

Trusts

An Introduction

An Introduction to Trusts

What is a trust?

Most people have heard of trusts, but they are often misunderstood. Many think they are only for the super wealthy or those with something to hide, perhaps from the taxman.

The truth is that a trust is in essence a relatively simple concept. Fundamentally, it is a means of separating the legal ownership and control of an asset from its benefit and enjoyment - the trust asset is held by the trustees for the benefit of one or more beneficiaries (see diagram).

Although tax planning or mitigation can be the driver behind the establishment of a trust, tax is by no means the only reason why trusts are so popular.

Trusts can provide

- Protection for the vulnerable eg minor or spendthrift beneficiaries
- An extremely flexible and durable structure for wealth succession planning
- Asset protection in the event of divorce or personal bankruptcy

The terminology of trusts

Settlement – another name for a trust

Settlor – the person who establishes (and usually also provides the assets for) the trust

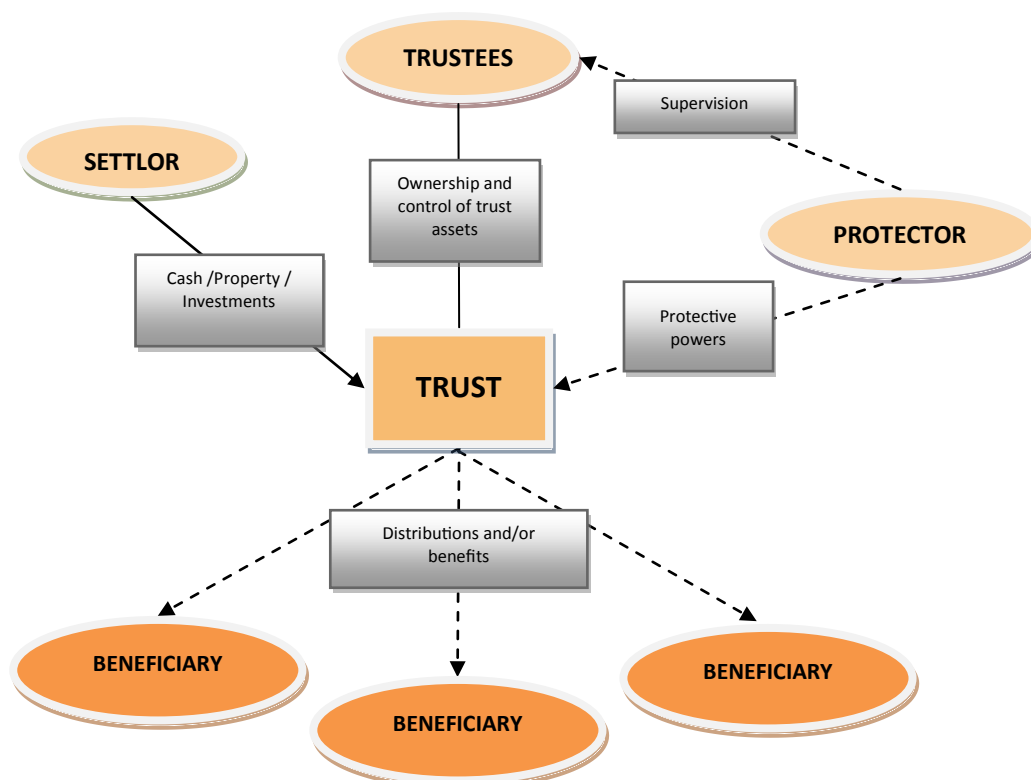
Trust deed – the legal document setting out the terms of the trust

Beneficiaries – those who benefit under the trust deed

Trust fund – the assets held within the trust

Trustees – the legal owners of the trust fund, who hold the assets for the benefit of the beneficiaries specified in the trust deed

Protector – a person appointed to exercise a supervisory role over the trust, with certain specific powers eg typically to add and remove trustees and beneficiaries



Types of trust

Trusts can be tailored to fit the individual circumstances and needs of the settlor (see inset: “The terminology of trusts”) and his or her family. The amount of flexibility and the range of powers given to the trustees to deal with the trust fund will depend on the particular situation, but trusts broadly fall into the following categories:

- **Discretionary trust:** no individual beneficiary has the right to any benefit from the trust fund; everything is at the sole discretion of the trustees
- **Life interest trust** (or “interest in possession” trust): one or more beneficiaries will have the right to the income or enjoyment of the trust assets, but capital distributions will be at the discretion of the trustees
- **Bare trust:** the trust assets are the trustees’ in name only; both the income and capital are held for the beneficiaries who (if adult) can call for the assets to be transferred to them
- **Charitable trust:** the income and capital of the trust fund must be used by the trustees for charitable purposes only.

Setting up a trust

Trusts can either be set up and funded during the lifetime of the settlor, or on the death of the settlor by his or her Will. Some form of Will trust will be necessary where a person dies leaving minor children. Trusts are also invaluable in family situations involving more than one marriage, by ensuring that the competing needs of all parties are met.

The structure of trust used in any given scenario, whether a lifetime trust or a Will trust, will also depend to a large degree on tax considerations. The tax treatment of trusts is complex and beyond the scope of this introductory note, but as part of our service we can advise you in respect of the UK tax issues affecting your individual circumstances.

Our trust team

The Private Client team at FSI are highly experienced in setting up and dealing with a variety of trust situations, from complex offshore structures involving multi-jurisdictional assets to simple family trusts holding a property or investment portfolio. We also provide settlors, trustees and beneficiaries with advice concerning their UK tax treatment. We are also experienced in dealing with trust disputes.

If you think that a trust could be of benefit to you or your family, or you need advice concerning an existing trust please contact a member of the team.

FSI have a deep understanding of our needs and values. They provide brilliant, tailored and often unusual solutions to the wide range of problems we put to them.

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Services for individuals include:

- wills and inheritance tax planning
- efficient administration of estates
- creation and administration of trusts and charities
- trust and estate dispute resolution
- family issues, including:
 - marriage and cohabitation (pre-nups/post-nups/cohabitation agreements)
 - relationship breakdown (divorce/civil partnerships dissolution and financial settlement)
- our specialist children's unit dealing with residence and contact, adoption and surrogacy, international child abduction and children disputes
- residential property
- employment law advice
- reputation management and defamation

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