

Introduction

A trust is a fiduciary relationship whereby one person (the trustee) receives an asset from another person (the settlor) to hold for the use or benefit of a third person (the beneficiary). The legal ownership is vested in the trustee whereas beneficiaries are entitled to benefit from the trust arrangement.

Trusts all share a basic principle; they rely on the distinction between legal ownership interest in property and the equitable interest of property. The Trustee is able to deal with the assets as if they were his own property, subject to the terms of the trust. The beneficiaries have the right to enjoy the benefit of the property, again subject to the terms of the trust.

The most frequently used form of trust is an inter vivos (or living) discretionary trust and is created by an express and intentional declaration of a settlor. This declaration is normally a written 'deed' also referred to as a trust instrument, it is an agreement between two people and has no separate legal personality.

Isle of Man trust law has its origins in English trust law, which has extended to the common law jurisdictions and is therefore widely recognised.

Trusts have a variety of forms and names for different purposes, but each trust will adhere to the three certainties:

- Certainty of subject matter – it must be clear what property is part of the trust

- Certainty of intention - it must be clear that the settlor intends to create a trust
- Certainty of objects – it must be clear who the beneficiaries (objects) are

Parties to a Trust

The settlor, (often referred to as the 'Grantor' in the USA) establishes the trust by transferring the trust property to the trustees to hold on the terms of the trust. The settlor then ceases to have a role in the trust.

The trustees are obliged to manage and dispose of trust property in accordance with the trust instrument. The Isle of Man generally requires that there are two individual trustees or one corporate trustee.

The beneficiaries are those people for whose benefit the trust was created. The administrative and management powers are vested in the trustees who have a duty to ensure that this is done in the best interests of the beneficiaries. The settlor may be a beneficiary.

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A protector can be appointed to restrict or oversee the activities of the trustees. The powers vested in the protector will be contained within the trust instrument.

Duties of the Trustees

The Isle of Man Trustee Act 2001 imposes a statutory 'duty of care', which requires the trustee to exercise such care and skill that is reasonable in the circumstances, having regard in particular to any special knowledge or experience that they hold, and to a standard that it is reasonable to expect of a person acting in the course of that business.

The trust deed will primarily contain the duties of the trustees and within this framework the trustee has an absolute duty to the beneficiaries of the trust. The trustee must with all diligence take possession of the trust assets and administer them strictly in conformity with the trust deed, statute and his fiduciary duty.

Fedelta

The Fedelta Group was formed in 1992 by its directors (Michael Shimmin, Frank Perry, David Brew, Steven Quirk and William Laughlin), who have worked together as a team for almost 30 years. Nigel Callin and his team joined the Group almost 20 years ago to establish Fedelta Pensions Limited. Fedelta remains independent, being wholly owned by its employees (full profiles of personnel are available on our website). Michael Shimmin is the former Chairman, and Frank Perry a former Director, of the trade association representing Company and

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Isle of Man

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Contact Us

If you would like to discuss your requirements or our services, without obligation or charge, then we would be delighted to hear from you. Please visit our website www.fedelta.com for further information or contact Stephen Colderwood, Executive Assistant to the Board at spcolderwood@fedelta.com.

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