

TRUST IN TRUSTS

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Trusts, a commonly used wealth planning structure in Anglo-Saxon jurisdictions, have been used for asset protection, tax planning purposes for centuries. The concept had originated in ancient Rome whereby wealthy Romans entrusted their friends to manage their estates after death for the benefit of their heirs, as their wives were not able to inherit the assets unless they are Roman citizens. This gave rise to a concept which was independently developed in medieval England when crusading knights left their estates in the care of other persons for safekeeping when they went to war. Since then, the flexible character of trusts has stood the test of time, adapting to suit the ever-changing global financial and legal landscape. Fast forward to today, using trust structures have been popular as family wealth becomes more complex, with assets being held in multiple jurisdictions.

What constitutes as trust property?

The infographic lists six categories of trust property, each with an icon:

- Immovable property**: Represented by a house icon with a percentage sign inside.
- Private company shares**: Represented by a document icon with lines of text.
- Life insurance policy**: Represented by a cross-in-circle icon.
- Financial products (e.g., cash, shares, bonds)**: Represented by a stack of banknotes icon.
- Precious assets (e.g., art, jewellery, heirloom)**: Represented by an open treasure chest icon.

When assets are injected into a trust, the legal ownership is transferred to the trustees who have the fiduciary duty to act in good faith for the benefit of the beneficiaries. Considering such an important role, it is imperative to work with reputable trustees. A trustee can either be a person or a firm, as long as it is someone savvy with the prevailing financial, tax issues. When an individual is entrusted with this responsibility, often due to his/her familiarity with the family, it can be a double-edged sword as it may be difficult to not yield to the emotional demands of a beneficiary, whereas a corporate trustee may find it easier to display objectivity. Given that trusts can last for a few generations, a corporate trustee would promise more continuity in the hands of professionals; otherwise, an individual trustee can also surmount this by naming a successor in case of incapacity or death.

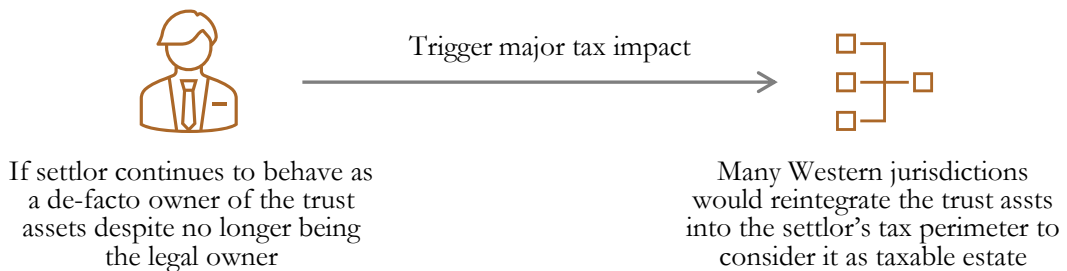
Key considerations for choosing a trustee

The infographic lists six key considerations for choosing a trustee, each with an icon and a text box:

- Understand the risk appetite of the settlor and purpose of the trust**: Represented by a radiation warning icon.
- Act with prudence and in the best interest of the beneficiaries**: Represented by a warning triangle icon.
- Maintain detailed record keeping for accountability**: Represented by a checklist icon.
- Diversify across asset classes**: Represented by a hierarchical tree diagram icon.
- Seek independent advice in formulating investment strategy and portfolio selection**: Represented by a person in a suit icon.
- Supervise performance of investment managers**: Represented by a bar chart icon.

The delicate balance of control

One of the most common questions raised is on the issue of control, and rightfully so. After all, many who explore setting up trusts are those who have built successful businesses, having been hands-on over the years. Therefore, the notion of relinquishing the control of their hard-earned money is a leap of faith. Some settlors may wish to retain some control over the trust assets, and there has been development in certain jurisdiction enabling settlors to reserve powers in the management of the assets. However, it is critical to note that if a settlor is deemed to be effectively in control of the trust assets such that the trustees are rendered to be mere nominees, the **validity of the trust may be challenged**, thus losing the many benefits of setting it up in the first place.



