

Example Trust Deed

Preliminary notes

A trust is a formal arrangement where property is transferred from a settlor to a trustee who has full control over that property but must hold it for the benefit of beneficiaries.

A trust deed which is a legal instrument executed as a deed, is a more common form of written trust than a declaration of trust, the main difference being the parties to such an instrument. Whereas the settlor is party to the trust deed together with the trustee and protector if applicable, a declaration of trust is a declaration by the trustee. In the latter instance, the settlor is not party to the documentation and his or her name need not be mentioned. This is not to say that one does not have a settlor as there has to be someone who constitutes the trust and transfers property to it – the fact is that his or her name does not appear in the declaration unlike the trust deed where there is no desire to hide the name of the settlor.

This trust deed template is suitable for a discretionary trust which is a trust conferring on a beneficiary a contingent interest of a hope of benefit because the interest is dependent on the exercise of a discretion by some other person (normally the trustee). In such a trust, the trustee has full control over the assets of the trust and has no obligation to return the funds to the settlor and the settlor cannot influence the trustee in any way. The trustee's obligations under discretionary trusts are likely to be enforceable in courts (at least in common law countries like the US and UK) but this is a complicated and sophisticated legal arrangement which cannot easily be undone.

Unlike companies, trusts generally did not need to be registered in the past. Because of this the trust deed was often the only evidence of the arrangement and so was generally executed in several copies which could be kept by the trustee, the settlor and the family lawyer to keep them safe from fire, loss and natural disaster. However, given recent and ongoing requirements imposed by European Union Anti-Money Laundering Directives (4th, 5th and 6th EU AML Directives), EU Member States are required to establish registers that should be accessible to everyone with a '*legitimate interest*'. Questions remain as to whether the information on the registers will become publicly available and, if so, on what conditions and to what extent. Proposed legislative changes in this regard are currently under consideration which may impact the future registration of trusts.

Finally, the setting up of a trust may have serious tax consequences and it is strongly suggested you take advice before executing this deed of trust template.

Deed of trust template

Notes in red italics

This Deed of Trust (the “Trust Deed”) sets out the terms and conditions upon which: [Settlor Name] (the “Settlor”), of [Settlor Address], settles that property set out in Schedule A (the “Property”) upon [Trustee Name] (the “Trustee”), being a Company duly registered under the laws of [state] with registered number [Registered Number] and having its registered address at [Registered Address] (together, the “Parties”) establishing a trust.

Note: In this sample trust deed the “Settlor” is the person setting up the trust and the “Trustee” is the person who will administer the trust property. The Beneficiaries are listed later (in Schedule B). Both the settlor and trustee may be either natural persons or legal persons (like a company).

WHEREAS: The Settlor is the owner of the Property set in Schedule A.

WHEREAS: The Settlor wishes to settle on the Trustee that Property set out in Schedule A for the benefit of those beneficiaries set out in Schedule B.

WHEREAS: The Trustee for his part is willing to accept the Property set out in Schedule A on trust for the beneficiaries set out in Schedule B and to hold the Trust Fund for their benefit.

NOW, THEREFORE, IT IS HEREBY AGREED as follows:

1. **DEFINITIONS** In this Trust Deed the following terms shall be defined:

1.1 “Trust” shall mean the trust created by this Trust Deed and named in clause 3.

1.2 “Property” shall mean that property set out in Schedule A.

1.3 “Trust Fund” shall mean that Property set out in Schedule A as well as any and all additional settlements which may be made from time to time as well as any and all income of any sort whatsoever earned by or as a result of the trust Property and any additional settlements.

1.4 “Beneficiary”, “Beneficiaries” shall both mean those persons listed in Schedule B as Beneficiaries of the Trust as well as any persons subsequently nominate as Beneficiaries by the Trustee pursuant to those powers set out in Clause 7.

1.5 “Excluded Person”, “Excluded Persons” shall both mean any person excluded from benefit under the trust listed in Schedule C as well as any other person who may be subsequently nominated by the Trustee as an Excluded Persons under the powers in Clause 8.

1.6 Unless it is evident from the context and having regards to the generality of this Trust Deed that a clause intends to mean otherwise: words denoted in the singular only shall

include the plural and vice versa; words denoted in any gender shall include all genders; and, terms denoting people or persons shall include both natural and legal persons (such as corporations) and vice versa.

1.7 The heading names in the Trust Deed are provided as reference only and do not form part of the Trust Deed.

1.8 The Trust Deed or declarations may be executed in both English and other languages. If there is a conflict between this Trust Deed in its various translations the English version shall prevail.

1.9 This Trust Deed may be executed either in one original or in counterpart.

1.10 The terms of this Trust Deed shall be deemed to be binding on both Parties based on their respective conduct notwithstanding any error or defect in the execution of this Trust Deed.

