



Reserved Powers Trust

The benefits and flexibility delivered by trusts make them a highly attractive option for clients across the globe. 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. The discretions of a trustee may be wide ranging. The settlor, the party establishing the trust, may therefore wish the trust deed to be drafted so that they retain certain powers.

Background

Although a trust deed may often provide a trustee with wide discretions, it has been possible under Guernsey Trust Law for a settlor to reserve certain powers or for certain powers to be provided to a third party (a protector). The position was enhanced following the introduction of The Trusts (Guernsey) Law, 2007 ("the Law"), which introduced an express provision to substantiate the reserved powers position.

Features of Reserved Powers Trust

A Reserved Powers Trust established under the Law would be drafted in consideration of Section 15. Section 15 now expressly provides that a trust is not invalidated by the reservation or grant by the Settlor (or a third party) of wide ranging powers. These powers may include:-

- revocation or amendment of the terms of a trust
- payment of income and capital or to give directions regarding the payment of income and capital
- removal of officers of subsidiary companies
- to give directions on the purchase, sale or retention of trust assets
- the removal of trustees or beneficiaries
- the removal of an investment manager

The terms of a trust deed may also simply be drafted to restrict the trustees discretions (for example, 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 will always depend upon the terms of the trust deed.

A trust deed may also be drafted to require the trustees to obtain prior third party consent from a protector before exercising certain powers.

The Guernsey Trust is a flexible instrument with Section 15 of the Law now clearly establishing the wide extent of powers that may be retained by a settlor.

Advantages

- can provide a settlor with continued involvement and allow them to provide direction in major administration and ownership decisions
- can provide a settlor with continued involvement and allow them to provide direction in the event of a change of circumstance (family or otherwise)
- a flexible and confidential arrangement used for a wide range of purposes including estate planning, consolidation of assets and preservation of wealth

For further information contact

Ian Rouget on +44 (0)1481 731204
ian.rouget@ardeltrust.com

Ardel Trust Company (Guernsey) Limited

PO Box 175, Frances House, Sir William Place, St Peter Port, Guernsey GY1 4HQ
T +44 (0)1481 723573 F +44 (0)1481 732121

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