



Discretionary Trust

The benefits and flexibility delivered by Discretionary Trusts make them a highly attractive option for clients across the globe. Discretionary Trusts provide a flexible method for the protection and distribution of personal, family and institutional assets and are used in a wide variety of situations for both private and corporate clients. Guernsey is widely regarded as a preferred jurisdiction for the establishment and administration of trusts.

Background

The trustees are the legal owners of any assets. They are responsible for the administration of the trust and have a duty to act in the best interests of the beneficiaries. The trustees exercise discretion with regard to the application of income and have discretion with regard to the payment of capital to the beneficiaries. The trustees are often given discretion with regard to the accumulation of income too.

The terms of the trust deed may also be drafted to restrict the trustees' discretions (there may be situations when the trustees are required to use income or capital for the benefit of particular beneficiaries or specific purposes). In these situations the trustees may still retain discretion as to how and when to pay. The extent of the trustees' discretion depends on the terms of the trust deed. The settlor, the party establishing the trust and providing the trust assets, may wish the trust deed to be drafted so that the settlor can retain certain powers. The trust deed may also be drafted to require the trustees to obtain third party consent from a trusted advisor (a protector) before exercising certain powers.

The settlor may also use a discretionary trust to set aside capital to meet certain requirements such as a future need that may not yet be known, for example a grandchild that may require more financial assistance than other beneficiaries at some point in their life beneficiaries who are perhaps not capable or responsible enough to deal with money by themselves.

Features of a Discretionary Trust

- Governed by The Trusts (Guernsey) Law, 2007
- Trustee has a statutory duty to act in the best interests of beneficiaries
- Trustees may be guided by a non-binding Letter of Wishes provided by the settlor
- A flexible arrangement used for a wide range of purposes including estate planning, consolidation of assets and preservation of wealth
- Confidentiality. The trustee has a statutory duty to keep accurate accounts but there is no filing of records or accounts at public registry

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