

Earl Group

Independent Trust and
Fiduciary Services Providers

A SHORT GUIDE TO TRUSTS

1. What is a Trust?

A trust is a legal arrangement by which a person (the “**settlor**”) transfers the legal ownership of specific assets to another person (or a group of persons) (the “**trustee**”) who is required by the terms of the arrangement to hold those assets (hereinafter referred to as the “**trust assets**” or the “**trust fund**”) for the benefit of other persons (the “**beneficiaries**”).

A written document (the “**trust deed**”), the provisions of which are agreed between the settlor and the trustee, sets out the terms and rules upon which the trustee is to manage the trust assets for the benefit of the beneficiaries and the respective rights, duties and powers of the trustee and the beneficiaries (who are typically, but not limited to, individuals and charities). It is also sometimes possible to create a trust orally rather than in written form, but this is not recommended.

One of the fundamental aspects of a trust is that the trustee holds and manages the assets forming the trust fund, not for his own benefit, but for the benefit of the beneficiaries. A trust is not a legal entity like a company or a foundation; it is simply the relationship which is created between the trustee and the beneficiaries.

In order for a trust to be created, there must be:

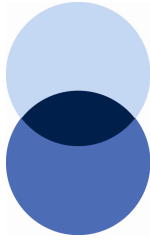
- a settlor;
- a trustee (or trustees);
- a beneficiary (or beneficiaries); and
- trust assets.

There are many different types of trusts, each created for different reasons, but most trusts administered by Earl Fiduciary AG are family trusts or charitable trusts:-

- Family trusts – typically created for the benefit of the settlor and spouse, children and other relatives.
- Charitable trusts – typically created either for the benefit of certain listed charities or a charitable cause in general.

It is important from the outset to understand that a trust can be extremely flexible and can adapt to changes in fiscal and family circumstances.

Whilst trust law can be complex and varies from jurisdiction to jurisdiction, the general principles of trusts are well established and understood (trusts having first arisen in England in medieval times) - especially in common law countries (for example, the United Kingdom, the United States of America and offshore centres such as Jersey,



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Guernsey, the British Virgin Islands and Cayman Islands) but increasingly so in a number of civil law countries, for example in Switzerland, Italy and Holland. The ratification of the Hague Convention on Trusts by countries such as Italy and Switzerland has been important to the increasing acceptance worldwide of trusts to facilitate efficient tax and estate duty planning, creditor protection, succession planning and so on (these benefits and others are discussed below).

(a) The trustee

As mentioned above, in establishing a trust the settlor transfers legal ownership of the assets to be settled in trust to the trustee, who agrees to safeguard such assets for the benefit of the beneficiaries of the trust.

Earl Fiduciary AG in general uses a group company (permitted by the laws of the jurisdiction of its incorporation to carry out the business of a trustee) to act as a corporate trustee. In limited instances where tax or other advice dictates, senior executives of Earl Fiduciary AG may also assume office as trustees in their individual capacities.

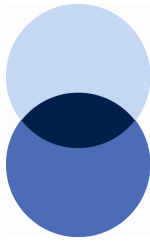
It is important to realise that the trustee is not the agent of the settlor, but rather takes ownership of the trust assets from the settlor, which the trustee is then obliged to safeguard and manage in terms of the trust deed for the benefit of the beneficiaries.

The majority of trusts established by Earl Fiduciary AG are discretionary trusts in the sense that no single beneficiary has any vested right to any of the income of the trust or to the trust assets. The trustee therefore has wide discretionary powers to decide which of the beneficiaries will benefit, how they will benefit and how much they will receive. This provides flexibility and enables the trustee to react to the changing circumstances of the beneficiaries. Discretionary trust deeds are also usually supplemented by a letter of wishes prepared by the settlor (see below).

Whilst the trustee has obligations imposed on him by the terms of the trust deed, obligations are also imposed by law (for example, under Jersey statute law a trustee is required to act in accordance with terms of the trust, with due diligence, as would a prudent person, to the best of the trustee's ability and skill and with the utmost good faith).

(b) The settlor

Even though the settlor dispossess himself of the trust assets, it is important to note that the settlor can also benefit from the assets of a trust if he is one of the beneficiaries. A typical family trust is set up to benefit the settlor and his or her spouse whilst they are alive, and their children.



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Where a trust is of a discretionary nature, a settlor may set out his or her wishes as to the circumstances and manner in which beneficiaries are to receive trust distributions in a “letter of wishes”, which the trustee will endeavour to take into account. Where a settlor does not provide a letter of wishes, it is common for the trustee, after consultation with the settlor, to document the settlor’s “wishes” in a “memorandum of understanding”. For example, it is possible for the settlor to be consulted about matters such as investment strategy or the trustee may appoint an investment manager acceptable to the settlor.