2. TRANSFER OF PROPERTY The Settlor hereby conveys, transfers and assigns the Property to the Trustee to be held on trust on such terms as are set out in this Trust Deed. The Trustee hereby acknowledges receipt of the Property and consents to the terms of the Trust Deed and admits and acknowledges that they are holding the Property in trust on the terms as set out in this Trust Deed. The Trustee is also expressly authorised to receive further property in the future from the Settlor or from any other person and to add this new property to the Trust Fund.

3. TRUST NAME This Trust shall be known as [Trust Name].

Note: Trusts usually have names such as “The ABC Trust” or “The ABC Settlement” or “The Jones Family Trust”.

4. PROPER LAW This Trust is established under the laws of (Proper Law) and the Trustee shall have the power to change the proper law by written declaration.

Note: The Proper Law of a trust can be the law of any country or territory and does not necessarily have to be the one in which the Trustee or Settlor are located. The choice of Proper Law is usually motivated by selecting a legal system which is considered just and fair in the interpretation and enforcement of trusts. Bear in mind that in some countries the local law may override the proper law so this clause may be ignored and some countries may not accept the legality of trusts in any case. If in doubt you could choose “England and Wales” or the state or country you live in (assuming they accept the existence of trusts). You should obtain competent advice if you are unsure about the recognition or acceptance of trusts in your country or state.

5. INCOME, CAPITAL, APPOINTMENT AND ADVANCEMENT The Trustees stand possessed of the Trust Fund for the exclusive benefit of the Beneficiaries. The Trustees shall pay such amounts of income and capital to one or more Beneficiaries from time to time as they shall in their absolute discretion see fit. The Trustees may at their absolute discretion:

5.1 pay or apply the entire income or capital of the Trust Fund to the benefit or the maintenance of one or more of the Beneficiaries.

5.2 pay or apply part of the income or capital of the Trust Fund to the benefit or the maintenance of one or more of the Beneficiaries.

5.3 settle the whole or any part of the Trust Fund on trust for one or more Beneficiaries.

5.4 transfer the whole or any part of the Trust Fund to another Trust for the benefit of all or some of the Beneficiaries regardless that this other trust may also have other beneficiaries who are not Beneficiaries under this Trust.

5.5 make payment of any and all tax liabilities including but not limited to the payment of estate or death duties, transfer taxes, capital taxes from the Trust Fund.

5.6 make payment of any and all other legitimate expenses of the Trust from the Trust Fund.

5.7 at the direction of a Beneficiary give consideration to making a distribution to charity.

provided always that any distribution from the Trust will be made only after the Beneficiary due to receive the distribution has confirmed in writing that he is not under attack from creditors and nor does he have any unsettled claims or pending claims from any court and nor is he an undischarged bankrupt nor is he undergoing bankruptcy proceedings and that no distribution of capital or income may be made to an Excluded Person.

6. DISTRIBUTIONS TO MINORS The Trustees may make distributions to Beneficiaries who are minors in the following ways: either a) payment to those minors directly, or, b) payment to their parents or guardians. The Trustees shall have absolute discretion over which manner to choose and either manner shall be a valid discharge of their powers.

7. POWER TO ADD BENEFICIARIES The Trustee shall have the power at any time and at their discretion to appoint additional beneficiaries by written declaration provided always that the new beneficiary shall not be an excluded person.

8. POWER OF EXCLUSION The Trustee shall have the power at any time and at their discretion by written declaration to remove any Beneficiary under the trust as well as the power to exclude any person (beneficiary or otherwise) to the list of persons excluded from benefit under the Trust.

9. DELEGATION OF POWER The Trustee shall have the power to delegate the administration of the Trust to any third-party which he in his absolute discretion shall see fit provided always that the Trustee remains responsible for the actions of any party to whom he has delegated authority.

10. CHANGE OF TRUSTEES It is agreed that if the Trustee becomes unable or unwilling to act as Trustee of the Trust he or his lawful representative may appoint a new Trustee to be Trustee of the Trust provided that this new trustee shall accept his appointment.

11. APPOINTMENT OF ADDITIONAL TRUSTEES It is agreed that if the Trustee sees fit he may appoint an additional Trustee to be Trustee of the Trust.

12. INDEMNITIES AND WARRANTIES It is agreed as follows:

12.1 If the Trustee ceases to be a Trustee of the Trust and appoints in his stead a new trustee in accordance with the provisions of clause 10 then he shall have no further liability of any kind in respect of the Trust.

12.2 The Settlor warrants that he is absolutely entitled to all of the legal and beneficial interest in the Property at the time of making the initial settlement of the Property and execution of this Trust Deed.

12.3 The Settlor hereby irrevocably undertakes to indemnify and keep indemnified the Trustee against any and all losses howsoever caused as a result of a breach of these warranties.

12.4 Both Parties warrant that they have the necessary power and approval to enter into this Trust Deed.

12.5 Both Parties warrant that they are not aware of anything in their reasonable control which will or could have an adverse effect upon their ability to perform their respective obligations hereunder.

12.6 The Settlor warrants that there is no litigation currently in progress, likely to be commenced or threatened against him.

