



## Trusts and Trustee Services

### Fact Sheet

#### 1) What is a trust?

A trust is a legal obligation that comes into being when an individual, or a legal entity, transfers ownership of specified assets to a trustee. Under the terms of a trust deed drawn up for the purpose, the trustee holds the assets not for its benefit, but for the benefit of third parties called beneficiaries.

#### 2) How is a trust established?

Most trusts are established when a written document known as a trust deed is dated and signed by both the transferor of the assets (the settlor) and the trustee. The trust deed enables the intentions and requirements of the settlor and for the obligations assumed by the trustee all to be clearly evidenced and documented.

#### 3) What is the role of the trustee?

The trustee receives assets from the settlor and these are placed in trust for the benefit of the beneficiaries. The trustee becomes the legal owner of the assets and during the lifetime of the trust, the trustee administers the assets until they are distributed to the beneficiaries. Additional duties of the trustee will be defined in the trust deed.

#### 4) Which duties of a trustee are generally imposed by the law?

The duties of a trustee are generally quite onerous and will include

- to preserve and to enhance the assets where reasonable
- to act impartially in the interests of all beneficiaries
- to keep accounts and full records of decisions and activities
- to invest prudently and not speculatively
- to administer the assets prudently and in good faith

#### 5) What kind of powers is a trustee likely to have under the terms of a trust

The powers may be wide-ranging, but commonly include the following

- to acquire almost any kind of (non-speculative) investments
- to employ investment advisors / managers, agents and professionals
- to incorporate subsidiary companies and to transfer assets to those companies
- to borrow and lend, to insure the trust assets and to pay expenses
- to maintain and manage the trust and its underlying companies
- to appoint replacement or additional trustees
- to move the trust (and / or its subsidiary companies) to a different jurisdiction
- to transfer the trust assets (in whole or in part) to a new or another trust

#### 6) Does a trust pay taxes in Switzerland?

Trusts for non-Swiss resident families generally do not pay any taxes in Switzerland. Income, accumulations, gains and distributions are again generally free of taxes or deductions.

#### 7) Are details of the trust, its assets or its interested parties available on public record in Switzerland or elsewhere?

No

8) What are the minimum assets a trust must have when it is established?

By law there is no minimum value, although the costs of maintaining the trust and the benefits derived will determine what is economical.

9) What are the typical reasons for a settlor to settle assets on a trust?

- for estate planning - determining who will benefit by how much and when
- for avoiding probate in those countries where the assets are kept or invested
- for protection - settlors exposed to domestic or political dangers seeking sanctuary for the family's assets
- for using professionals in the daily management of a large and complicated asset portfolio
- for tax planning
- for seeking more freedom of choice on which family members will benefit – and which will not
- for privacy - ensuring publicly registered assets are held in a third party name
- for ensuring family assets are still properly managed during old age and mental impairment

10) How can a settlor express his wishes and preferences for how the trust is administered?

This is commonly done by the settlor writing a Letter of Wishes to the trustee. Alternatively, the settlor may discuss his wishes with the trustee and the trustee will document these in a Memorandum of Wishes.

11) Are Letters of Wishes legally binding on the trustee?

In the case of a discretionary trust for example, it is generally unwise for a Letter of Wishes to be binding on, or even to seek to bind, the trustee. In such cases, a Letter of Wishes will usually state expressly that it shall not be binding.

12) How can a settlor obtain comfort and some control over how a trust is being administered?

A common solution to this instinctive need is to add a Protector to the trust.

13) What are the typical powers of a Protector?

- appointing and removing trustees
- adding and excluding beneficiaries
- sanctioning distributions of assets to beneficiaries
- sanctioning changing the law of the trust
- sanctioning the termination of the trust

14) Where are further details on Protectors and protector services available?

IPG is a specialist protector services provider and advisor and further details are available here: [ipgfo.com/services/protectorservices](http://ipgfo.com/services/protectorservices)

15) How does a trust differ from a foundation?

- a foundation is a registered legal entity, whereas a trust is not
- a trust assumes only legal ownership of assets (and not beneficial ownership) whereas a foundation assumes both
- a trust holds its assets in the name of the trustees, whereas a foundation holds assets in its own name
- trusts have their ancient traditions in common law countries, whereas foundations have theirs in civil law countries

## IPG Switzerland GmbH

[ipgfo.com](http://ipgfo.com)  
[switzerland@ipgfo.com](mailto:switzerland@ipgfo.com)