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tricolor

Business, Corporate and Investor Services
商務、企業、投資者服務

Tricor Services Limited
卓佳專業商務有限公司

Principal Tricor subsidiaries
Abacus Share Registrars Limited
Secretaries Limited
Standard Registrars Limited
Strath Corporate Services Limited
Tengis Limited
Tricor Executive Resources Limited
Tricor Investor Services Limited

Member of BEA Group 東亞銀行集團成員

TECH news

Discretionary Trust – Purposes and Benefits

What is a Trust

A trust is a legal concept originally developed in the English Courts in medieval times. In essence, it is a legal, binding arrangement or agreement whereby one individual (the settlor) transfers his/her assets to another individual or a body corporate (the trustee) who holds and manages the assets for the benefit of a third person (the beneficiary) or for a purpose permitted by law in accordance with terms set out by the settlor. The trust property may include anything such as land, buildings, money, shares, bonds, etc.

Trusts are useful for many purposes provided that they are not illegal or against public policy. For tax or estate planning purposes, a trust is normally established by a written instrument called a Trust Deed, Trust Instrument or Settlement Deed.

What is a Discretionary Trust

A discretionary trust is the most commonly used type of trust in offshore tax planning arrangements as it allows maximum flexibility and vests all discretion and powers in the trustee thus enabling the trustee to react quickly to changing circumstances.

SET UP AND OPERATION

A discretionary trust is established when the settlor and the trustee

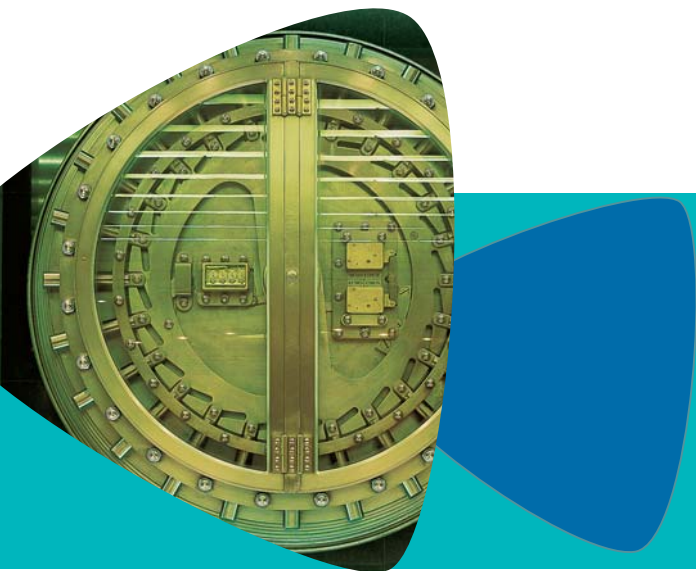
together execute a trust deed which, among other matters, details the powers and obligations of the trustee, the trust period, the beneficiaries, and how the trust assets should be applied. On or following the setting up of the trust, the settlor will inject the assets into the trust.

At the time the trust is set up, the settlor would normally express his wishes to the trustee as a guide in administering the trust. The settlor's wishes have no legally binding effect and do not form an integral part of the trust deed. They may therefore be varied by the settlor from time to time when family or other circumstances change.

Under a discretionary trust, there are usually no absolutely entitled beneficiaries (i.e. beneficiaries with an absolutely vested interest entitlement). Instead, wide powers and discretion are granted to the trustee to deal with matters including appointment and removal of beneficiaries, determination of beneficiaries' entitlement, distribution of income and/or capital, and the making of investment decisions. In exercising these powers and discretion, the trustee may refer to or consider the settlor's wishes mentioned above, and come to its independent decision giving due regard also to the needs and interests of the beneficiaries and other factors which the trustee may consider prudent or relevant.

Not yet enrolled? 2004 Tricor Seminar will be held in September! Enrol now!

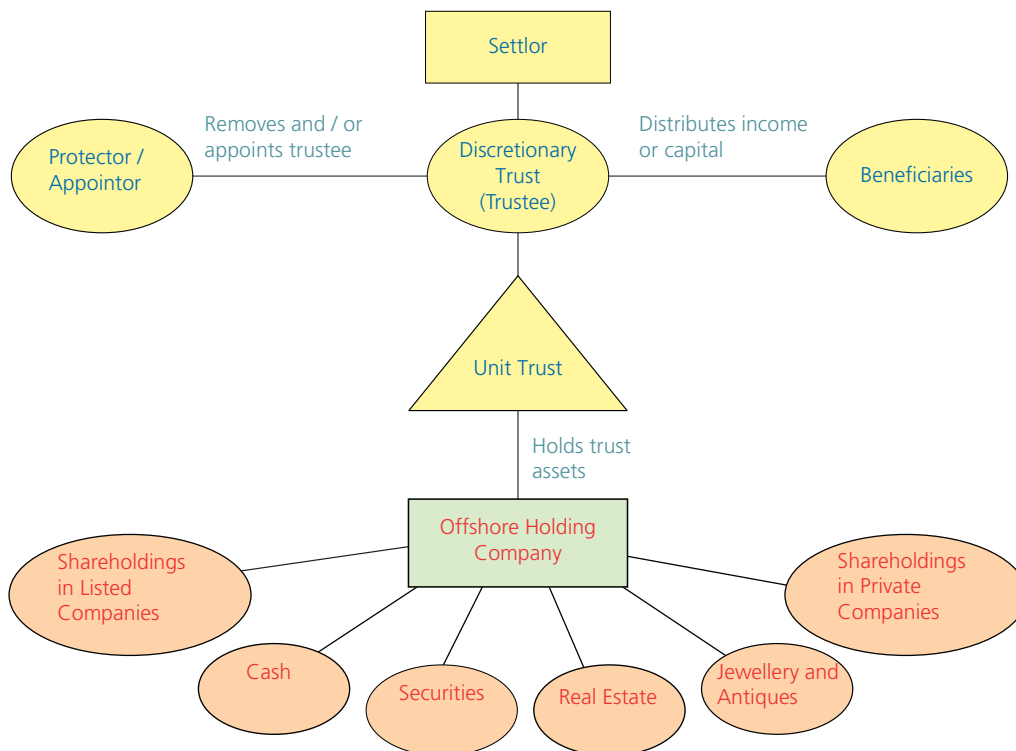
For our valued clients and business partners, we are pleased to waive the admission fees for the first participant nominated by your Company. All admission fees to be received will be donated in full to charities without any deduction. For enrolment and more details, please visit our website at <http://www.tricor.com.hk/2004seminar>.



