered competently and professionally in accordance with their long-term wishes, and always for the benefit of the beneficiaries.

Letter of wishes

Apart from the trust instrument itself, the letter of wishes is perhaps the most important document connected with a discretionary trust. Although not a legally binding contract between settlor and trustee, a letter of wishes enables settlors to indicate, in writing, how they wish the trustee to manage the trust and its assets.

The trustee must always act in accordance with the trust instrument for the benefit of the beneficiaries. However, it is the usual practice for a settlor to offer guidance to their trustee concerning investment strategy and distribution policy; who better to help the trustee identify which beneficiaries may require financial assistance from the trust than the settlor?

A concern often expressed by settlors and beneficiaries is that passing legal title of family assets such as properties, investments or other items to trustees, they will be excluded from benefiting from them. This is certainly not the case. Provided the trust instrument is worded appropriately, the trustee may permit the beneficiaries (which can include the settlor) to use assets held on trust as well as receive income or capital from the trust. All such matters can be dealt with as part of the letter of wishes.

Why set up a trust?

You should seriously consider the use of a trust if you are concerned about the protection of your assets from financial, fiscal or political risk.

A trust is one of the most secure and flexible financial planning vehicles available, particularly when established offshore. Subject to the tax laws applicable to the settlor's estate, a trust may enable a settlor to make long-term plans for the preservation or distribution of wealth during or after their lifetime in precisely the manner required. By transferring property into trust settlors can ensure that the management of that property will not be interrupted on their death by probate or other formalities, but continue in accordance with the trust instrument and their letter of wishes.

A trust may also be an effective tax-planning tool, for example in respect of estate or inheritance taxes on assets situated outside the country of the settlor's nationality. It may also provide complete confidentiality and protect assets from the imposition of exchange controls or similar political measures. A trust may also be used as a means of protecting assets from risk of unforeseen financial difficulty.

All types of assets, from personal properties such as the family home to more complicated investments, may be included in a trust structure and the use of trusts is not confined to individuals. International corporations also use trusts as an important part of their asset management strategy. In broad terms, trusts may be used to:

- Reduce tax
- Protect assets
- Arrange family matters
- Ensure confidentiality

i) Taxation

By establishing certain types of trusts, individuals may remove assets from their estates thus reducing their taxable wealth, limiting exposure to income tax, capital gains tax, wealth tax, gift tax and inheritance tax.

When using trusts for tax purposes, settlors must consider the tax rules that apply to themselves, the beneficiaries and also the assets. Care must also be taken to consider the implications of transferring assets into the trust and how payments to the beneficiaries will ultimately be treated.

Some specific uses of trusts include:

- when relocating, wealthy individuals may settle assets into a trust based in a low tax jurisdiction prior to taking up residence in a higher tax location;
- settlement of shares with long-term growth potential at a time when they have a low value may allow capital growth in a tax-free structure;
- removal of assets from an estate to avoid wealth or inheritance taxes;
- reduction of the tax costs of providing remuneration for expatriate executives;
- continuity of ownership in the long-term for family companies

ii) Asset protection

Having worked so hard to build a valuable business or asset base, it is everyone's right to try to preserve that wealth for themselves and their family. A trustee resident in another jurisdiction may act as guardian of a family's wealth thus offering a greater level of protection over those assets. This may be of particular interest to settlors living in politically sensitive areas where their wealth could be at risk. Assets in a trust may be protected from the imposition of exchange controls or other government regulations and once removed from an estate, free the settlor from the threat of confiscation or devaluation.

By passing legal ownership of trust property to trustees, the name of the settlor is removed from title deeds and other documents of ownership and thus from the unwanted attention of third parties.

Put simply, a trust offers settlors the opportunity of divesting their assets so that in the event of business or personal disaster, the financial security of the family can be protected. However, a trust cannot be established to defeat or defraud creditors but, provided the settlor is solvent and expects to remain so, it is perfectly reasonable for a wealthy individual to hedge against the unexpected by establishing a trust.

iii) Family matters

a) Avoiding forced heirship

The law in some countries dictates to whom a person may leave their assets on death and in what proportions these may be left. If this is likely to be contrary to an individual's wishes, they may consider

transferring assets into a trust located in a common law jurisdiction such as Jersey, which accepts that a trust is valid, even if forced heirship issues may arise in the settlor's country of nationality.

b) **Minimising estate administration costs**

The cost of probate upon the death of a wealthy individual can be high and even force the unwanted sale of assets. By establishing a trust, settlors may minimise the disruptive effects of their own death on the family estate. Settlors can therefore be rest assured that their family will be looked after in the same way after their death as before in accordance with the terms of a trust established during their lifetime, and the wishes expressed to their trustees.

c) **Protecting individuals**

Certain family members may be less capable of managing their own affairs than others, or be adversely affected by the knowledge of their future inheritance. This might apply to infant children or aged parents and professional trustees can be of great help in such circumstances.

d) **Keeping the estate intact**

Settlors may wish to ensure that, after their death, the wealth that they had accumulated is not immediately split up amongst their heirs but is maintained in one fund. Distributions may be made to family members whose needs dictate but the corpus of family wealth can be preserved for succeeding generations.

