HEWITSONS

Trusts

Trusts have been in existence since Roman times and are still widely used today for a variety of reasons. In simple terms, a trust is an arrangement under which a person (the Settlor) transfers assets to trustees who hold those assets for the benefit of one or more beneficiaries.

Trusts can be created by Will or during a person's lifetime. When created by Will, the Will itself will set out the terms of the trust. When created during lifetime, the Settlor and the Trustees will sign a trust deed which establishes the trust.

There are various types of trust and many different reasons for their creation. Trusts can provide a flexible solution for a variety of family and tax issues, offering a means of:

- Preserving assets for future generations.
- Holding assets for children or grandchildren until they are of an age where the assets can be transferred to them.
- Protecting assets for vulnerable beneficiaries (this could be a child who is unable to look after assets due to incapacity, a child who is a spendthrift or in financial difficulties or a child whose marital situation appears precarious).
- Providing for a spouse, as well as children of a previous marriage.
- Passing on assets during lifetime.
- Providing for charitable beneficiaries.

The Settlor's aims in creating the trust need to be identified, understood (both by those drafting the trust deed and by the trustees) and reflected in the terms of the trust deed. The drafting of the trust deed itself requires a great deal of care, to ensure that the Settlor's aims are met but also that the trust is capable of adapting to changing circumstances over time. It may be appropriate to prepare an additional document known as a Letter of Wishes, which is not legally binding but which guides the trustees in the exercise of their discretions.

There have been significant changes to the taxation of trusts in recent years and the taxation implications of a trust require careful consideration at the outset. What are the tax consequences of creating the trust? How will the trust be taxed during its continuance? What are the tax consequences when the trust comes to an end?

The choice of trustees is particularly important. Trustees are the legal owners of the assets in the trust and it is their duty to look after those assets, investing and managing them in accordance with the terms of the trust, for the benefit of the beneficiaries. Their duties are onerous and need to be clearly understood. They will often need to balance the interests of different beneficiaries. They must act unanimously (unless the trust deed states otherwise) and their personal interests must not conflict with their role as trustee.

As part of their role in administering the trust, the trustees must usually take investment advice on a regular basis, deal with H M Revenue & Customs (HMRC), submit annual tax returns and produce annual accounts in relation to the trust.

We have considerable expertise in advising on all aspects of the creation of trusts, including the taxation consequences. We also have a great deal of experience in drafting trusts of all types. We can advise on, and prepare the documentation necessary to deal with, changes of trustees, distributions to beneficiaries and other events during the continuance of the trust.

We have a large, dedicated Trust Management Team which administers a significant number of trusts, considerably easing the burden for trustees by dealing with investment managers and HMRC and ensuring the trustees comply with their obligations to the beneficiaries.

A Partner of the firm may be prepared to act as a trustee of a trust if a request is made. The appointment of a professional trustee can be useful in certain circumstances, although there is no requirement to have a professional trustee.

In Summary at Hewitsons we can advise on, and deal with, all aspects of trusts, including:

- Advising on the reasons for establishing a trust and the implications, tax and otherwise.

- Creating the trust and registering it with HMRC.

- Administering the trust and dealing with the preparation of:
  - annual tax returns;
  - annual accounts;
  - 10 yearly and exit charge inheritance tax returns;
  - Deeds of Retirement and Appointment for changes of trustees;
  - Deeds to distribute trust assets to beneficiaries;
  - Deeds to alter the trust provisions.

- Applications to Court under the Variation of Trusts Act 1958 to vary the terms of a trust where this would not otherwise be possible.

- Advising on disputes in relation to trusts.

- Winding up the trust, finalising the tax aspects and distributing the trust assets.

Clare Colacicchi

Partner
Northampton
01604 233233
clarecolacicchi@hewitsons.com

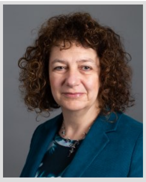
Daniel Curtis

Partner
Cambridge
01223 461155
danielcurtis@hewitsons.com

Ben Moorhead

Partner
London
020 7831 8888
benmoorhead@hewitsons.com

Carolyn Bagley



Partner
Milton Keynes
01908 247015
carolynbagley@hewitsons.com

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This document is written as an outline guide only and any action should not be based solely on the information given here. Appropriate professional advice should always be taken in specific instances.

Hewitsons LLP is authorised and regulated by the Solicitors Regulation Authority.

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