

WiltonGroup
Isle Of Man Trusts

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WiltonGroup

“WiltonGroup is an independent Accountancy and Business Services Practice, which offers a range of top-quality tailor-made services to meet the needs of each client. Our team combines professional expertise with exceptional experience and enthusiasm. We put personal service and trust at the top of our priorities and ensure that every client receives individual attention from all our team members. By harnessing this blend of service and managing it in a client focused manner, we offer a unique service but with the traditional private banking client relationship approach. ”

Tony Flanagan - Managing Partner –

WiltonGroup Client Services

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- Taxation
- Accounting
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- Trust Services

Our specialist services include:

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- Corporate Finance
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ISLE OF MAN TRUSTS

What is a Trust?

A trust is a long established legal undertaking whereby the ownership and the benefits attached to property can be split. Trustees have title to the property passed to the Trust but are under an obligation to pass on the benefits to Beneficiaries. The original owner of the property (the Settlor) passes on the title having identified those who will benefit from it. A trust is sometimes referred to as a Settlement.

Trusts have their origins in English Trust Law, which dates back to the Middle Ages. Isle of Man Trust Law is, with a few minor exceptions, identical to that of England. There is no complete definition of a trust by an Act of Parliament, since Trust Law derives from a branch of English Law known as Equity and not from any law passed in Parliament. Equity evolved as a system of judge-made law as did the Common Law. The Common Law could be oppressive and, in effect, deny justice through rigid interpretation. Equity arose to balance it. Later, legislation in England and the Isle of Man was passed to guide Trust Law and clarify uncertainties but not to form it.

In a trust, legal ownership (i.e. the Common Law ownership) belongs to the Trustee, but Equity realises that the Beneficiary has an interest. Trust law recognises the relationship between the Trustee and Beneficiary, enforces its duties and provides remedies in the case of any breach. The law permits the Settlor to also be a Beneficiary.

The site of administration of a trust will normally be that of the Trustee. If the site is in the Isle of Man, the local courts will have jurisdiction. Local law closely resembles English law and is supported by an independent judiciary. Trust law here has developed over the centuries and is not an afterthought designed to attract foreign investment in an otherwise incompatible legal system. The Isle of Man is a signatory to the Hague Convention on the Recognition of Trusts. The island is politically stable. These advantages are not enjoyed by all offshore centres.

Why use a trust?

For an individual who wishes his or her wealth to continue to serve others, a trust has many advantages. It may enable the Settlor to protect that wealth against risk and misuse and specify how it should be given to the Beneficiaries. In many cases it is possible to use a trust to protect the wealth from taxes. Practical advantages of the use of trusts include:

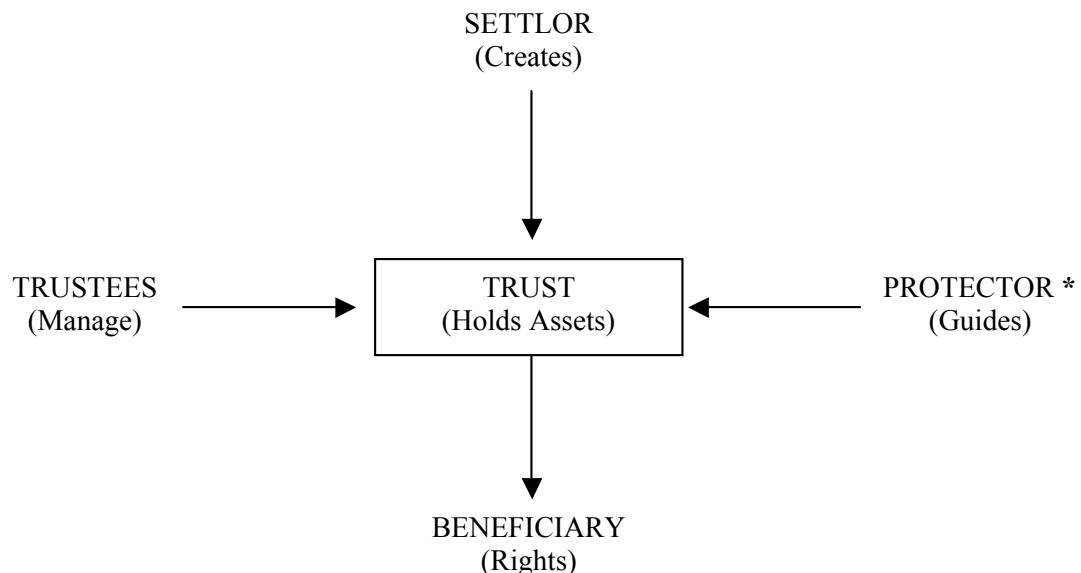
- a) Passing the benefit of an asset on to a spouse or parent but ensuring that children eventually receive it. This might not happen if the property is simply given to the parent or spouse.
- b) Protecting an asset from being owned by someone who is financially immature or too young until they are old enough.
- c) Making future provision for children and grandchildren – even those not yet born – which can be made equally or unequally depending on their particular needs in the future.

