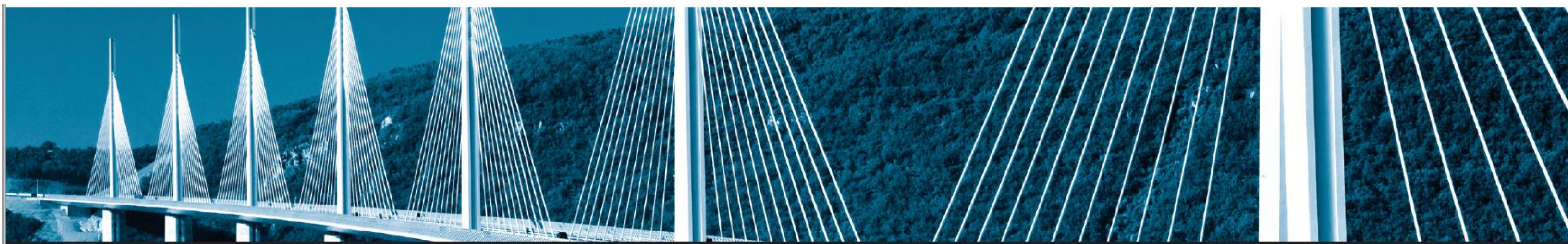

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Family Trusts and Asset Protection

A trust is a legal arrangement created by a settlor (the person who contributes assets into trust) for the benefit of specified beneficiaries. The settlor appoints a trustee who is typically the legal owner of assets within a trust fund[1]. The trustee will manage the assets of the trust in accordance with the terms of the trust deed and with due consideration to any letters of wishes[2] provided by the settlor or beneficiaries. The beneficiaries may be named individuals, a class of persons[3], charities, other organisations or a combination of these.

A settlor can appoint a Protector on creation of the trust, or at a later date. A Protector is typically a trusted family friend or advisor and their role includes ensuring that the Trustee acts in accordance with the terms of the deed and not in a capricious or abusive manner. The level of involvement of a protector is determined by the powers given within the trust deed. At the most basic level, the protector could be given the power to replace the trustee, or if enhanced protections are considered necessary, the deed could require protector consent for actions taken by the trustee including adding or removing beneficiaries, making investments and making distributions.

When created correctly[4] trusts are an effective method of asset protection. As the trustee of a trust has control of the trust assets, the trust offers protection in the event of a large creditor claim against the settlor. Consideration should be given to whether the settlor should be excluded from benefit. This may provide a much stronger asset protection position. Trusts may also provide a level of comfort for the settlor in relation to future generations, i.e. where an adult child divorces.

Trusts also facilitate succession planning. By creating a trust, families may benefit from not having to go through the rigorous legal procedures of probate. This is especially useful for high net worth families holding assets in multiple jurisdictions.

The most widely used form of trust is a discretionary trust. The trustees have absolute power to decide how the assets in the trust are distributed. If a beneficiary is to have a fixed income,

[1] In some cases, a nominee will own trust assets.
[2] Which are not binding upon the Trustee.
[3] For example, children and grandchildren of the settlor.
[4] If a claim is known or likely to arise at the time assets are settled, the trust may be ineffective in terms of asset protection.

an interest in possession is created. The beneficiary, known as a life tenant, will have a right to income, but they will not have a right to receive trust capital.

Private trust companies ("PTCs") are often used to maintain an element of control, but without affecting the validity of the trust arrangement. These are established with the sole purpose of acting as a corporate trustee to one trust or a small number of trusts for a particular family or group of persons.

High net worth families commonly use PTCs in their private wealth structuring. They protect confidentiality and they provide a comprehensive framework under which family members can be involved in decision making.

This document is to provide general information only and does not constitute advice.