ProTrust
Trust Management

Good Trust File Management

Guidance Notes

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Introduction

When a Trust is created, there are some steps suggested to be undertaken on behalf of the Trustees in order to ensure good practice and to comply with statutory requirements for the management of Trusts.

When does the Trust administration commence?

For a Trust created within Wills, the Trust comes into being following the death of the testator. It is fully active once assets are received to it from the Will/estate of the deceased.

A lifetime Trust: comes into being immediately after it is signed (executed).

Once a Trust is created, it becomes a 'living' entity. The lifespan of the Trust usually extends up to 125 years. It therefore needs some form of 'management' and 'administration'.

In practice, the Trust can remain dormant for a number of years but even if this is the case, there will be some form of basic administration required.

How is a Trust Activated?

A Trust comes into being once it has something of value within it, ie an asset or assets.

Assets can be

- property or an interest in a property
- capital
- shares
- proceeds of a life policy
- a binding promise to pay a sum or transfer an asset to the Trust
- loan/debt due from a beneficiary of a trust (as is often the case)

Delegate Trust Management

When a Trust is created, the Trustees need to ensure that there is a sensible, efficient process for discharging their duties to the beneficiaries and to the persons who created the trust.

Trustees are often lay persons with little or no previous trust management experience. Why would a lay trustee want the full responsibility of managing a trust? They are not entitled to be remunerated from the Trust for their function. It is a burden. So if you are a Trustee, help yourself and the Trust by delegating some or all of your functions.

Delegating Trust Management to a specialist firm is the best solution. Some of the reasons are:

- a specialist firm knows all of the statutory requirements and can ensure compliance;
- a specialist firm is experienced in knowing what constitutes 'usual' processes and steps;
- a specialist firm can ensure that trustees do not miss a crucial element of trust administration;

- a specialist firm can take delegated responsibility away from the Trustees and help protect them;
- a specialist firm can use the benefit of experience drawn from a number of similar cases;
- a specialist firm is independent of the beneficiaries. It can protect the wishes of the creator of the trust. It is not burdened with conflicting trustee-beneficiary interests that often arise for lay trustees.

Not all functions need to be delegated. It is quite usual for a lay trustee to wish to have input into the trust management and even to take steps such as TRS trust registration, accounts preparation, or other functions for the trustees. Part of the role of the specialist firm is to ensure that the trustees work within their skill sets and capabilities and are not overstretched.

Consider delegating some or all of the functions to us, ProTrust Consulting. Our Trust Management team has all the necessary experience and expertise to help you.

ProTrust Trust Management – what do we require?

Receiving Instructions to act for the Trustees

At the commencement of our instruction, we need to ensure that we are instructed to act for the Trustees. In the majority of Trusts, we will act where **all** the Trustees are in agreement for us to do so.

Needless to say it helps if all Trustees are of the same mind in instructing a specialist firm (our firm in this case) to assist the Trustees in the management of the Trust.

We can act for one or more individual Trustees. But in such cases we will always endeavour to involve and inform the remaining Trustees. Even if we act for one of the Trustees, despite the fact that our client is the instructing Trustee, given that our duties are to the Trust as a whole, our costs in reasonably discharging the role of the instructing Trustee are almost always the ultimate responsibility of the Trust itself.

Paying for the costs of Trust Management

Management of a Trust of course carries an associated time cost and the arrangements are set out in the letter of engagement. Costs are usually paid from the capital assets of the Trust or in some cases apportioned between capital assets and income if there are separate beneficiaries receiving income from capital.

Costs are usually charged on an hourly rate basis for Trusts with managed assets. For property trusts or loan-based trusts, we usually suggest that after the second year of operation, matters are reviewed to see whether fixed fees can apply once the Trust management has ‘settled down’ and there is a defined system of basic management and operations involved.

If the only asset within the Trust is a loan note or a share in a property, then costs of administration are usually the responsibility of the trustees but often are paid for by the primary beneficiary(ies) who hold the benefit of the physical assets within their ownership. The method of such arrangement can vary according to what is the most effective and efficient way for the Trust to be managed.

What constitutes a basic "Trust File"?

Once we are instructed, we create a working Trust File. There are sections of our Trust file that relate to the basic functions required for all active Trusts, as follows:

Section A: Trust Synopsis & Fact Find, Settlor Information

A good well-completed Fact Find is the backbone of good Trust Management. The details taken are important as they factor into many areas. Details taken include;

- Our primary *point of contact* for the Trust;
- *The Trust*: the name of the Trust, the nature of it;
- *The Primary Beneficiary(ies)*: their health, financial circumstances, contact details, and estate planning requirements;
- *The Settlor/Testator*: the person who created the Trust;
- *The Trustees*: basic information;
- *The Trust Documentation*: how was the Trust created, and where the originals are located;
- *Trust Accounts*: are annual accounts required, who shall prepare them;
- *Taxation:* how is the Trust taxed (if at all) for income, CGT and IHT or trust taxation;
- *Other advisors to the Trust*: do we need financial advisors, accountants, solicitors?
- *Trust Registration (TRS)*: arrangements for registration of the Trust with HMRC TRS;
- *Summary of the Assets* in the Trust and any 'managed capital/investments';
- *Ultimate/Future beneficiaries*: who ultimately benefit, details of their circumstances.