- d) Protecting the Beneficiaries of the Trust by confidential arrangements which prevent even them being aware of any entitlement to benefits. For example, this can protect someone who would be at risk of kidnap if information relating to future wealth became public knowledge.
- e) Preserving the continuity of a family controlled business when some or all family members cease to become involved in the business. This can preserve the business against family conflict or disinterest.
- f) Protecting a relative who needs assistance in managing his or her affairs.
- g) The winding up of a large and complicated estate may take years to resolve and so disadvantage heirs. If property is in the hands of Trustees, they can be empowered to deal with the immediate needs of beneficiaries.
- h) Protecting assets from future creditors. Note that in the Isle of Man no transfer of assets to Trustees to defeat known creditors at the date of transfer will be valid. However, it is possible to transfer assets to Trustees to protect against potential future claims.
- i) A company can make provision for employees' pensions outside of the limits on contributions and restrictions on fund use that operate in its existing tax regime.
- j) Expatriate workers who may need to change country of residence from time to time can build up their savings in a safe jurisdiction.

How are Trusts established?

A trust comes into being as a result of the wishes or actions of the Settlor. There is no public registration requirement. Essential elements include:

- a) A Settlor.
- b) A Trustee.
- c) A Beneficiary.
- d) Trust Property.



* Not necessarily required (See Page 8)

A trust need not be made in writing except in situations relating to land and can even arise by implication. However a written statement – a ‘Trust Deed’ - is essential for private client business.

A trust can be set up to take effect on the death of the Settlor. The ‘Testator’, as he or she is then called, directs by will that the Trust Property be taken from his or her estate and given to the Trustee to establish the trust.

A transfer of property to a Trustee has the nature of a gift. Since that transfer is an essential part of the creation of a trust, a trust cannot come into existence until the transfer has been at least irrevocably started. Once a trust is in existence, additional property may be added to it by further settlements.

The Rights of Beneficiaries

The rights of a beneficiary depend upon the intention of the Settlor, the type of property, the type of trust, the trust deed and the law.

It is not possible to explain all rights in this brochure, but the most obvious one is to receive income and capital from the trust. A Beneficiary also has the right to information from the Trustee on the administration of the trust. However, a Settlor need not obtain the consent of a prospective Beneficiary to establish a trust. Thus a trust can be set up in secret for a Beneficiary. Once aware of a trust, a Beneficiary may renounce his or her rights under it.

A Beneficiary has the right to seek Court orders to compel a Trustee to undertake his or her duties, or to direct a Trustee to do something, or even to remove Trustees and appoint new ones. In some cases a Beneficiary may even terminate the Trust, against the opposition of the Trustees, and the terms of the Trust. Careful drafting of the Trust Deed and choice of professional Trustees will of course reduce the opportunities for conflict between the Trustees and beneficiaries.

In Fixed Trusts (see **Types of Trust**, p.11 below), a Beneficiary’s interest in a Fixed Trust is transferable to others outside of the trust. In addition, a creditor of a Beneficiary in such a trust can enforce a valid claim against the interest. A Settlor will wish to bear this in mind in choosing the sort of trust to form.

TRUSTEES AND PROTECTORS

In general, any individual or corporation may act as a Trustee. Trust Corporations ('Corporate Trustees') have the advantage of being perpetual bodies. A minor may not be a Trustee. A Trustee may not be appointed against his will. On the Isle of Man, all professional Trustees must be licensed.