This may be particularly relevant in the case of a family business where settlors may wish their family to receive the income from the business after their death, but prevent their heirs from selling the business unless absolutely necessary. By transferring the shares to a trust the business can be preserved in accordance with the settlor's wishes.

e) **Protection from divorce payouts**

The advantage of offshore trustees

Not every person who wishes to establish a trust should assume that the trust should be offshore. However, there can be major benefits from going offshore and the following principal factors should be considered.

i) Taxation

The majority of offshore centres apply little or no tax to trusts where the settlor and beneficiaries are resident elsewhere. This would probably not be the case for an onshore trust; by not paying tax, the value of the trust fund will accumulate at a greater rate.

Settling a trust offshore may also protect against future tax changes in the settlor's home country.

ii) Government interference

Settlors may wish to protect their estate from government interference such as the imposition of exchange controls. It is highly unlikely that offshore centres like Jersey would ever introduce such controls.

iii) Reporting requirements and confidentiality

Confidentiality is often a key factor when establishing a trust. Many offshore jurisdictions, including Jersey, have deliberately avoided negotiating double taxation and exchange of information agreements with other territories so that information will only be provided if a specific court order has been obtained, or if a serious crime has been committed.

Furthermore, there is no requirement for a Jersey trustee to disclose the names of the settlor or beneficiaries of a trust. Similarly there is no requirement for a trust to be registered in Jersey or for any documents relating to the trust to be registered, stamped or made available for inspection. Consequently a trust remains a private arrangement between the settlor and the trustee where confidentiality can be assured.

Your questions answered

To highlight some key characteristics of a trust we have included below a selection of the questions we are often asked to answer when discussing trusts with potential settlors and their families.

i) Can I still be involved with investment decisions?

Yes you can, on an advisory or consultancy basis. The trustees must always be seen to take decisions in the best interest of the beneficiaries but it is only natural that they should consult with the settlor or some other appointed person in this regard. Your letter of wishes can play a crucial role in guiding the trustees on investment strategy.

ii) What if I, or one of my family needs funds from the trust?

The trustees will probably have a discretionary power to distribute accumulated income or capital to the beneficiaries. Provided the trustees consider all the beneficiaries' circumstances, they can usually assist in any way possible. Here again, your letter of wishes plays an important part in making sure that the trust operates in the best possible way for all your family.

iii) How safe are the assets?

The assets in your trust are not at risk from the creditors of the trustee, as property held as trustee for any other person is excluded from property distributable to the creditors of a bankrupt.

iv) What happens if I die?

A trust can continue in perpetuity, although a trust can also continue for a specified period, which may extend well beyond the lifetime of the settlor. Your corporate trustee will ensure that your trust is always managed in accordance with the trust instrument and the most recent letter of wishes issued by the settlor or the person nominated as successor by the settlor and always in the best interest of the beneficiaries. Your wealth may also be protected from the tax and other costs that arise on death by being held on trust.

v) Why should I use a professional trustee?

The standard of care that the law imposes on a professional trustee is higher than an individual or lay trustee. This feature offers settlors and beneficiaries the confidence that the trust will be administered properly at all times. In addition, by appointing a corporate trustee, settlors can be sure of the continuity they require; the availability of the trustee not depending on any given individual.

Is a trust for you?

Moore Stephens, Jersey, respects and understands that your decision to establish a trust will not be taken lightly. We hope that the information contained in this paper has explained what a trust is and also how the settlor can remain closely involved with its administration. However, should you wish to discuss the idea of a trust personally, please do not hesitate to call us.

Moore Stephens Jersey is part of Moore Stephens International, which is regarded as one of the world's major accounting and consulting networks consisting of 351 independent firms with 630 representative offices and some 21,000 people across 98 countries.

This information sheet provides a brief outline only and is not comprehensive as such and should you require further specific advice, please contact either Clive Barton or Paul Camara:

Telephone: 00 44 1534 880088
Facsimile: 00 44 1534 880099
E-mail: mail@moorestephens-jersey.com

March 2010