Fixed vs Discretionary Trust

When a discretionary trust is set up, the trustee is granted the power to exercise discretion in distributing proceeds to the beneficiaries, as opposed to a fixed trust whereby distributions have been predefined by the settlor. In the latter instance, should there be a change in family dynamics or circumstances, the trustees would be obliged to carry out prior instructions regardless. For example, if the settlor had allocated most of his wealth to his son, but should the heir become addicted to vices, then the trustees' hands are tied in a fixed trust; whereas in a discretionary trust, the trustees would be able to assess the situation and intervene to act in the best interest of the beneficiaries instead.

Settlor as a beneficiary

While the settlor may set himself to be a beneficiary to be entitled to distributions, he cannot be the sole beneficiary, otherwise the trust would serve no purpose.

Letter of wishes

While the trustees would be in charge of making key decisions, this process is often led by the settlor's letter of wishes, a supplementary document spelling out general guidelines for the administration of the trust which can include distribution amounts and investment strategy. It is not a legally binding document, but trustees are expected to follow it generally.

Protector

Another safeguard would be to appoint a protector over the trust.



Independent party



Tends to be close to the family with a deep understanding of the settlor's intentions



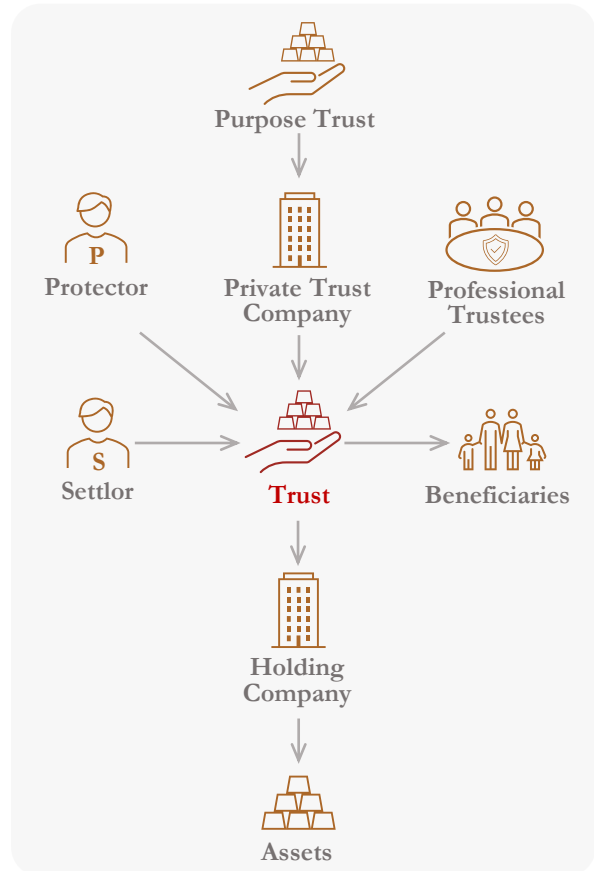
Serves as a check on the power of trustees

Protectors are most commonly linked to irrevocable living trusts as they can have expansive powers. The trust deed would typically detail the protector's responsibilities and areas of authority such as:

- Removing the trustees
- Terminating the trust
- Resolving dispute between trustees and beneficiaries
- Correcting ambiguities/errors when the trust was drafted

Private Trust Companies

That said, some ultra-high net worth families may still be uncomfortable with handing the reins of their assets over to an external party, therefore private trust companies (PTCs) have proliferated in recent years. It is essentially a privately-owned company incorporated specifically to **serve as trustees for the family's own trust**. Its board of directors can consist of family members or trusted advisors, allowing a higher degree of privacy, control and discretion.



Example diagram of PTC structure

Key considerations for choosing a jurisdiction

An English common law system with robust legislation supporting trust business



Established ecosystem of qualified professionals (accountants, lawyers etc.)