A trust may have only one Trustee and there is no maximum number. The exception is a trust which holds land which must have at least two and not more than four Trustees. In many cases, these numbers are not a problem as a trust may be able to use a company to hold the land and a corporate Trust Company may hold land on its own.

A Trustee may be appointed by the Settlor in the Trust Deed, by the Court or under legislation. Legislation permits a Trustee to retire, without being replaced, if there are sufficient Trustees to continue. It also allows the appointment of Trustees in place of retiring ones.

Normally the first Trustee is appointed on the creation of the trust. The Trustee will be party to and execute the Trust Deed. Once appointed, then he or she cannot be removed by the Settlor unless the Deed permits. A deed may empower a third party (an 'Appointer') to appoint a Trustee.

A Trustee may retire if the Trust Deed allows and the Court has a further power to approve the retirement of a Trustee and to appoint a Trustee.

If a Trustee dies, any remaining Trustees continue without him.

Duties of a Trustee

The duties of a Trustee in the operation of a trust are primarily determined by the trust deed. In addition, legislation gives Trustees certain inherent rights associated with the day to day running of the Trust. However, Trust Law imposes a duty of absolute good faith upon the overall behaviour of Trustees.

Thus a Trustee must act fairly and impartially towards the beneficiaries of the trust, both as a group and as between them. A Trustee cannot deviate from the directions of the Trust Deed and the obligations that arise from legislation. A Trustee must be entirely disinterested in his or her actions. This means a Trustee may only receive remuneration or benefit if expressly permitted under the Deed.

Liabilities of a Trustee

If a Trustee breaches his or her duty of trust, the Court will order full restitution of what has been lost by the trust as a result of the breach. A retired Trustee remains liable for any breaches of trust committed during his Trusteeship.

Powers and Discretions of Trustees

A Trustee's powers and discretions arise from the Trust Deed, legislation and any Court Order that may be made. Legislation permits trustees to exercise a number of practical powers, for example, to insure trust property and to employ agents.

Sometimes a Trustee's powers may be limited under the Trust Deed. For example, if a Fixed Trust is created to carry out a sale of a house, then the sale must happen. The Trustee may have discretion over the timing of the sale and will usually be obliged to insure the house until sale. If particular powers and discretions are called for then the matter should be addressed via the Trust Deed.

The role of Protectors

A Settlor may feel uncomfortable handing over legal title to property to Trustees with whom he or she has no previous dealings. He or she may have a trusted friend or adviser who is unable to act as a Trustee. (For example, such a person may be restrained by tax law in his or her own country, or the role might impact on whether the trust could be said to be truly resident on the Isle of Man).

To alleviate such fears, local law permits the appointment of 'Protectors'. These may supervise and guide Trustees and sometimes appoint and remove them. Protectors may act singly or together as a 'Committee of Protectors'. The powers of Protectors can be couched in a negative sense such that Trustees may require their consent to certain actions. Care must be taken in drafting the powers granted to Protectors such that these do not make him or her in law a Trustee.

Just as with a Trustee, Protectors owe their duty of absolute good faith in all dealings to the beneficiaries, not to the Settlor.

MANAGEMENT OF TRUSTS

Accounts and Investment

A Trustee has a duty to keep clear and accurate accounts and have these accounts available for inspection by beneficiaries. Beneficiaries are also due a full and proper explanation of the dealings of the Trust.

Usually, investment powers are set out in the Trust Deed. If not, these are provided by legislation which permit such investments as authorised for trusts in England and in addition, investment in a range of Isle of Man assets. A Trustee has a duty of prudence in the choice of investments and this protects the Trust and the Beneficiaries in the ordinary course of business. However, a Settlor who wishes the Trustee to carry out particular forms of investment will address that in the Trust Deed.

There is no restriction on the period that income may accumulate to a trust (in contrast, for example, to English trust law).

Taxation

In general, Isle of Man trusts are not liable to local taxation or government duties if the beneficiaries are resident outside the Isle of Man and the income arises outside the Isle of Man. By concession, bank deposit interest earned from Isle of Man banks is exempt from taxation. No filing obligations such as the submission of tax or legal returns apply.