Section B: Trustee Information

Holding a central file of information on the Trustees is a requirement. We have two basic folders:

- Due Diligence: signed by each Trustee with all of the details for each Trustee (NI numbers, address, contact)
- ID: up-to-date identification and verification to meet AML requirements

Section C: Family Tree and Beneficiaries Information

Knowing the family set-up is also important. A basic family tree document will be helpful. Signed Due Diligence forms are helpful for future contacting of beneficiaries and registration of their details with the TRS as well as for future payments/distributions. ID from all named adult beneficiaries is a requirement.

Section D: Minutes of Trustee Meetings

Minuting all relevant decisions taken by Trustees is at the very least 'good practice' if not an actual requirement under the Trustee Act.

The first 'official' meeting of Trustees should cover a basic set of due diligence requirements, including:

- Background and terms of the Trust
- Completing the Trust Management Fact Find (see Section A above)
- Decisions on Tax and Accountancy matters
- Update on circumstances of relevant beneficiaries and discussion on distributions
- Investment of Assets

For Trusts comprising 'loans', the Minutes of the first meeting and subsequent meetings will often be more basic.

Section E: Trust Assets

There should be a file location containing details of all assets held within the Trust. If the assets are loans, then Deed of Equitable Charge/Legal Charge/Promissory Note and any related property title deeds should be referenced here.

Section F: TIPS: Trust Investment Policy Statement

The Trustee Act 2000 suggests good practice is for the Trustees to have an up-to-date statement on file as to their policy regarding the investment of assets held within the Trust. For capital and investments, this is an important requirement as it links in the engagement with a financial advisor (or otherwise) and matters such as benchmarking and comparison with other investment models. This is an important document to discharge Trustees' duties and to help financial advisors ensure they cover all the bases in terms of managed assets.

For Trust assets comprising interests in property or loan debts, this document is less relevant but there are still some important provisions confirming the arrangements regarding repayment of loans and ultimate beneficiaries. It is a good aide-memoir for Trustees in managing the assets, particularly in the event of death of the primary beneficiary.

Section G: Trust Accounts

The purpose of having Trust Accounts is set out below. Trust Accounts do not have to be onerous and lengthy. A Trust comprising a property interest or a loan debt may be in a very basic form.

The benefits:

- *to help the Trustees* to chart the value of the Trust's assets over the lifespan of the Trust. It helps them view the position quickly so as to aid them in decision-making;

- *to help prepare Trust Tax Returns* (for managed assets) or to assess the need for any HMRC returns for trust taxation;

- *to help beneficiaries* review the performance of the Trust since its inception. This might be particularly relevant for remainder beneficiaries of an interest-in-possession trust to check on the preservation of their capital/property interests. It might also help beneficiaries with their own estate and IHT planning;

- *To provide evidence of the Trust's value, charting* a paper trail can be important to confirm that the Trust value is correct. Trusts are often relied upon as protections against 3rd parties. That could be a divorce, insolvency, Inheritance Tax, or even care fees. If there were questions asked as to how the Trust value was derived, it would help to have a set of Trust accounts from inception to chart the value within the Trust to the present day.

Section H: HMRC, Tax Returns, TRS etc

This section of a Trust's file with contain all communications with HMRC relating to the Trust. In most cases that will start with the Trust Registration Scheme (TRS) declarations and register entries for the Trust. If the Trust has managed assets, then income tax and CGT returns may be required, so details need to be held. For a Discretionary Trust (or equivalent), there may be the requirement to review the asset value every 10 years and account to HMRC for the trust taxation and exit charge elements where the trust value exceeds the threshold (currently £325,000).

Section I: Client Care, 3rd Party Agreements

This section contains copies of our firm's letter of engagement and TOB as well as those for any accountants, financial advisors or solicitors engaged to assist the Trust.

Section J: Trust Documents

This section contains a copy of all executed documents creating the Trust (for example, a Settlement or Will) and any documents relating to the Trust entity such as deeds appointing or retiring trustees and any other formal documents executed by the Trust.

Section K: Correspondence

Most correspondence comprises email communications but all are stored on file with copy letters and notes of communication.

Section L: Invoices, Timesheets, Ledgers

Our firm's invoices and those from other advisors to the Trust are contained in this section. We record the time we spend on file so that we have a trail of all of our work undertaken.

Section M: Miscellaneous

Any other relevant documents and notes are within this section. Usual examples include the estate planning file relating to the Settlor (giving background behind the creation of the trust and useful material such as Wills etc that may be relevant and sitting alongside the Trust).

Ongoing File Management

As with most administration matters, if you are able to get matters off to a good start, they then operate smoothly and with minimal cost. Managed assets such as investments require regular review but that will often be organised via financial advisors working to an agreed review process. For other trusts such as property trusts or those with loan debts, the majority of time in management and administration is in the creation of the Trust file and its opening documents. Reviewing those from that point onwards is often relatively straightforward, quick, and thus inexpensive. The documents are on 'screen' and can be reviewed easily at a meeting (or particularly easily on a video call, with screen sharing).

We hope this guidance is helpful. Any questions just let us know.

Contact us for more guidance

For more information and for an initial discussion for advice please contact us on:

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