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Trusts administered from London

Minerva Group

Minerva is an international and independent provider of bespoke private client, corporate and fund administration services. Having been in existence for over 35 years, Minerva has developed into a global business with a prestigious worldwide client base, focused strategically on India, sub Saharan Africa, the Gulf, Eastern Europe and the UK.

What is a Trust?

A trust is a legal relationship created during lifetime, or on death as a result of which legal ownership of assets is passed to one or more 'trustees' to be held by those trustees for the benefit of others (the 'beneficiary/beneficiaries'). The key characteristic of a trust is that it permits the separation of legal ownership of property from the enjoyment of it.

Characteristics of a Trust

For a trust to exist there must be:

One or more settlor – This is the person who sets up a trust. The person will have transferred assets into the trust or declares that he holds property on trust for the benefit of others (and possibly himself). If other people add assets to an existing trust, they also become settlors of that trust to the extent of the property that they have introduced to it.

Beneficiaries – These are the people who are intended to benefit from the trust. The fundamental feature of a trust being the legal ownership of property and the enjoyment of it. The terms of the trust will specify who the beneficiaries are and the nature and extent of their entitlement to benefit from trust property. Trusts can be flexible in nature because they confer discretion on the settlor and/or the trustees to decide who the beneficiaries are and when and how any benefit is given to one or more of the beneficiaries. Such trusts are often called 'discretionary trusts'. Under such discretionary trusts a beneficiary has no outright entitlement to any income and/or capital from the trust. A beneficiary has a right to be considered by the trustees as a possible recipient of trust income and/or capital. The trustees can also decide whether a beneficiary receives an outright release of trust property or whether by way of loan.

Trustees – The trustees' responsibilities are to receive the trust assets and to administer the trust by managing the trust property for the benefit of the beneficiaries in accordance with the terms of the trust deed. Whilst the terms of the trust deed are mandatory upon the trustees, if the terms of the trust deed provide an element of

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flexibility, it is common for the settlor to provide (by a Letter of Wishes) guidance as to how the settlor would prefer the trustees to exercise their discretion – such Letter of Wishes will often also record the reason that the trust was established. Such Letter of Wishes is not legally binding on the trustees.

A trust has the following characteristics:

- The trust assets are a fund separate from the trustee's own personal property;
- Legal title is held in the name of the trustee, or another person on behalf of the trustee;
- The trustee has the obligation to manage and dispose of the trust assets in accordance with the terms of the trust deed and the duties imposed upon him by law; and
- It is possible for the settlor to reserve certain rights and powers to himself, and the fact that the trustee may himself be a beneficiary, is not necessarily inconsistent with the existence of a trust.

Types of Trust

There are three common types of trust:

Fixed Trust – Is a trust that provides the trustee with no discretion as to the application of their power. The wishes of the settlor contained in the trust deed will instruct the trustees on how to distribute the trust assets when the beneficiaries become entitled. To enable the trustees to distribute the assets of a fixed trust all of the beneficiaries must be ascertained or capable of ascertainment.

Discretionary Trust – Is a trust that provides discretionary powers to the trustees, and the limits of these powers will be contained in the trust deed. A trust of this nature is normally created with a class of beneficiaries, from which the trustee can chose to apply the trust assets.

Purpose Trust – Is a trust with a defined purpose which is contained in the trust deed. Therefore, the trustees will manage and apply the trust assets to the benefit of the defined purpose. Charitable trusts are the most common examples of these trusts, as the trust assets are applied to ensure the fulfilment of the charitable purpose.

Trustees' duties

Primary duty – The primary duty of a trustee is to manage the trust assets and apply them for the benefit of the beneficiaries. The terms of the trust deed will usually confer wide administrative powers on trustees intended to assist them to administer the trust assets efficiently and to take into account change in circumstances. Notwithstanding such possible wide powers being conferred by the terms of the trust deed, wide investment powers are not contained in the Trustee Act 2000.

Specific duties – The trustee's duties include the following:

- Ensuring that the trustees know the terms of the trust deed;
- A statutory duty of care (contained in the Trust Act 2000) to manage the trust in the beneficiaries' interest;
- If any assets are received by the trust, there is a duty to consider investing those funds unless these are to be spent immediately;
- The trustees must keep careful stewardship of the trust assets. They will be liable to the beneficiaries if any loss is suffered within the trust fund by reason of the breach of the trustees' duty;
- To keep proper accounts (including the trust assets – it is usual for annual accounts to be prepared – beneficiaries are entitled to see these accounts and may request information regarding the dealings of the trust to ensure that their interests are being considered and protected;
- Unless the trust deed permits this, no trustee (other than professional trustees) can charge for their services for acting as a trustee;
- The trustees must ensure that the trust assets are properly invested and that any investments are monitored regularly;
- The trustees can seek advice from suitable qualified professional advisers but there are formalities that must be complied with should the management of the trust's investments be delegated on a discretionary basis, in particular the completion of an Investment Policy Statement, which must be kept under review; and
- Any potential conflicts of interest between the trustees and beneficiaries must be disclosed.