Variation and Termination

Unless the Trust Deed allows otherwise, it is fixed and cannot be changed. Nevertheless, if all parties involved agree – Settlor, Trustees and all beneficiaries - a change may be possible. However, if there are minors, or unborn beneficiaries, a change is not possible.

On rare occasions, the courts may approve alterations of the terms of a trust. Such changes usually relate only to management matters. In such cases, the original intentions of the Settlor will be of great importance.

Once a trust is created, the Settlor no longer has any direct ownership of the property given to it. Only if an express power of revocation is included in the Deed can the ownership return to him or her.

A trust may end if:

- a) It never met the basic requirements of law. For example, if the Trustee has never taken control of trust property. Strictly speaking, such a trust has not properly come into existence in the first place.
- b) The trust property is used up.

- c) It reaches the natural end of its life.
- d) If the Settlor has included a power of revocation in the Trust Deed and then uses it.
- e) The Trustee and sole Beneficiary are or become the same person.
- f) The Beneficiaries have the right to demand that all the Trust property be paid to them at once and do so.

Trustees remain bound by their duties during the winding up of a trust and after termination.

Duration of a Trust _____

There are two options available for the maximum period (also known as the ‘perpetuity period’) for which a trust can exist. Either a fixed period can be chosen of one hundred and fifty years. Or, the maximum period will be the duration of any relevant life or lives in being at the date of the trust deed, plus a further period of 21 years from the date of death.

Managing Foreign Trusts _____

Trusts validly established elsewhere are recognised on the Isle of Man. If a foreign trust is administered locally or has some other substantial connection with the Isle of Man, then the local courts have jurisdiction over it.

Dealing with ‘Forced Heirship’ _____

Some countries have what are called “forced heirship” provisions. These require the estate of a deceased person to be divided among the family in a certain way. This can create a conflict if that estate has been transferred to a trust. Under Isle of Man law, foreign “forced heirship” provisions have no effect in regard to a locally managed trust. Nevertheless, advice may be needed regarding the actual distribution of Trust assets within a forced heirship jurisdiction.

TYPES OF TRUSTS

There are several types of trusts likely to be of interest to those advising wealthy clients. By their nature some types of trust overlap – for example a Trading Trust is also a Discretionary Trust:

Accumulation and Maintenance Trusts

A form of trust whereby the trust income is used for the beneficiaries until a certain date when the Beneficiaries can receive their share of the Trust capital. In practice these are mainly used for the education and maintenance of the Settlor's children or grandchildren until they reach maturity.

Asset or Creditor Protection Trusts

On the Isle of Man, these trusts are not a special class of trusts as such, but their names reflect the fact that Trust Law recognises the transfer of assets to a trust as valid against future creditors of the Settlor if the transfer has not been done to defraud known creditors at the time of transfer. The Isle of Man is not a jurisdiction that has passed specific legislation to encourage Asset Protection Trusts. Nevertheless, it has been established in law that if transfers are made honestly, they will stand up to future claims.

Asset Protection Trusts are recognised as a way that individuals in business and those in high risk professions such as lawyers and doctors may wish to protect their assets, particularly if adequate insurance arrangements cannot be made.

Discretionary Trusts

Here the Trustees can exercise their judgement in applying the powers given to them by the Trust Deed and by law. They can, nevertheless, be guided in their decisions by the advice of the Protector or of the original settlor or any person nominated by him. There are variations on the degree of discretion available (see Fixed and Discretionary Trusts, below).

Fixed or Non-Discretionary Trusts

The Trust Deeds of this type of trust are so worded that the Trustees have no discretion as to which of a class of beneficiaries shall receive benefits, nor the amounts or timing of such benefits. While these trusts guarantee absolute certainty over how the Trustees treat beneficiaries, most clients prefer to grant a degree of discretion to Trustees so that unforeseen changes in circumstances can be accommodated. Nevertheless, Non-Discretionary Trusts can have a role to play.

For example, a Trustee may be required to hold property on trust for a single beneficiary without any power or discretion to do anything other than hold the property, and deliver it when requested to the beneficiary. This can create timing advantages in respect of tax liabilities.

