

International Trust

An international trust is generally very similar to a family trust, with the main variation being that the individual setting up the trust cannot be a trustee and has to appoint a professional trustee resident in the country in which he wants the trust to be resident. The trust will also appoint an Investment Advisor to effect all the investment decisions on the trust.

The trust is a legal concept that has its origins in medieval English law. The trust concept is firmly established in many countries around the world including most of the leading offshore jurisdictions (international financial centres). This unique arrangement allows an individual (the “Settlor”) to transfer assets to a third party (the “Trustee”) to be administered for the benefit of person(s) chosen by the Settlor (the “Beneficiaries”) strictly in accordance with the provisions of a document (the “Declaration of Trust”).

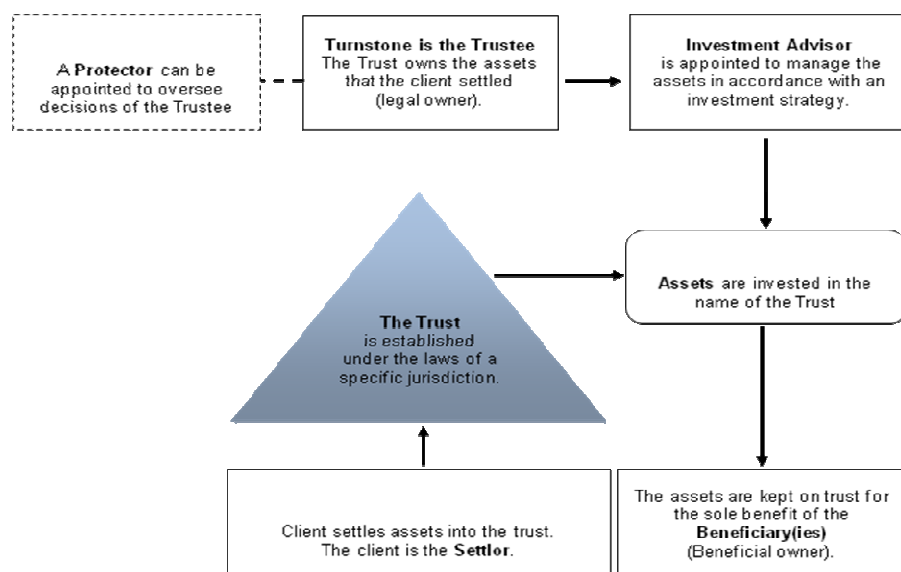
A trust is one of the most secure and flexible financial planning vehicles available today, particularly when established offshore. It allows the Settlor to make long-term plans for the distribution of wealth after his/her lifetime. By transferring assets into a trust the Settlor can ensure that the management of the assets will not be interrupted on death, by probate or other formalities since the trust assets will continue to be held and administered by the Trustee in accordance with the provisions of the Declaration of Trust.

The Structure

Objective: To hold the assets settled by a client in a secure manner and for the benefit of the persons nominated by the client without having excessive charges against the assets.

Overview of structure: Assets are settled by the client. The client becomes the settlor of the trust. The assets are invested in the name of the Trustee (the legal owner) and the Investment Advisor manages those assets on behalf of the Trust. The assets are held on trust for the sole benefit of the named beneficiary(ies). The beneficiary(ies) is/are the beneficial owner(s) of the trust.

A Trust structure operates as follows:



Elements of a Trust

- a) A Trust is a legal arrangement between a settlor and a trustee whereby the trustee keeps on trust assets that were transferred by the settlor to the Trustee for the benefit of the beneficiaries.
- b) The Settlor is the person(s) who transfers assets into the trust. This can be done in various manners for instance by giving a donation to the trust or by giving a small donation and a loan to the trust. By transferring the assets into the trust the settlor gives up his legal ownership to the assets.
- c) The Legal ownership is transferred to the Trustee. By law it is the duty of the Trustee to hold the assets on trust on behalf of the Beneficiaries. The Beneficiaries are those people who will derive the benefit, both capital and/or income, from the Trust. The Beneficiaries hold the beneficial ownership of the assets. The Trustee is not allowed to ever benefit from the Trust. The beneficiaries may also be described in terms of classes. A class of beneficiaries is a group of people that will benefit in the same manner, for instance, "Children of the settlor".
- d) The Trustee is normally a corporate entity usually situated in an international financial centre such as the Isle of Man, Mauritius or New Zealand, which is responsible for the administration of the trust and provides confidentiality for the beneficiaries.
- e) A Protector may be appointed to oversee the decisions of the Trustee. His duty, as the name suggest, is to protect the interest of the Beneficiaries. He may even have veto powers on decisions of the Trustee. His powers are described in the trust instrument.
- f) The trust instrument is the document that describes who the parties (Trustee, Settlor and beneficiary (ies)) to the trust are. The document sets out the rules, regulations and conditions that apply to the trust. The instrument can be in the form of a Declaration of Trust or a Trust Deed.
- g) The Proper Law of the trust indicates the jurisdiction's laws and courts that will govern the terms of the trust. Turnstone is very comfortable with the trust laws of Mauritius, Isle of Man and New Zealand. The Forum of Administration is the country where the trust will administer from and does not necessarily have to be the same as the Proper Law of the Trust.
- h) Once the assets of the trust have been invested. The Trustee will appoint an Investment Manager/Advisor to manage the assets of the trust. All the decisions of the Investment Manager should be base on the protection of the interest of the Beneficiaries. The Trustee will give the Investment advisor an investment policy that has to be followed.
- i) All the trust assets are invested in the name of the Trustee as the legal owner. An annual or bi-annual statement is issued to the client to reflect on the total value of the trust's assets. The trust instrument will guide the Trustee on how to deal with the capital portion of the assets as well as the income portion of the assets.
- j) The settlor may guide the Trustee by giving a Letter of Wishes. The letter of wishes makes the intention of the settlor clear. The Letter of Wishes is, as the name suggests, a letter that sets out the wishes of the settlor and it serves to guide the Trustee and Investment Advisor in their decision making.