2. Why transfer the legal ownership of assets to the trustee in the creation of a trust?

Here are some, but by no means all, of the typical reasons:

(a) Trustees can be used to safeguard and administer assets for beneficiaries who lack the capacity to do so themselves.

The intended beneficiary of a settlor’s estate may not be able to administer assets for himself because of age or possible physical or mental disability or perhaps because of a lack of financial experience. A trust established specifically for the benefit of such an individual may overcome this limitation.

(b) Trusts provide continuity of ownership and stability for future generations.

Trusts can be used to ensure the continuity of ownership of a particular asset, for example, a family business. If a person has established a successful business there is a possibility that on his death the ownership of the business might be split between a number of people (possibly even individuals outside of the family) as a result of the administration of his estate. This could have a detrimental effect on the running of the business. If the family business is instead settled into trust, because of the transfer of legal ownership from the settlor to the trustee, it will not form part of the settlor’s estate on his death. Instead the trustee will own the business and will act in the best interests of the beneficiaries (for example, the settlor’s family) and in accordance with the terms of the trust deed agreed with the settlor at the time the trust was created.

(c) Trusts may be effective tax planning vehicles.

Trusts are often established to protect underlying assets from various forms of tax, including estate or death duty. Clients of Earl Fiduciary AG who are planning to emigrate are often advised by specialized tax advisors in the country of their intended residence that the period prior to taking up a new residence may be an opportune time to create a trust so as to legitimately avoid or minimize taxes in their future host country. Suitable professional advice should be sought before setting up a trust for tax purposes to ensure that the trust can be administered so as to lawfully avoid tax - rather than evade it (which is illegal).

(d) Trusts can be created so that they are flexible and can cater for unforeseen circumstances.

It is common for trusts to be discretionary in nature, allowing the trustee to make distributions on a discretionary basis. Therefore, trusts can be extremely flexible and can adapt to changes in family and fiscal circumstances.

(e) Trusts can potentially protect and preserve assets for beneficiaries regardless of the future circumstances in which the settlor may find himself.

This is particularly important where, because of the nature of his business or professional interests, a settlor fears that he could at some point be sued and potentially forfeit assets that he had earmarked for specific beneficiaries (including himself) at a future date. However, many jurisdictions do not permit trusts to be used with the purpose of putting the settlor's assets beyond the reach of his creditors and legal advice must always be taken where a trust is being considered for such asset protection purposes.

(f) Trusts can, in some circumstances, also provide confidentiality.

This is so, despite the significant disclosure requirements recent anti-money laundering and other rules have imposed upon trustees to ensure that both they and the custodians of the trust assets are fully acquainted with the source of such assets and the fact that such assets have been lawfully obtained.

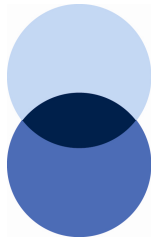
In most jurisdictions, trustees are not required to file accounts with any public authority, although in certain circumstances tax rules require either settlors or beneficiaries to make certain disclosures to tax authorities. Usually the trust deed is not a public document and is not required to be registered in any official or public register and the trustee, as the legal owner of the trust assets, will be the registered owner of those assets and not the beneficiaries.

(g) Finally, trusts are secure legal structures for holding assets.

A trust created outside a settlor's home jurisdiction allows a consolidation of assets in one place and protects those assets from economic and political instability in the home jurisdiction.

3. Summary

Because of the flexibility of trusts they can be used for a diverse range of reasons. Trusts are primarily used to facilitate succession planning and tax planning, and asset



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protection is becoming increasingly common. Trusts are no longer limited to citizens or residents of common law countries, as is evidenced by the ratification of the Hague Convention on Trusts in a number of civil law jurisdictions.

Earl Fiduciary AG typically drafts trust deeds subject to the laws of Jersey or the British Virgin Islands. This means that the chosen law will govern the way in which the trust operates and set out, for example, the duties of the trustee and the rights of the beneficiaries. This does not mean that the trusts have to be administered in either of those jurisdictions and trusts administered by Earl Fiduciary AG are administered by group companies resident in Switzerland and Holland.

Assets placed in trust with Earl Fiduciary AG are subject to the protection of:

- experienced trustees with a broad range of qualifications including, accounting, actuarial and legal degrees and continuing membership of well recognized and respective professional bodies such as the Society of Trust and Estate Practitioners;
- professional indemnity cover;
- a solid and unblemished reputation; and
- being placed in separately identifiable bank, fund management and other accounts and being properly recorded and monitored using the very latest software designed specifically for the professional trust industry.

Earl Fiduciary AG
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