



Creation of Trust

A trust can be created by Will or in writing by either an instrument called Deed of Settlement or a Declaration of Trust.

The Deed of Settlement will be entered into and signed by both the Settlor and the Trustees, while the Declaration of Trust will be signed by the trustees only stating that he has received the trust asset in possession to hold and manage on behalf of the settlor in the interest of the Beneficiaries.

The trust deed need not be registered to be effective.

For the trust to be validly constituted it must meet certain legal requirements:

1. The Settlor must be of capacity
2. The purpose of the trust must be legal and not contrary to public policy.
3. The rule of 3 certainties must be satisfied i.e. certainty as to asset to be transferred into the trust, certainty of objects as to who shall be the beneficiaries and the nature of their benefits discretionary, life interest etc). Certainty as to the intention of the Settlor that he wants to create a trust not to make a donation.
4. The trust property must actually be transferred to the trustee

The Settlor should not interfere in the management of the trust otherwise it will be qualified as a sham trust and rendered invalid. The Settlor can however issue a letter of wishes to the trustees to advise and guide them in the management of the trust.

CMS can introduce you to management companies which can assist with the creation of a trust for individuals and corporations.

The Management Companies' services encompasses the following:

- ⇒ Creation of trust for individuals and corporations.
- ⇒ Professional advice on the structuring of the trust and estate planning.
- ⇒ Drafting of the trust deed.
- ⇒ Acting as corporate trustees.
- ⇒ Administering the assets in accordance with the trust deed and the letter of wishes.
- ⇒ Monitoring of trust assets and investments.
- ⇒ Prepare and maintain trust accounts on the basis of principal and income accounting.
- ⇒ Make distributions to the beneficiaries.
- ⇒ Provide a Protector, where required.
- ⇒ Protect and ensure the safe custody of documents.
- ⇒ Establishing and administering Asset protection trust allowing clients access to their assets free of interference, seizure or freezing.



Compliance Requirement

There is a general International requirement that certain mandatory regulations be complied with including regulations on Money Laundering. Accordingly, information is requested from our clients both initially and on a periodic basis on such issues like:

- ⇒ Source and origin of funds.
- ⇒ Certified copy of the Passport of the Beneficial Owner.
- ⇒ Recent Utility Bill confirmation the Residential Address of the Beneficial Owner.
- ⇒ Letter of Reference from the Beneficial Owner's Bank.
- ⇒ Signed consent to act as Protector (if a Protector is required).
- ⇒ Letter of Wishes (not mandatory on establishment).

Types of Trusts

Trusts have their origins in medieval England when they were associated with knights making provision for their families when they went away to fight in the Crusades.

An offshore trust enables an individual (the "settlor") to donate assets to a neutral third party or guardian (the "trustee"), who holds the assets and administers them for the benefit of other individuals nominated by the settlor and in many cases the settlor himself (the "beneficiaries"). An offshore trust arrangement is normally recorded in a written document (the "trust deed").

The effect of creating an offshore trust is to shift the burden of property ownership onto a trustee, while retaining the benefit of the property for the beneficiaries.

An estate created under the will of a deceased person is a trust. A trust created by a person prior to death is known as an inter vivos trust. Most trusts created offshore are formed as inter vivos trusts.

As trusts are a creation of English common law, the most suitable location for an offshore trust is a jurisdiction which has English common law and equity as the foundation of its legal system.

An offshore trust may be established as either revocable or irrevocable. A revocable trust may be terminated or varied by the Settlor either at the end of a specified period or at any time. An irrevocable trust cannot be terminated by the Settlor nor can the Settlor vary the terms of the trust. Whether a trust is established as revocable or irrevocable will depend upon the objectives and circumstances of the Settlor.

Both revocable and irrevocable offshore trusts may be either discretionary or fixed interest trusts. Under a fixed interest trust the interests of the beneficiaries are specifically fixed in the terms of the trust deed and the trustee has no power to vary those interests. A discretionary trust on the other hand gives the trustee the power to determine the allocation of income and capital amongst the members of the beneficiary class and to vary the membership of the beneficiary class. The flexibility provided by the discretionary form of trust is often necessary to satisfy tax planning objectives.