Trustees' functions

The trust deed will usually include the powers conferred on the trustees to enable them to administer the trust assets. The trustees must also:

- Seek professional advice when they do not feel competent to make decisions for example, where and how to invest trust monies;
- To act unanimously, unless the trust deed permits the trustees to act by majority;
- To ensure that a beneficiary receives their entitlement at the correct time, for example if a beneficiary is entitled to all the income from the trust fund as it arises, to ensure that such income is paid to that beneficiary or as that beneficiary directs; and
- To ensure that the trustees' tax affairs with HM Revenue & Customs are up to date. This will include ensuring that the trustees' annual tax returns are completed and filed with HM Revenue & Customs and the payment of any tax when it falls due. The trustees can employ accountants or other tax advisers to ensure that their obligations with HM Revenue & Customs are in order.

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The Trustees' duties to beneficiaries

In addition to the above, the trustees must ensure that they act with the utmost integrity at all times and must not favour one beneficiary over another, unless this is permitted by the terms of the trust deed or (perhaps) to comply with the settlor's wishes.

In practical terms, the better the relationship between the trustees and their beneficiaries in terms of consultation and ensuring that beneficiaries are kept informed about the administration of the trust, the fewer problems should be experienced in the administration of the trust.

Reasons for creating a Trust

Some common current motives for placing property in trust rather than continuing to hold such property in personal ownership include:

Where a person lacks the necessary capacity to hold property themselves – An example is a minor child being unable to hold real estate in his/her name.

The wish to retain control and management of family assets – Trusts can enable parents, grandparents and other relatives, who own family businesses for example to continue to run those businesses so they thrive, but at the same time enable 'the next generation' to benefit from those businesses. The ownership of those businesses can be kept intact rather than being fragmented between members/branches of the family with the potential problems this could cause and which jeopardise the future success of that business.

A beneficiary's (perceived) lack of maturity and the consequent fear of the dissipation of assets – Trusts can be used so that a beneficiary is able to enjoy the 'fruits' of property settled for him/her (for example income generated from the investments or rent from real estate), but prevent that beneficiary from being able to spend all of the income at once, or to sell or otherwise dispose of the property without considering the future financial benefits of retaining it.

Transferring the management of assets to persons better qualified to preserve and develop them – This can often be the case in relation to business assets and/or intellectual property rights.

Altruism – Trusts are commonly used to hold property and funds intended to be used for charitable causes. A discretionary trust is often used to enable the settlor or the trustees to decide which types of charity should receive donations in the form of income and/or capital from the trust.

Asset protection – A trust might be used to protect assets from creditors in the case of

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the settlor's subsequent bankruptcy or from 'predatory' spouses/partners on divorce or separation. There are however, statutory measures which enable trusts to be 'attacked' and to be vulnerable if created within prescribed periods before bankruptcy or divorce because it is presumed that they have been used to try and oust the jurisdiction of the courts or for other improper reasons.

Estate/tax planning – Trusts are sometimes used to prevent death being an event upon which ownership of assets pass. The aim is to avoid the cost and delay that might be involved if probate has to be obtained to deal with those assets.

Global Presence

Minerva is a family owned business that has been in existence for over 35 years with business connections dating back to 1922. We provide services from our strategically located offices in London, Jersey, Geneva, Dubai, Mauritius, Singapore and Amsterdam. In addition to these, through associates we provide services from Kenya, India and New Zealand.

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Vaishali is a Director of Minerva Corporate Services (UK) Limited in London. She is the granddaughter of M P Shah, and a member of the Meghraj family, Minerva's largest long term strategic shareholder, and is responsible for developing and nurturing relationships with the next generation of clients. Vaishali also heads up Female Focus, an exclusive international network of highly successful women in business. Vaishali devotes time to

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charitable causes on a regular basis.

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Jeremy is Minerva's Group Head of Legal and Risk. He is a qualified English lawyer with over 10 years of experience in the private wealth industry. Based in England, Jeremy is responsible for managing the legal and risk matters across the Minerva Group.

Disclaimer: This flyer is for information purposes only and should not be treated as advice. Minerva holds no responsibility if the information provided is used otherwise. Advice should be sought prior to setting up any structure. Minerva will be happy to help find the right adviser.