Fixed and Discretionary Trusts

It is possible to combine the powers given to Trustees so that they are in some respect fixed and in others, discretionary. Hence the title 'Fixed and Discretionary'. For example, Trustees may have discretion over how the income of the trust is used but are obliged to distribute the capital of it in fixed proportions when the trust is wound up. Or a trust may be an 'Accumulation and Maintenance' Trust, where the Trustees must accumulate income until a fixed point in time when they can exercise discretion in releasing it. Such trusts often operate for minors.

Employee Benefit Trusts

Companies can use an Employee Benefit Trust (EBT) as a tax efficient vehicle for the provision of employee remuneration packages. In addition to tax advantages, an EBT is also free of the restrictions on funding and the use of funds that some jurisdictions impose upon, for example, pension funds. The EBT is the subject of a separate WiltonGroup brochure.

Grantor or Interest in Possession Trusts

Some times referred to as ‘Settlor Interested Trusts’, such trusts are normally formed for the benefit of the Settlor (‘Grantor’) who is named as the principal Beneficiary entitled to both income and capital. They do not usually confer tax advantages but they can act as Asset Protection Trusts. If the capital or property is not used up during the life of the Settlor, the Trust Deed may also empower a Trustee to release the trust property to the next of kin of the Settlor without waiting for the formalities of the estate procedure to be completed.

Express Trusts

Trusts come into being following the wishes of the Settlor. It is possible for a trust to come into being by words alone or even by implication. For the purposes of private clients, all trusts created will come about following their express wishes and trust literature sometimes refers to these as “Express” Trusts.

Implied Trusts

It is possible for a trust to come about without the express intention of the Settlor. Such trusts are referred to in trust literature as “Implied” Trusts. However, these are too uncertain to play a role in the affairs of private clients and the use of a written Trust Deed will make any trust an “Express” one (see above).

Purpose Trusts

These are trusts founded to carry out a specific purpose, rather than to benefit beneficiaries. Usually a trust must have identifiable beneficiaries. Purpose Trusts were originally only permitted for charitable purposes, where those who might benefit could not be easily identified. In turn a government law officer – the Attorney General – could bring an action against the Trustees on behalf of the purpose of the trust.

In 1996 legislation permitted the formation of Purpose Trusts for non-charitable goals. The Isle of Man is one of only three jurisdictions that allow such trusts. They must have at least two Trustees of which at least one must be in the Isle of Man, and there must be an Enforcer, independent of the Trustees, who, like the Attorney General, can ensure that the purpose is carried out. Commercial Purpose Trusts can be used, for example, to improve the security available for large ticket financing of company assets, and placing company assets ‘off balance sheet’ for legitimate purposes of business confidentiality.

Revocable and Irrevocable Trusts

In the ordinary course of business, a transfer of property to a trust is not revocable and so is described as ‘Irrevocable’. However, there is a class of Revocable Trusts where the Settlor has included an express power in the Trust Deed by which the transfer of property to the Trustees is revocable.

Trading Trusts

A variation of a Discretionary Trust in which powers are given to Trustees to trade. This type of trust is not commonly used in practice because Trustees can then be exposed to legal challenge for breach of duties, if they incur losses. However, sometimes it is appropriate for this type of trust to be used. It is possible to use such trusts to trade but with the taxable events attributed to the Beneficiaries and so avoid an intermediate corporate tax charge.

Unit Trusts

A Unit Trust is a Trust in which the interest of Beneficiaries is defined by reference to units held by them. The number of units is variable and units can be created and redeemed at will. Unit Trusts can be used as holding vehicles because of this flexibility rather as if a privately held company. As such, a Unit Trust for the benefit of family members may be of use as a way for an extended family to enjoy the benefits of a trust.

It is also possible to use publicly traded Unit Trusts. The Isle of Man operates a secondary market in such financial securities. However, although these Unit Trusts may form the assets of a private trust they do not act as trusts in the roles described in this brochure

Disclaimer

This brochure contains only an outline of the nature of trusts and their role in private client affairs. It is provided for general information purposes only. By its nature, it cannot be an authoritative statement of the law and practice on the subject in the Isle of Man and no person should rely upon it for this purpose. The WiltonGroup strongly recommend that all persons who consider using trusts in any way whatsoever should take appropriate professional advice.

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