

Trust Special Part II

What is a trust and do I need one?

In this fortnight's Private Wealth Planning series briefing, Senior Associate [Emily Grosvenor-Taylor](#) gives an overview of trusts and considers whether they are right for you.

What is a trust?

A trust is a legal relationship that is created by a person (the “settlor”) when assets are placed under the control of one or more persons (the “trustees”) for the benefit of one or more beneficiaries (or for a specified purpose, e.g. in the case of a charitable trust).

The key characteristic of a trust is the separation of legal ownership of an asset from the underlying beneficial/economic ownership.

A simple example of this separation of legal and beneficial ownership is a bare trust of English real estate. The trustees are the legal owners and so will be registered as the proprietors of the land at the Land Registry (and so will be the owners of the land as far as third parties are concerned) but they will hold the land for the benefit of the underlying beneficial owner; in pure economic terms, the land belongs to the beneficial owner and not to the trustees.

An individual can create trusts during his or her lifetime and also on death by his or her will. Trusts can also be created automatically by operation of law in certain circumstances.

Why might I need a trust?

Trusts can be useful for many reasons, including:

1. for estate and inheritance tax planning (eg by retaining assets in trust to benefit future generations while still allowing current generations to benefit);
2. to asset protection (eg to provide some protection against claims by a beneficiary's creditors or on death or divorce);
3. to manage assets for children or other vulnerable beneficiaries who cannot manage assets themselves;
4. to preserve business assets for the longer term (eg rather than fragmenting the ownership of the business by leaving it outright to children on death)
5. to provide a vehicle for charitable giving.

What assets can a trust hold?

Trust can hold almost any type of asset, including:

1. cash
2. property such as art, jewellery, cars, fine wine etc.
3. land
4. shares
5. financial products such as life insurance policies, bonds or other investments

However, particular care needs to be taken when settling assets located in a jurisdiction that does not recognise trusts.

Are there different types of trust?

Yes – different types of trust include:

Bare trust

As the name suggests, assets held in a bare trust belong to the beneficiary outright but the trustees are the bare legal owners and hold the assets to the order of the beneficiary. Bare trusts can also be used to hold and manage assets for children under the age of 18 who cannot hold legal title in their own name (in which case the beneficiary can require the trustees to hand over the assets when he or she reaches 18).

Interest in possession/fixed interest trust

Under a fixed interest trust, a beneficiary will be entitled to receive the income from the trust (often for the lifetime of that beneficiary – a “life interest”), but he or she is not entitled to the underlying capital of the trust (which in the case of a simple fixed interest trust will pass to other beneficiaries – the “remaindermen” – on the death of the lifetime beneficiary).

Discretionary trust

The trustees of a discretionary trust have complete discretion over the distribution of the trust assets and the income they produce (and will usually have the power to accumulate the income instead of distributing it) – however, these wide powers can only be used to benefit members of the class of beneficiaries specified by the settlor. Sometimes the trustees will have power to add beneficiaries.

Trusts can be very flexible; for example, fixed interest trusts will often include discretionary powers which can be used by the trustees to override the fixed interests.

Is a lifetime trust different from a trust created a by will?

Not from a trust perspective – the trusts described above can broadly be replicated either during lifetime or through your will. However, the tax consequences are very different (which we will cover in a separate note).

How long will a trust last for?

Under English law, a trust can continue for a period of up to 125 years (charitable trusts can last indefinitely), although the trustees will usually have the power to bring the trust to an end on an earlier date if it is appropriate to do so.

What is the role of the trustees?

The trustees (who could be individuals and/or corporate bodies) are the legal owners of the trust assets, which they control and manage. The trust's governing document (a trust deed or declaration of trust in the case of a trust made during the settlor's lifetime, or the settlor's will in the case of a trust created on death) will usually confer wide management and administrative powers (in addition to the powers conferred and the duties imposed on trustees by statute and common law, in the case of English law trusts). Trustees are fiduciaries and must always act in the best interests of the beneficiaries when exercising their powers.

Can I tell the trustees what to do?

The short answer is no. However, a settlor can make requests or give non-binding guidance to trustees (often in the form of a letter known as a "letter of wishes") setting out how the settlor envisages the trust fund being used for the benefit of the beneficiaries now and in the future.

What about tax?

The taxation of trusts (and the taxation of benefits received from trusts) is complex and depends on a wide range of different factors that are beyond the scope of this introductory note. However, we will follow up with a separate tax briefing shortly.

If you would like to discuss any of the issues raised, please do not hesitate to contact the author or your usual Payne Hicks Beach contact



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