

TRUSTEES

1. What is a Trust?

A **Trust** is an arrangement (not a legal entity like a company) made between a person, called a “Settlor”, who gives assets to someone, called a “Trustee”, to hold and manage them for the benefit of other persons, called “Beneficiaries”. Sometimes there is also another person called a “Protector”, who is there to look after the interests of the Beneficiaries and may have powers such as to remove and appoint Trustees. Trusts are not registered.

There is a **Diagram of a Trust** attached to this Memorandum.

2. What is a Trustee?

This is the person referred to above who holds and manages the assets for the Beneficiaries.

3. Who can be a Trustee?

Any person can be a Trustee. If individuals are selected, it is wise to have at least two. Often a company will act as Trustee. There are professional Trust Companies which specialize in acting as Trustee.

4. Can I be Trustee of my own Trust?

You can but, if so, you will not have transferred control of the assets concerned to someone else and, particularly if you are one of the Beneficiaries, there may be no Trust but merely a nominee arrangement for you. This means that the assets are treated as still being yours and are not the assets of a Trust.

5. Can I have my own company as a Trustee?

Many jurisdictions enable a “family” company to act as Trustee without being licensed or registered.

If you own the shares of such a company and you are the sole director of it, there will be a danger of a nominee arrangement as in paragraph 4 above. This will not be so if there are other directors than you and they act properly.

If the shareholder is an individual and passes away, those shares will be part of his estate and will be transferred by his Will or under his intestacy. This will mean that a Probate or the equivalent is needed, whereas the use of a Trust would avoid this. Use of a Purpose Trust or a company limited by guarantee, or a Foundation or a Special Purpose International Company to hold the shares would avoid this.

6. Should I have individuals as Trustees?

You can do so. If you do so, it is probably because you trust them to hold the assets and to do what you wish. The disadvantages of having individuals are as follows:-

- 6.1 They will pass away and they may become incapable.
- 6.2 The tax residence of the Trust is determined by the residence of the Trustees and the individuals you choose may not reside in an appropriate jurisdiction.
- 6.3 They may not understand the duties and responsibilities of Trustees. If they then ask professionals to advise them or to act for them, it may be wiser and less expensive to appoint a professional Trustee in the first place.

7. What are the advantages of having a professional Trustee in the first place?

- 7.1 The company specializes in being a Trustee and understands the duties and powers involved.
- 7.2 Make sure that it is licensed, regulated and insured.
- 7.3 Because it is a company, it has continuity.
- 7.4 It is a registered legal entity in the jurisdiction of your choice which can be advantageous for tax and safer than having individuals.

8. Can Trustees be changed?

Yes, the Trust should be drafted so that you, as Settlor, or a Protector can remove the existing Trustees and appoint new Trustees in their place at any time.

NOTE: This Memorandum is provided for your assistance but you should always take professional advice before acting. Circumstances and needs differ considerably from one person or family to another.

This Memorandum was last updated on 30th July 2015