Low or no taxation for trusts



Extensive double tax treaties to reduce capital gains and withholding taxes in jurisdiction of the investment assets



Specific local trust rules to suit client requirements

Trusts are normally set up in offshore jurisdictions as a form of asset protection against creditors, unstable economy and legal judgments such as divorce or bankruptcy. To initiate litigation in the offshore jurisdiction, there may be a short statute of limitations, or have stringent requirements such as posting a cash deposit or proving beyond any reasonable doubt that the asset transfer into the trust was conveyed fraudulently, thus making it difficult to even access those funds.

Comparison of trusts in different common jurisdictions

	BVI	Cayman	Guernsey	Hong Kong	Jersey	Singapore
Common law jurisdiction	Yes	Yes	Yes	Yes	Yes	Yes
Stamp duty on trust deed	Yes	Yes	No	No	No	No
Licensed trustee required	Yes, min 1	Yes, min 1	Yes, min 2	No	Yes, min 1	Yes
Max perpetuity period	360 years	150 years	No max	No max	No max	100 years
Local reporting requirement	No	No	No	No	No	Yes
Purpose trusts allowed	Yes	Yes	Yes	No	Yes	No
Asset protection legislation	No	Yes	Yes	No	No	Yes
Beneficiaries' right to remove trustees	No	Yes	Yes	Yes	Yes	No
Beneficiaries' right to information	No	No	Yes	No	Yes	No

Benefits of trusts

Let us take a look at how trusts can achieve the benefits outlined in our earlier [Legacy Planning](#) paper.



Smooth transfer of assets

Having a well-planned trust would help **avoid probate** which may be a lengthy process extending to years, meaning that the funds are frozen until resolution which deprives the beneficiaries of access to much-needed funds during a volatile time. With a trust, beneficiaries could receive the inheritance within a few weeks of the death certificate being issued.



Reduce family strife

When assets are settled into the trust, control is handed to professional independent trustees, thus **relieving the settlor from emotional demands** of the family. To **preserve harmony**, the trust can also administer distribution discreetly as beneficiaries would have limited access to information. It can also **protect minors or disabled heirs**, to have the trustee manage the money ensuring that they are able to live comfortably upon the settlor's passing. Some parents may also prefer their offspring to be financially independent and not know about the quantum of the assets, until they are mature enough to do so.



Facilitate business succession

For business owners who would like to maintain ownership within the family across multiple generations, putting shares of a family business into a trust could have multiple advantages. The settlor could create a succession plan to:

- **centralise management**
- **facilitate a systematic transfer of ownership**
- **stipulate limitations on purchase/sale of shares**



Asset protection

In case of bankruptcy or lawsuits, due to the fact that the assets had already been removed from the settlor's ownership, creditors would **not be able to lay claim** to those assets, provided that the trust was not set up as a sham to avoid such claims. It can also **protect against the risk of divorce**, as trust property is considered out of the marital asset pool. Further, certain jurisdictions may have **provisions effective against foreign rule of forced heirship**, such that the settlor may be able to distribute his wealth to the people whom he really wants to, instead of being obligated to leave his assets to estranged relatives.



Philanthropy

Having enjoyed a blessed life, the settlor may wish to commit to charitable goals. In addition to obvious social good, it would also **establish a family legacy**. Future generations may be roped into the committee to enforce greater unity and involvement. Depending on the jurisdiction and circumstances, there would also be **applicable tax benefits**, such as reducing estate taxes, having partial income tax deductions, and capping capital gains for highly appreciated assets put into the trust.



Tax optimisation

In essence, these are a few areas for tax consideration:

- Residence country of the settlor
- Investment holding location
- Source country of investment assets
- Tax-residence of beneficiaries

When capital is injected into the trust, its legal ownership is transferred from the settlor to the trustees, thereby **reducing the assessable value for inheritance tax purposes** when the settlor passes; however, this may incur income tax for beneficiaries when they receive the distribution. Instead of selling an appreciated asset, transferring it into the trust may also allow for **capital gains tax deferral**, or potentially even elimination. The presence of **double tax treaties** between countries would also serve to reduce withholding and capital gain taxes. Your tax planner would be best positioned to advise the optimal mix of legal vehicles and jurisdictions suited for your needs.