12.7 The Trustee warrants that there is no litigation currently in progress, likely to be commenced or threatened against him.

12.8 The failure or delay by either Party to enforce any term of this Trust Deed or to act upon a breach of any term shall not constitute a waiver of their rights.

12.9 The Settlor hereby indemnifies and agrees to keep indemnified the Trustee against any and all losses, expenses and liabilities of any other kind arising from:

12.9.1 Any misrepresentation, misleading statement, deceit, untrue statement (whether by act, statement or omission) made by the Settlor at any time prior to and including the execution of this Trust Deed.

12.9.2 The cost of defending any action brought under this Trust Deed.

13. TRUSTEES REMUNERATION The Trustees shall have the power to reimburse themselves from the Trust Fund for all fair and reasonable expenses involved in the creation and administration of the Trust and shall be entitled to charge fair professional fees for their services to the Trust.

14. IRREVOCABILITY AND DURATION The Settlor hereby expressly declares that this Trust is irrevocable and shall have effect until either the Trust Fund is exhausted or until the elapsing of the maximum perpetuity period permitted by law whichever is the sooner. The Settlor hereby divests himself of any right or power to revoke or amend in any respect whatsoever this trust and it is expressly declared that none of the powers and discretions vested in the Trustee may be exercised so as to confer any benefit on the Settlor.

15. CHANGES TO TRUST DEED The Trustees may at their discretion and by written declaration make changes to the terms of the Trust Deed when necessary to amend the interests of the beneficiaries.

16. SEVERANCE The illegality or unenforceability of any clause (or part thereof) shall have the effect of voiding that clause (or part thereof) only and not the entirety of this Trust Deed.

17. POWER OF INVESTMENT The Trustee may make any investment with the Trust Fund that he in his absolute discretion sees fit.

18. POWER TO MAKE LOANS TO BENEFICIARIES The Trustee shall have the power to make loans to one or more Beneficiaries of such amounts and on such terms as they in their absolute discretion see fit.

19. POWER TO MAKE REALTY AVAILABLE FOR THE USE OF BENEFICIARIES Where the Trust owns realty the Trustee shall have the power to make said realty available for the use of one or more of the Beneficiaries.

20. POWER TO TAKE ADVICE The Trustees shall have the power to take legal and financial advice and counsel on behalf of the Trust and have the power to pay for said advice from the Trust Fund.

21. POWER TO GUARANTEE DEBTS The Trustees shall have the power to use the Trust Fund or any part of it to guarantee debts in any manner including but not limited to mortgage, charges and liens.

22. POWER TO REACH COMPROMISES The Trustee shall have the power to reach agreement and effect compromises for any reason including but not limited to the settlement of debts and the balancing of competing interests between creditors and between beneficiaries.

23. NOTICES Any notice served under this Trust Deed shall be made in writing and shall be considered served if it is handed to the other Party in person or delivered to their last known address or any other such address as the Party being served may have notified as his address for service. All notices shall be delivered in English.

24. DATE OF EXECUTION This Trust is duly constituted on the settlement of the Property which is acknowledged to have taken place by both Parties on this the (day) of (month) (year).

Signed by the Settlor

Signed by the Trustee

Schedule A

The Trust property (subject of the Trust) shall be the following:

[Trust Property]

Note: This should include a detailed list of all the trust property. Trust property must be very specific as it is not possible to create a trust with vague terms like “all of my property” or “my income rights” and trusts like this will not be valid or enforceable. The following are good examples of trust property:

“The sum of 1,000 US Dollars”.

“That real estate property known as “The Elms” located at 123 Main Street, Small Town, Illinois and registered on the Illinois land registry with number 123456L.”

“My portfolio of shares held by ABC Brokers Limited under account name Jones11A.”

“10,000 shares in ABC Corporation Limited, a company registered in Delaware with registered number 123456 and those shares bearing registered number 30,001 to 40,000”.

Remember that more property can be added later. There may be tax implications in settling money or assets into a trust and you should take advice before doing so.)

Schedule B

The Trust Beneficiaries (objects of the Trust) shall be the following:

[Trust Beneficiaries]

Note: List the full names and addresses of all beneficiaries, remember that in a discretionary trust the trustee must act impartially between beneficiaries so they are generally entitled to the equal benefit. If you wish to apportion benefit unequally between beneficiaries you may be able to do so by drafting a Letter of Wishes, which is a private letter to the trustee which must be sent before the trust is established. Discretionary trusts should really have more than one beneficiary. Additional Beneficiaries can be added later.

Schedule C

The Excluded Persons shall be the following:

- (i) Joe Bloggs of 123 Main Street, Big Town, USA.
- (ii) any person who is insolvent.
- (iii) any creditor of a Beneficiary.

Note: If you wish to exclude people from benefit you can do so here. An excluded person can never be made a beneficiary and can never benefit from the trust. You can add more than one person and renumber the clauses or if you don't wish to exclude anyone by name then you can just leave the last two clauses in place and renumber them (i) and (ii). Excluded persons can also be added later.