

## Trustees Powers and Duties

Trustees have certain legal obligations that they must fulfil whilst acting as a trustee of a trust, be it a trust created during lifetime (an inter vivos settlement) or by somebody's Will. If these obligations are not properly fulfilled then trustees can face legal ramifications and the trust can be attacked by Her Majesty's Revenue and Customs (HMRC).

### General Duties

Trustees are under a legal obligation to "exercise such care and skill as is reasonable in the circumstances". This takes into account the fact that lay trustees may not have the skills and knowledge that a professional trustee would be expected to have.

Any new trusts must be reported to HMRC for one or more of income tax, capital gains tax and inheritance tax purposes.

### Trust Funds

The legal title of assets held for the benefit of a trust should, where possible, be registered in the names of the trustees of the trust.

Occasionally simply transferring the beneficial title to the trustees can be sufficient.

No matter how the trust assets are owned, they should be kept separate to any personal assets of the trustee. For example, a trust bank account should be opened in the trustees' names if cash is going to be held.

### Trust Returns and Accounts

If the assets within the trust are income producing the trustees generally have to submit an annual tax return for the income produced in the trust.

If the assets held within the trust are non-income producing (or the income produced is below specified limits) then HMRC may not require the submission of annual income tax returns. In this case, the trustees are under an obligation to inform HMRC if the income position of the trust changes.

It will also be necessary to submit tax returns if disposals are made which give rise to gains for capital gains tax purposes. These matters can be dealt with by the trustees personally, or the trustees can instruct Warners/an accountant to deal with these matters on their behalf.

The trustees may also choose to have trust accounts drawn up in relation to the trust. If capital is not distributed this can be limited to an account dealing with income only.

Depending upon the type of trust in question and the value of the trust assets, it is also possible that inheritance tax forms will need to be completed on every ten year anniversary of the creation of the trust and/or if capital disposals are made from the trust between these ten year anniversaries.

### Annual Trustees Meetings

Trustees should hold regular trustee meetings. These should be held annually at the least. In addition to these annual meetings, extra meetings should take place if the trustees have decisions to make relating to the trust in between the standard annual meetings.

Agendas should be prepared prior to any such meetings and minutes should both be produced and kept throughout the lifetime of the trust.

At these meetings, the trustees should cover topics such as:

- The current nature and value of the trust assets
- The preparation and submission of tax returns and trust accounts and whether this is necessary
- The beneficiaries of the trust and their current needs and circumstances
- The trust distribution policy
- The likely/anticipated longevity of the trust

It may well be that very few changes occur within the trust from year to year, in which case the minutes would be relatively straight forward to produce each year.

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### Appointments and Resolutions

If the trustees of the trust decide to make capital distributions from the trust, these decisions need to be correctly documented to satisfy HMRC that the trust has been properly managed. For example, if the trustees decide to distribute capital out to a beneficiary, a resolution and/or Deed of Appointment should be prepared reflecting both this decision and the actual transfer of funds/assets. These are matters that Warners can assist with on an ad-hoc basis at the request of the trustees.

### Miscellaneous Documentation

As well as the necessity of drawing up documents when funds are distributed, it is necessary to document any other fundamental changes to the trust and its assets. An example of this would be a Deed of Appointment and/or Retirement on a change of trustees.

Again this is something that Warners could assist with as and when required.

### Trustee Powers

Trustees receive their powers in relation to the trust under both the relevant trust deed (usually a specific deed or a Will) and statute. The Trustee Act 2000 gives trustees the power to make any investment on behalf of the trust that they would be able to make if they were the legal owner of the trust assets. This power is, however, fettered by the trustees' duties discussed above.

Any trustee wanting to carry out an action on behalf of the trust should be sure that they have the power to carry out that action before proceeding. This can always be checked with Warners if the trustee is in doubt.

### Overview

Essentially, trustees have a fiduciary duty to act in the best interests of the beneficiaries of the trust they are running.

If the trust in question has a tax planning purpose it is especially important that the HMRC reporting requirements (including trustees meetings) are complied with as without these the trusts may be criticised at a later date.

For further information please contact a member of our team.

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