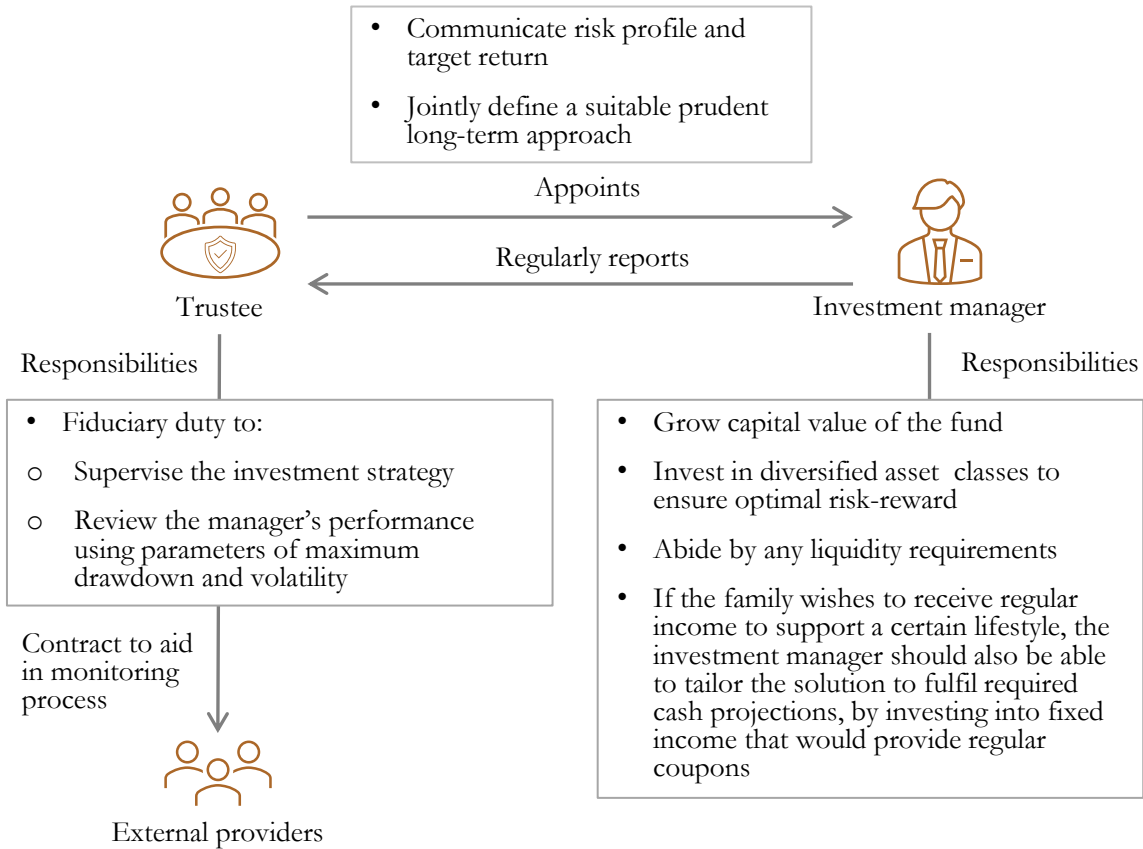
Cost considerations

These include:

- One-off trust setup costs
- Legal opinion
- Ongoing annual trust fees
- Annual investment management fees
- Performance fees (if any)

Management of funds in a trust

It is crucial that the trust assets are put to work, to cover ongoing costs and to cater for future generations’ needs, such as private college tuition, or purchase of residence when the family expands.



At the end of the day, everything boils down to one word “trust”, it is as much a noun as it is a verb. After all, when one has passed, the only thing that would endure is the belief that you have put your trust in the right people who would act in the best interest of your loved ones. Work with trusted partners to customise a trust solution for your beneficiaries, it is never too early to start this discussion.

About us

SingAlliance is an independent wealth management company founded in Singapore in early 2011. With offices strategically located in Singapore, Geneva and Hong Kong, SingAlliance provides comprehensive financial solutions and professional advice to High-Net-Worth Private individuals and Institutional clients as well as manages a range of investment funds with high added value.

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