

Trustees' Duties in the Isle of Man



A trust is a gift of, for example, money or other assets by the 'Settlor' to a Trustee or Trustees which binds those Trustees to deal with such money or assets for the benefit of Beneficiaries. It is enforceable by the Beneficiaries and not the Settlor.

The terms of the trust are set out in the Trust Deed. By making a gift to the Trustees, the Settlor has divested himself of ownership of those assets. The Trustees become the new legal owners of the assets on behalf of the Beneficiaries.

Trustees Acceptance of Their Trusteeship

Trustees need to be appraised of the fullest of information before accepting their trusteeship and be aware of the potentially onerous responsibilities to be placed upon them by accepting this position.

For example Trustees should consider:

- the intended purpose of the Trust, why it was created
- will they be acting alongside any co-Trustees
- who are the intended Beneficiaries, what are their circumstances and potential needs
- the assets held in the Trust Fund
- the nature of any proposed transactions to be carried out
- any liabilities of the Trust
- the powers and duties of the Trustees as set out in the Trust Deed
- indemnity and remuneration clauses in the Trust Deed

Each Trustee will be entitled to review such documentation needed in order to allow them to fully discharge their responsibilities. They must ensure that upon their appointment they have the Trust Fund properly transferred to them and placed under their control.

Duties of Trustees

As stated in the case of *Armitage v Nurse* by Millett LJ, in any trust relationship there exists "an irreducible core of obligations owed by the trustees to the beneficiaries and enforceable by them which is fundamental to the concept of a trust."

Any powers given to the Trustees must be exercised properly and in good faith, for the purposes for which they are given and in the interests of the Beneficiaries.

Trustees have a duty to act fairly and disinterestedly between the differing interests of the Beneficiaries. Trustees must always comply with the terms of the Trust Deed and must not act beyond the express powers given to them under the Trust Deed or under the terms of trust law.

Trustees are also subject to a range of other duties under Isle of Man trust law some of which are outlined below:

Fiduciary Duties

A fiduciary relationship arises between the Trustees

and the Beneficiaries. Trustees must at all times consider what is in the best interests of those Beneficiaries and of the Trust as a whole. Trustees have a duty not to allow their personal self-interest at any time to conflict with their fiduciary duties. A duty of care is owed to the Beneficiaries both at common law and under statute, for example under the Trustee Act 2001.

Protection of Trust Fund

Trustees have a duty to keep trust monies separate from their own funds and those of other trusts. They have a duty to protect the capital of the Trust Fund and to ensure that any monies are invested wisely. The Trustees must from time to time consider making distributions to the Beneficiaries.

Investments

Trustees have a duty to keep any trust investments under regular review. When making or reviewing investments, Trustees are bound to consider certain investment criteria, and, unless they reasonably conclude that it is unnecessary or inappropriate to do so, to obtain professional advice.

Trustees should formulate an investment policy and keep this policy under regular review. If there are investment managers or other professional advisors appointed they should also receive a copy of the current investment policy of the Trust.

Accounts

One of the most fundamental duties of Trustees is to account to the Beneficiaries and to be ready with their accounts. If the Beneficiaries request it, Trustees must provide them with accounting information regarding the current status of the Trust Fund.

Trust accounts must be kept up to date together with any relevant tax certificates, tax returns, bank statements, asset valuations, minutes and the books of any underlying companies. Trustees must keep relevant documentation regarding any liabilities or potential liabilities and any undertakings they may have given.

Remuneration

Trustees have a duty not to profit from their trusteeship. Although they may be reimbursed for out of pocket expenses they cannot be remunerated other than in accordance with an express power.

Level of Skill and Care

Trustees have a duty to exercise reasonable skill and care in carrying out the role of trustee. In complying with this duty regard will be had to any special knowledge or experience of each trustee. A person who by reason of qualification or experience is a professional person will be imputed to have a greater degree of knowledge and a corresponding greater level of responsibility than that of a lay person.

Conclusion

Trustees are the legal owners of the assets of the Trust and must decide how to manage and distribute such assets in accordance with the terms of the Trust Deed and their general duties as trustees.

Should Trustees act outside of their powers or in breach of trust they may be liable to claims from the Beneficiaries subject to the extent that any indemnity provision may protect them.

Should you have any questions or requests for further information please contact:

Annemarie Hughes
Senior Associate
ahughes@applebyglobal.com

Bahrain
Bermuda
British Virgin Islands

Cayman Islands
Hong Kong
Isle of Man

Jersey
London
Mauritius

Seychelles
Zurich