Trusts in Gibraltar

What is a Trust?

A Trust is a vehicle used in an individual's financial planning whereby the person setting up the Trust (the 'Settlor') transfers the legal title of any interest he might have in any property to named Trustees.

The Trust is created in the form of a legal document called the Trust Deed. The Trustees are required to hold the property in accordance with any obligations imposed by the terms of the Deed, and in particular to administer the property for the benefit of such persons (the 'Beneficiaries') as are named in the Trust Deed.

A Beneficiary has recourse in law to compel the Trustees to act in accordance with the terms set out in the Trust Deed.

Discretionary Trusts

It is common for Trustees to be given wide discretionary powers so as to take account of changing circumstances.

Letter of Wishes

A Settlor will normally provide the Trustees with an informal and confidential letter of wishes which will provide guidance as to how the Trustees might exercise their discretion. The letter of wishes does not form part of the Trust, and can therefore be amended or added to at any time.

Protector

A Protector is a person appointed under the Trust Deed whom the Trustees can consult when administering the Trust, and in particular cases from whom the Trustees must seek consent before carrying out certain transactions. The role of Protector is one of some responsibility and therefore he is usually a person in whom the Settlor has complete confidence. However, the appointment of a protector is optional and not common in Gibraltar.

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Being a common law jurisdiction, the concept of trusts is recognised and given full legal effect in Gibraltar. The provisions of the Gibraltar Trustee Ordinance are based almost exclusively on the trustee laws of the United Kingdom.
Reasons for Setting up Trusts

The most common reasons for setting up a Trust are as follows:

- **Protection of assets** - by severing ownership, a trust can avoid assets being repatriated or being made accessible to subsequent creditors.
- **Avoid or defer taxation** - usually inheritance taxes and wealth taxes. Trusts are also used to avoid assets accompanying individuals to new tax domiciles.
- **To ensure property passes in succession** - a trust can name the order of devolution of the trust property over the life of the trust.
- **To hold property that cannot be held personally** - for example by infants.
- **To prevent family property passing to those who might dissipate it** - a Trust can enable such persons to benefit from the property but only under the Trustees control.

Advantages of a Gibraltar Trust

There are many advantages to setting up a Trust in Gibraltar, the main ones being:

- **Confidentiality** - Except for Asset Protection Trusts there are no filing requirements and no information needs to be disclosed to any authority as long as no liability to Gibraltar tax arises.
- **Tax benefits** - As long as the trust is established by a non-resident, has no Gibraltar resident beneficiaries and derives no income locally (other than bank interest), no tax will be charged on the trust's income.
- **Residence of Trustees** - Trustees of Gibraltar trusts can be resident in Gibraltar without affecting the tax status of the trust.
- **Perpetuity and Accumulation periods** - Under Gibraltar law, both the perpetuity and accumulation periods of a Gibraltar trust are 100 years.