In the case of a discretionary trust, the trustees will have wide discretionary powers (although they may sometimes be constrained by the requirement for the consent of a third party or the protector), the trust deed will often be supplemented by an informal and confidential letter from the settlor or grantor to the trustees setting out his wishes on such matters as the amount and timing of distributions, investments, employment of advisers, those who should be regarded as primary beneficiaries and so forth. While this letter is non-binding and intended for the trustees' guidance only, the trustees will generally respect the settlor or grantor's wishes and strive to act in accordance with them.

Most offshore trusts fall into four broad categories:

Private: including discretionary, accumulation and maintenance, life interest and fixed interest trusts.

Corporate: including pension and employee benefit trusts.

Charitable: solely for the benefit of charitable organisations.

Purpose: trusts with no beneficiaries that are established for purposes that are certain, reasonable and possible.

Modern offshore trust deeds can be tailored to meet your specific requirements. Generally they are worded in the widest possible terms to allow a trustee scope to respond to changing circumstances and requirements.

Discretionary Trusts

The most flexible form of offshore trust and used in wealth protection and tax planning. A discretionary offshore trust will normally allow the Trustees to appoint additional beneficiaries or to remove existing beneficiaries, and will usually also allow the Trustees to distribute the income and capital of the trust to the beneficiaries in varying amounts and at various times. When a Settlor establishes a discretionary offshore trust he will generally provide the Trustees with a Letter of Wishes, which provides guidance to the Trustees on how he would like them to administer the trust and manage the assets.

Interest in Possession Trusts

These differ from discretionary trusts in that the beneficiaries will be entitled to receive income and capital from the trust as detailed in the trust deed.



Accumulation and Maintenance Trusts

Almost always established for the benefit of children. The offshore trust deed will specify that the trust fund be used for the education and maintenance of the children up to a certain age with surplus income being accumulated by the offshore trust. Once a predetermined age has been reached the beneficiaries will be entitled to receive income and capital from the offshore trust as detailed in the trust deed.

Trust is an innovative vehicle for the acquisition, enhancement, preservation and transmission of assets. It allows flexibility in the management, transfer of one's property with greater confidentiality and optimal tax planning within a strict legal framework. It also protects against claims based on foreign expropriation and exchange control laws.

Using a trust to own the shares of an underlying offshore entity can result in a very substantial tax and non-tax related advantages, which will accrue both on death and during the lifetime of the trust settlor, these include:

1. **Saving of inheritance tax:** on death, the Inheritance tax which would normally be assessed on the value of the shares would generally be eradicated.
2. **Confidentiality:** That is it enables clients to make confidential provisions for themselves or their families in a tax efficient manner during their lifetime or upon their death by divesting themselves of income and assets to a trustee who will hold and administer them in a tax-exempt jurisdiction.
3. **Asset protection:** assets placed into a trust are generally beyond the reach of creditors who might arise as a result of financial difficulties, divorce proceedings, litigation etc. It also enables to protect capital and other assets from exchange controls and other legal or political actions which may be taken against clients or their asset, transferring legal ownership from the client to the trustee.
4. **Avoidance of probate:** a trust provides the means whereby assets can be smoothly passed on to the next generation without any disruption, delays, substantial costs, loss of confidentiality associated with probate procedure which necessarily follows when assets are bequeathed by will.
5. **Continuity:** trusts provide a mean whereby assets can continue to be administered in accordance with the wishes of the settlor after his death so the weak can be protected from others and the spend –thrift can be protected from himself.
6. Add **flexibility** in the distribution of clients' estates to their successors upon their death where an estate could be subject to the laws of forced heirship.



7. Hold funds as an intermediary in an **escrow arrangement** to ensure the proper performance or completion under an agreement between independent parties.
8. **Hold and manage assets** for those who cannot do so for themselves e.g. minors.
9. Preserve the **confidentiality** and provide **anonymity** with regard to the beneficial ownership of the property and shareholdings.
10. Provide a controlled structure by which a client can **delegate the responsibilities** for specific duties and actions to a third party i.e. the trustees.
11. **Life time tax savings**: during lifetime, substantial income and capital gains tax advantages may result from setting up the trust.