



N. XENOFONTOS LLC

Trusts: Uses, Economic and Social Benefits



Introduction

Trusts have a longstanding tradition in common law jurisdictions and are a product of the Law of Equity. Forms of trusts are claimed to be dated back to the ancient Greek and Roman times, though trusts as we know them now in the modern sense first arose in the Middle Ages at the time of the Crusades.

One of the most significant developments is the growth and use of discretionary trusts throughout the 20th century. This type of trust gives trustees power to make decisions on areas such as what gets paid out of the trust fund, to which beneficiary and in what proportion. It is flexible as it can be adapted to changing circumstances, personal and business wise and it is advantageous as this flexibility can cater when for instance one beneficiary may need more financial help than another or where a person wants to leave property to a beneficiary who is not capable of dealing with the property themselves.

A more modern turning point is the Hague Trust Convention, concluded in 1985. Trusts are well known and defined in common-law countries. However, disputes can arise where a trust holds assets and the settlor, trustee or beneficiary is resident in a country that does not recognise trusts in the same form. These types of disputes became increasingly common. The Hague Trust Convention ensures that cross-border acceptance and described the features a trust has to possess in order to be regarded as such.

To date, it is effective in 14 countries, including the UK and its overseas territories and crown dependencies, the USA, Australia, Canada, Cyprus, Italy, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, Panama, San Marino and Switzerland.

Uses of Trusts

There are numerous examples of the uses of trusts, ranging from productivity and growth, like education, homeownership or setting up a business to private succession planning and succession.

I. Succession Planning

Succession planning is perhaps of one of the most well-known uses of trusts. It is the overarching use of trusts that and is an option available to all, whether a high net worth individual or a parent who wishes to safeguard his/her assets for future generations.

There are many reasons a person may want to specify how their assets are used after their own death. People may want their money to go to causes, people or charities that they care about when they pass away.

On the other hand, they may want to protect minor children or those not felt capable of managing the assets but needing an income or somewhere to live. A will trust is the most common way of arranging this and comes into force upon someone's death. The will trust specifies what needs to happen with particular parts of the estate, it names the trustees and beneficiaries, and sets out what should happen with the trust.

II. Education

Privately, families are also using trusts to manage their children's educational future. Parents can allocate money in specific education trusts, which their children can only use for educational purposes, safeguarding it against being dissipated.

III. Property Acquisition

There are several ways in which trusts support a wide variety of people's home ownership aspirations. First, parents (or grandparents) can set up a trust to provide their child (or grandchild) with funds that can be used as a deposit for a home or provide a loan or other financial support so that their children/grandchildren will, in the future, to be able to afford their own home.

Holding such money in trust ensures that it is not spent on anything else, can be used for the child or grandchild in the most flexible way and the money or home will be protected in the event of bankruptcy, illness, or other unexpected life events.

IV. Marriage and Divorce

Across the globe, more and more people are part of 'non-traditional' families, e.g., divorced children, second marriages, single parents or same-sex couples. Children are more and more likely to experience a variety of family arrangements because of increases in divorce rates, cohabitation, remarriage. Given these trends, families can use trusts to set assets aside for the future and protect their wider family's interests.

Not only because of the above 'modern' trends, trusts remain an attractive instrument to provide for children. They can help transfer assets and protect the surviving spouse. An advantage is that a lifetime trust may be less contestable than a will, which in the case of internal division or disagreement among surviving family members can be advantageous and ensure that the assets will be available to meet different needs of the surviving family members.

Trusts can provide certainty during a divorce settlement. Often the house is the most valuable asset in the family, but also the hardest to divide, especially with young children in the middle. A trust can be set up that allows one of the spouses to remain living in the house until the children are of age, when the house can be sold, and proceeds divided. In this example, the trust offers certainty and stability for the children by deferring the sale of the family home and the division between the divorcing spouses.

V. Building a Business

A very common purpose of trust is setting one up for the purposes of carrying on a family business. Where trusts are used as a way of creating companies, they are also used to plan for succession of family businesses. A trust can facilitate the transition and focus control in the business driver or lead, yet provide for other family members. For example, a business owner can set up a revocable living trust that can establish an advisory board when the owner passes, to manage the business during transition. Or when more than one child is active in the business, but it is unclear which should have control, the owner can hold on to the voting shares until the decision is made, and a trust can be set up to provide direction in case the business owner passes before transferring voting shares. Without these measures, a company can suffer from lack of control for a significant amount of time, which increases the risk of eventual failure.

VI. Protecting the vulnerable

Trusts are widely used to set aside funds to ensure the care of someone vulnerable. The term 'vulnerable' can mean anything. The generally acceptable legal definition of vulnerable is that of a person who is physically or mentally disabled or a minor and is unable to look after themselves or their finances.

VII. Charitable Trusts

Charitable trusts are a well-known way for people to support causes that they care about and are one of the most well-known forms of trust structures.

VIII. Employee Stock Option Plan (ESOP)

An ESOP trustee is an integral part of the ESOP Corporate Governance process.

An ESOP trustee serves as the legal shareholder of the shares held by the ESOP trust and has the responsibility, such as managing assets of the ESOP trust, implementing and administering the ESOP policies and procedures and establishing the Annual ESOP Share Price. This is a responsibility that professional and experienced trustees should handle.

IX. Protection of Personal Assets

A trust can be used to protect one's personal assets against malicious lawsuits, possible bankruptcies for unforeseen reasons and frivolous claims. Moreover, by using a trust for safeguarding personal assets can serve as a defence against bad faith claims from third parties or even disgruntled family members.

Final Comments

As can be seen, trusts can have an overarching positive influence at every stage and every day of someone's life from beginning to end, from education to buying a home, from marriage to succession planning.

Internationally they are a common basis on which to incorporate companies, ensure the smooth succession of family businesses, support those who would not be able to afford higher education, and manage estates in a timely and cost-effective manner.

Our services

N. Xenofontos LLC is a proud member of the Society of Trust and Estate Practitioners (STEP), UK with over 14 years of hands-on experience with all matters pertaining to trusts, restricting of wealth and succession planning.

Our Managing Director, an accredited Trust & Estate Practitioner (TEP) is a member of the Board of Directors of the STEP Cyprus Branch.

- Establishment of the trust – Advising clients regarding the creation of trusts under Cyprus Law, including proposing structure ideas for creating, managing, and dissolving trusts and draft all required legal documents
- Provision of professional trustee & protector services
- Drafting and review of trust settlements, deeds, declarations – Advising clients on the potential flaws and deficiencies of existing trusts
- Day to day management and administration of trusts – Providing trustee, administration, management, and other related services
- Advising clients and trustees on issues arising in relation to trusts under Cyprus Law, trustee powers, beneficiary rights, interpretation of trust deeds and other trust related documentation
- Trust and asset restructuring, change of trusteeship, protectorship
- Advising on family asset protection, inheritance matters and family planning
- Trust disputes – Representing clients and trustees in court proceedings (contentious or not contentious)
- Setting up private trustee companies (PTCs), especially useful for family trusts of High Net – Worth Individuals who wish to have a separate and exclusive trustee for their trusts
- Bank account opening and management / investment management with external investment managers
- Preparation of proper books of account for the trust
- Statutory reporting / compliance with local regulatory requirements (AML, Due Diligence)

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