Types of Trusts

There are various forms of trusts such as Purpose Trusts, Charitable Trusts, Discretionary Trusts, Absolute (Fixed) Trusts and Will Trusts, to name a few. This document will focus only on Discretionary trusts and Fixed Interest Trusts.

Discretionary Trusts

- a) A settlor creates a trust for the benefit of a class of beneficiaries. The Trustee has the power to determine when, how and in which portion the beneficiary (ies) are to benefit.
- b) The trust instrument will describe the discretionary powers and will give the Trustee guidance on the conditions and rules that apply when exercised these powers. The trust instrument may, for instance, require that the Protector approve the decision of the Trustee when it exercises its discretionary powers.
- c) The discretionary powers of the Trustee can be very wide or can be very limited. The Trustee will have the power to decide what a mount and the proportion of capital to income that can be distributed to a beneficiary. The Trustee may also have the discretionary power to appoint beneficiaries.
- d) The settlor can guide the Trustee by providing a letter of wishes that sets out his intention and wishes.

Fixed Interest Trusts

- a) In an fixed interest trust there are certainty as to who the beneficiary(ies) is as well as how and when the beneficiary(ies) is to benefit from the trust. To give a few examples, it could be stipulated that:
 - b) The beneficiary may only benefit from a specific age; or
 - c) The beneficiary may benefit from the income from a specific age and from the capital at a later stage; or
 - d) The education and maintenance of the beneficiary may be provided for until a specific age. At that point in time the beneficiary may receive distributions from income or capital or both; or
 - e) The beneficiary may benefit from the income and capital at the demise of the settlor.
 - f) The discretionary powers of the Trustee in a fixed interest trust are not as wide as it is in a discretionary trust. The discretionary powers of the Trustee are limited as the trust instrument will prescribe to the trustee what decisions need to be made (see examples above).

Domicile of a Trust

Obviously, for a trust to be an international trust it has to be registered somewhere other than actual domicile of Settlor. Usually this country will be at the choice of the Settlor and where the trustees are resident. This is necessary because a trust is deemed to be resident where the trustees are resident being, where the trust is managed and controlled.

In most instances one would take advantage of tax havens or low tax countries and accordingly these trusts are formed in tax havens such as Isle of Man, Mauritius etc. The custodianship of a trust can vest in a country such as Switzerland. When determining residency for the trust, there are a number of factors to be taken into consideration, these being-

- a) economic stability;
- b) financial stability;
- c) confidentiality;

- d) the language and business medium of the country;
- e) the culture of the people being dealt with;
- f) time zones and
- g) the legal system.

Advantages of a Trust

- a) The assets are invested in the name of the trust and not the name of the client. This arrangement is similar to a custodian arrangement and the involvement of the settlor is kept confidential as far as possible.
- b) The assets do not form part of the estate of the client as it has been gifted to the trust.
- c) Protection from claims of creditors in certain situations.
- d) The assets are protected for the benefit of the Beneficiaries of the trust and therefore, on the demise of the settlor, the investments are not interrupted.
- e) The assets of the trust are protected from spendthrifts of the family after the demise of the settlor.
- f) Orderly transfer of wealth to the next generations on the demise of the settlor.
- g) Assets of the trust can be used to promote charities or certain causes.
- h) The trust may provide tax savings.
- i) Provides a mechanism for income tax saving- in transferring assets to a trust, the assets cease to be owned by the Settlor. It may then be possible to minimise taxes that would have become payable on that property if the Settlor had continued personal ownership.
- j) To manage the application and effect of exchange control- the trust will be in a jurisdiction with no application of exchange control.

Various jurisdictions have different advantages and should be discussed with your trust advisor when the proper law is selected. Turnstone will be happy to assist you.

For further information please contact our expert team at marketing@turnstone-group.com

www.turnstone-group.com

This document does not provide a legal opinion and Turnstone does not guarantee the information contained in this document.

Professional advice should be obtained for establishing a trust.

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