BERWIN LEIGHTON PAISNER

PRIVATE WEALTH

# *Wealth Owner Summary*

You've likely been advised that establishing a trust or foundation is an effective way to hold, protect and manage your wealth. Here we summarise why you might want one of these – to let you know what you're getting into and how you will likely benefit.

## AN INTRODUCTION TO TRUSTS AND FOUNDATIONS

### KEY FEATURES OF A TRUST

> Assets are held by the trustees for the benefit of beneficiaries or for a specified purpose (charitable or non-charitable).

> The trustees must deal with the trust assets in accordance with the terms of the trust deed.

> The trust deed sets out what powers the trustees have - for example, to distribute the trust income or capital to the beneficiaries and to invest the trust assets.

> The settlor (the person who sets up the trust) may retain some control over the trustees and the trust assets - for example, by reserving the power to amend the trust, to add or remove the trustees or beneficiaries, or to direct the trustees in connection with the investment policy of the trust.

> The trust can have a 'protector' whose consent is required before the trustees may exercise certain of their powers.

> The trustees must protect the trust assets and must act in the best interests of the beneficiaries. The trustees are accountable to the beneficiaries of the trust.

> Beneficiaries may benefit from the income of the trust, or from the capital, or from both. The trust may state what a particular beneficiary is entitled to receive or it may be left to the trustees to decide what beneficiaries receive.

> A trustee can be an individual or a corporation. It is possible to establish a 'private trust company' to act as the trustee of a family trust or a group of family trusts. The directors of the private trust company can include the settlor and trusted family friends or advisers and the involvement of 'outsiders' need usually only be minimal.

> The trust assets do not form part of the trustees' own estate - so if a trust company becomes insolvent the trust assets are not available for distribution to the trust company's creditors.

> A trust will often hold investments through one or more underlying companies.

> A trust can be established for an unlimited duration or for a fixed period.

### ADVANTAGES OF A TRUST

> Trusts are very flexible - they can be adapted to take into account the changing needs and circumstances of a family.

> A trust allows the settlor to ensure that the trust assets are used to benefit his chosen beneficiaries in accordance with his wishes.

> Trust assets will not be frozen on the death of the settlor as they do not form part of his estate.

> Trusts can be used to hold both personal and business assets.

> Trusts provide asset protection and confidentiality advantages.

> Trusts can be set up in a number of different jurisdictions - for example, Jersey, Guernsey, the Bahamas, the Cayman Islands, the British Virgin Islands, New Zealand and England. Rules, on for example asset protection and disclosure of information, vary from jurisdiction to jurisdiction.

> Trusts can also be resident in a number of different jurisdictions - and not necessarily in the same jurisdiction as that which governs the law of the trust.

## KEY FEATURES OF A FOUNDATION

- An incorporated body which has its own legal personality.
- Unlike a company, a foundation has no shareholders or members with ownership rights; it is not owned by anyone.
- Holds assets for beneficiaries and/or for a specified purpose (charitable or non-charitable).
- Created by the transfer of assets and the registration of the 'charter' or 'articles' of the foundation. The charter is a publically available document but only contains limited information such as the name and domicile of the foundation.
- Foundation 'regulations' or 'by-laws' set out how the assets are to be managed, invested and distributed. The regulations/by-laws are usually contained in a private document. The family's 'philosophy' may be set out in the regulations/by-laws.
- The foundation council is responsible for administering the assets of the foundation and carrying out its objects. The foundation council can include the founder and trusted family friends or advisers and the involvement of 'outsiders' need usually only be minimal.
- In some jurisdictions the foundation must have a 'guardian' or similar 'enforcer' who ensures that the foundation council carries out its function - in others it is possible to appoint a 'protector'.
- Beneficiaries may benefit from the income of the foundation or a share in the foundation's assets, or from both.
- A foundation is not generally permitted to engage directly in an active trade or business.
- Foundations can be established for an unlimited period or for a fixed period.

## ADVANTAGES OF A FOUNDATION

- A foundation has a corporate personality. Foundations are popular in civil law jurisdictions where the use of trusts is less common.
- Foundations are very flexible - they can be adapted to take account of the changing needs and circumstances of a family and a family business.
- Founder (the person who sets up the foundation) can ensure that the foundation assets are used to benefit his chosen beneficiaries or purposes in accordance with his wishes.
- Founder may retain an element of control over the management and distribution of the assets of the foundation by being a member of the foundation council or reserving certain rights.
- Assets held by a foundation are no longer part of the estate of the founder and so will not be frozen on his death.
- Foundations can be used to hold both personal and business assets.
- Foundations provide asset protection and confidentiality advantages.
- Foundations can be established in a number of different jurisdictions - including Jersey, Guernsey, Liechtenstein, Panama and the Bahamas. Rules, on for example asset protection and disclosure of information, vary from jurisdiction to jurisdiction.

> "Trusts or foundations often form a key part of structures set up to provide a means of sharing, managing and maintaining a family's wealth, protecting it for future generations."



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## BUSINESS WEALTH

Building a successful business is a lifetime's investment. We will help you protect your legacy, now and for your successors.

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## Personal WEALTH

Substantial wealth, substantial risks. We will help you protect and pass on your personal wealth.

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## PRIVATE WEALTH INSTITUTIONS

Advising the industry that advises the wealthy; you can rely on us as your trusted legal partner.

### EXPERTISE

> Corporate > Dispute resolution > Family businesses & family office > Fiduciaries > Philanthropy > Privacy & reputation protection > Private equity > Real estate > Succession planning, wills & probate > Tax planning, disputes & compliance > Wealth management institutions > Wealth structuring