Disclaimer

This publication is intended to provide only general information for clients and contacts of Tricor Services group. It does not purport to be comprehensive nor should it be relied upon or taken as a substitute for proper professional advice concerning specific situations which should be sought in a timely manner. Changes in law or circumstances may occur after the issue date which may make information contained in this publication no longer accurate. Please pay attention to its date of issue.

TYPICAL TRUST STRUCTURE FOR TAX OR ESTATE PLANNING PURPOSES



COMPONENTS

A discretionary trust structure normally consists of the following principal components:-

The Settlor

Establishes the trust and provides the initial trust property.

The Trustee (an individual or a body corporate)

Holds the trust assets for the benefit of the beneficiary or beneficiaries and administers the trust in accordance with the provisions of the trust deed.

The Beneficiaries (an individual, a body corporate, charities or other trusts)

Receive the benefits from the assets held by the trust.

The Appointor / Protector (an individual or a body corporate)

Receives notice from the trustee on or prior to the occurrence of certain major specified events such as a distribution of assets, amendment of the trust deed or termination of the trust. The Appointor or Protector is normally also given the power to remove the trustee in certain circumstances, such as if the latter should become unfit or unwilling to act or be found not to be acting in accordance with the provisions of the trust deed, and to appoint a replacement trustee to protect the trust assets.

The Offshore Holding Company

Holds the underlying trust assets.



Unit Trust

A unit trust is sometimes inserted in the structure to hold the offshore holding company in order to avoid controlled company issues under the Estate Duty Ordinance since a unit trust is not a company or a body corporate. The trustee of the unit trust may be another offshore company whose director(s) may be the settlor and/or his family members. All the units issued by the unit trust will be held by the trustee of the discretionary trust thus making the discretionary trust the sole beneficiary of the unit trust. This arrangement enables the settlor and / or his family members to retain certain control over the management of the underlying trust assets.

What are the Purposes and Benefits of Having a Discretionary Trust

PURPOSES

Asset Protection / Political Risks

A discretionary trust provides protection of assets from claims of future creditors to the extent permitted by law as well as from political risks which could otherwise result in a temporary freezing, limitation on use, or even confiscation of the assets.

Estate Duty Planning

With proper planning, estate or inheritance tax liabilities can be minimised or eliminated as assets owned by a discretionary trust are excluded from the estate of a deceased person.

Succession Planning

While assets in the estate of a deceased person are generally frozen on death, assets in a discretionary trust do not pass through the estate, hence avoiding probate formalities and ensuring a smooth succession.

Business Planning

A properly set-up trust structure allows future generations to participate in and benefit from family businesses.

Immigration and Overseas Tax Planning

Potential settlors may avail themselves of tax planning opportunities available on migration from one jurisdiction to another.

BENEFITS

Confidentiality

Enhanced anonymity is afforded as the creation of a discretionary family trust is a confidential arrangement between the settlor and the trustee and in most of the popular jurisdictions, there is no requirement for its registration or publication with any public authority. The identities and interests of the beneficiaries are not disclosed as all assets are held in the name of the trustee.

Asset consolidation and management

Worldwide assets may be placed under one holding vehicle to simplify both asset management and assurance of continuity of highly competent administration.

Development of BVI Trust Law

The **Virgin Islands Special Trusts Act 2003 (VISTA)** came into force on 1 March 2004. The Act will enable a trust of BVI company shares to be established under which the shares may be held as long as the directors see fit and the management of the company may be carried out by its directors without any interference by the trustee. The Act circumvents difficulties previously faced by trustees in discharging their monitoring and intervention obligations. Subject to obtaining appropriate tax planning advice in each individual case, for settlors who intend that the shares of the company holding the family business would be retained and its affairs managed by the directors without the trustee's interference, the VISTA trust could be considered.

Trust services

Tricor's professionals can assist in setting up personal wealth management structures, such as family discretionary trusts and unit trusts, and administer the structures in a reliable and efficient manner. We will work closely with your tax advisors in providing our services. Tricor's services may include:

- Acting as the trustee
- Providing ongoing trust administration and support services such as investment making, preparation of trust accounts, distribution of trust income and assets
- Providing trust advisory services for trustees
- Attending to vesting of trusts

Please approach your usual Tricor contact should you need any further information or clarification in respect of our Trust Services.

Tricor, a member of Bank of East Asia Group, is a leading professional provider of integrated business, corporate and investor services in Hong Kong and Greater China. Our services include Accounting, Company Formation, Corporate Compliance & Company Secretarial, Executive Search & Selection, Initial Public Offerings & Share Registration, Payroll and Trust Administration. Our mission is to be The Business Enabler of choice.



Member of BEA Group

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