PRODUCT SHEET

IMPERIUM

DISCRETIONARY TRUSTS

What is a Discretionary Trust?

A discretionary trust is an arrangement whereby property is set aside by a Settlor and passed to a trustee with directions that it is to be used for the benefit of a group of beneficiaries at the trustee's discretion. The trust deed, which is signed at the start of the relationship, sets out the legal basis upon and within which the trustee must operate.

Discretionary trusts are highly flexible and this makes them an attractive structuring option for clients worldwide. They provide a method for protection and distribution of personal, family and institutional assets and are widely used by personal and corporate clients. In certain jurisdictions there may be tax advantages from placing funds within a trust.

Background

Assets placed into a trust are registered in the name of the trustees who become their legal owners. The trustees are responsible for the administration of the trust and the assets placed within it, always bearing in mind that they have a duty to act in the best interest of the beneficiaries. Generally the trust deed will provide the trustee with discretion over the investment and distribution of the funds, and wide powers of investment which allow the trustee a high degree of flexibility in their investment choices.

It should be noted however that the terms of the trust deed may be drafted to limit the trustees' discretions (for example there may be situations where the trustees are required to benefit specific beneficiaries at specific times, or the trust deed may require the trustees to hold certain assets types)

It is common practice for settlors to provide trustees with non-binding letters of wishes. The purpose of such a letter is to provide the trustee with a background to the beneficiaries' circumstances, and to set out their thoughts plans and feelings for the future use and distribution of the trust funds.

Some examples of uses of Trusts in UK tax planning

UK Inheritance Tax

UK non-domiciled individuals often use trusts to preserve their wealth outside of the United Kingdom, and if properly structured the trust can provide an efficient and effective Inheritance Tax shelter. HMRC guidelines state that "property situated abroad and held in a settlement is excluded property unless the settlor was domiciled in the UK at the time the settlement was made" A UK non-domiciled individual may therefore consider the settlement of assets into an excluded property trust.

UK Capital Gains Tax

Individuals who are non UK-domiciled are subject to UK Capital Gains tax on gains arising within the UK . If a UK non-domiciled individual establishes a trust however assets held within the trust are not subject to UK Capital Gains Tax on an arising basis. The trust needs to be established offshore and Imperium Trust Company Limited would act as the trustee. The gains made within the trust are outside of the UK Capital Gains Tax net until they are utilised to provide benefits to UK beneficiaries.

Please note that this information does not constitute advice of any kind and tax advice should be taken by a proposed client prior to entering into an offshore tax structure.

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These are just two examples of the advantages that trusts may provide, and there are many other ways in which we see structures such as this utilised on an on-going basis. If you think that a trust of this sort may be of benefit to you please call us to discuss your personal circumstances and requirements.

Summary of advantages of trusts

- A flexible arrangement which can be used for a wide range of purposes including estate planning, tax planning and wealth preservation;
- Confidentiality – a trustee has a duty to keep accounts and to account to the beneficiaries of a trust. There is however no record of the trust or its assets on any public registry;
- Allows wealth to be preserved for the benefit of future generations;
- Allows the individual to maintain the excluded property status of foreign assets and therefore provides a potential shelter from UK Inheritance Tax;
- Can provide deferral of Capital Gains Tax;
- Allows tax efficient and effective distributions to non UK resident beneficiaries;

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