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TRUST – ESTATE, SUCCESSION AND FINANCIAL PLANNING USES

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A trust offers great flexibility and provides solutions to a variety of estate, succession and financial planning challenges. Read more about trusts and their uses in the following paragraphs.

What is a trust?

Legend goes that the concept of the trust dates back to medieval times in Anglo-Saxon countries when knights would go to war during the Crusades. Before leaving his family, a knight would entrust his land and castle to a trusted friend with the task to manage and use the departing knight's property for the benefit of the departed's wife and children.

This basic trust principle of a person entrusting another person with the management of property to the benefit of third persons still exists in modern times.

The main characters in a trust setup

The main characters in a typical trust setup have not changed much over the centuries:

The person giving the assets for the benefit of other persons is known as the Settlor. The people asked to look after these assets and who become the legal owners of the assets are most often no longer trusted best friends, but rather professional Trustees. And the people to whose benefit the assets are held, managed and carefully looked after by the Trustees are the Beneficiaries. Finally, a Settlor may wish to appoint a supervisor who shall ensure that the Trustees duly act in the best interest of the Beneficiaries at all times. This supervisor is often a person close to the Settlor's family and is called a Protector. Protectors do not only supervise Trustees, they may also be empowered to appoint or dismiss Trustees, add or remove Beneficiaries, or to consent to distributions of trust assets to Beneficiaries.

The key characteristic and reason why trusts developed in common law countries is the possibility to separate legal and beneficial ownership. A similar, although not identical concept found in civil law countries is the Usufruct where a person is temporarily allowed to "use" the "fruit", or derive a profit from an asset legally owned by another person.

What are modern trusts used for?

Estate planning and family business succession

Trusts give a Settlor confidence in how assets will be used in the future. Trusts offer a means of holding and managing money or property for people who may not be ready or able to manage these assets themselves but who shall still be able to benefit from them. Trusts can be created to benefit people who are not even born yet, most often the Settlor's grandchildren and further issue. Trusts are also a great tool for succession planning in family businesses.

Trust - holding family wealth together

Wealthy families often possess a variety of assets in several jurisdictions. Real estate, company shares, collectibles, bankable assets, yachts, intellectual property rights and other types of asset can be held in a trust managed professionally by a corporate trustee for the benefit of the Settlor, his family and any other persons the Settlor may wish to benefit.

Simplification of tax, legal and regulatory compliance

The management and oversight of assets scattered across different jurisdictions is becoming ever more complex with the introduction of the worldwide automatic exchange of information and other worldwide regulatory initiatives. Trusts managed by professional trustees are a very efficient way of keeping family wealth together and have complex family assets consolidated, professionally managed and monitored in order to remain compliant with international taxation laws and regulatory requirements.

Commercial uses of trusts

Trusts can also be used in a variety of commercial transactions. A trust can, for example, be setup to hold security over a borrower's assets for the benefit of a number of lenders under a syndicated loan. This avoids granting securities to each lender separately which would be costly and administratively burdensome. Other commercial uses could be, for example:

Trustees acting on behalf of bondholders and representing their interests throughout the bond's life;
Securitisation transactions where trustees hold the shares of the special purpose vehicle used to acquire and further sell debt owed by a defaulting borrower.
Ownership of voting shares of commercial businesses.

Are trusts accepted in civil law countries?

Even though the trust is a common law concept and civil law countries do usually not have their own trust laws, several civil law countries, among them Switzerland, have accepted the use and management of foreign trusts within their jurisdiction under the Hague Trust Convention, a multilateral treaty developed by the Hague Conference on Private International Law.

Please contact the author if you wish to obtain more information on the uses, advantages or limitations of trusts or check out our Service "Trust & Corporate Administration".