

Nerine Trust

The Advantages of Creating a Trust

Protection of Family Wealth

Succession Planning

The distribution of assets in the event of death is normally dealt with by making a Will, with the Executor appointed under a Will carrying out the distribution of the estate of the deceased person under the terms of the Will.

The control and ownership of these assets will pass to the heirs and beneficiaries named in the Will.

In the absence of the deceased person having made a last Will and Testament, and therefore leaving “intestate” estate, letters of administration (or their equivalent) will need to be obtained through the relevant Court in order for the deceased person’s estate to be distributed.

Both these situations may result in a position arising which would not be in accordance with the long term planning of the deceased person.

For example:

“Financial Maturity”

- Minor children may become entitled upon reaching majority age to large sums of capital without having the financial management skills to cope with their new found wealth

Loss of Control of Family Assets

- Family assets such as property might need to be sold against the best interests of the beneficiaries in order to satisfy the payment of death duties
- Other family assets such as private company shares might suffer a dilution of voting power rights resulting in a disposal of the business at a disadvantageous value

“Spendthrift” Beneficiaries

- Spendthrift Beneficiaries could dissipate family wealth to the detriment of future family generations

Litigation Risk

In an increasingly litigious society, family wealth can be jeopardised by litigation risk. One example might be a divorce claim by the spouse of a family member against inherited wealth.

Through the creation of a Trust solutions can be found to all these problems (subject to appropriate research and advice) by enabling the Trustee of the Trust to retain control of family assets for future generations.

Asset Protection

The term “asset protection” should not be confused with the connotation implying a Trust established to defeat the legitimate claims of a creditor.

The earliest versions of Trusts “uses” as mentioned earlier had the simple objective of making provision for the financial well being of heirs.

Any Trust will involve the protection of assets under the administration of the Trustees.

Those assets may require protection against a variety of risks:

Commercial

Nowadays, risk management is part and parcel of the prudent planning in any business or commercial enterprise.

A businessman or partner in a professional practice may wish to place certain assets in Trust to make provision for a spouse and children and thus separately identify those assets for that purpose as distinct from capital supporting business interests.

The growing trend of Courts to attach personal liability to company directors, shareholders and partners in certain circumstances should promote serious consideration to any person involved in commercial risk to making suitable provision for protection of family wealth.

Political

Persons living in countries where economic or political mobility stability could pose a risk to the security and value of family assets should give consideration to the lodgement of assets in a jurisdiction with a proven legislative and regulatory infrastructure ensuring the security and protection of such assets.

The appointment of Trustees to administer such assets on behalf of family beneficiaries is often an integral part of the financial planning designed to minimise such risk.

Internationally Mobile Persons

“Globalisation” is recognised as a permanent feature of modern day society. The ease of international travel and globalisation of business trade frequently results in individuals having assets and investments in several countries.

Unfortunately, despite the globalisation process, one of the inevitable consequences for the internationally mobile client is the need to comply with the laws of each country in which assets or investments are held and the ongoing task of taking account of frequent changes in legislation.

These issues are particularly relevant to estate and succession planning.

As an example, consider a person living in country “A” and having assets and investments in countries “B”, “C”, “D” and “E”.

He may have made a last Will and Testament under the laws of country “A”, but can he be certain that the provisions of that Will will be effective and enforceable in countries “B”, “C”, “D” and “E” ?

In such circumstances, the executor of the Will made under the laws of country “A” will firstly have to obtain a grant of probate through the courts in country “A”.

In order to obtain control of the assets in countries “B”, “C”, “D” and “E”, the executor will then need to have the Will recognised in those countries – this process is commonly known as “re-sealing”.

However, there are a number of potential risks which may arise in those countries:

- Estate taxes –
are there death taxes payable on assets located in those countries

even if the deceased person was not resident or domiciled in any of those countries ? (as is the case for example with the United Kingdom)

- “Forced heirship” laws –
some countries have forced heirship provisions in their laws relating to succession, whereby certain fixed proportions of a deceased estate must be distributed to specified family members such as surviving spouses or children.

An additional potential problem is the level of costs of administration of the deceased estate. In the example quoted above, it is probable that legal fees would be incurred in 5 different countries. The same situation would apply if 5 different Wills were made, each subject to the laws of the specific country.

The consolidation of all these assets into a Trust structure can potentially avoid the succession, fiscal and expense problems which can arise in these situations.