



WESTPORT TRUST COMPANY LIMITED

## Secure your family's future

OUR LOVED ONES & FAMILIES ARE OUR GREATEST ASSETS, AND WE ALL STRIVE TO PROTECT AND ENRICH THEIR LIVES TO ENSURE THAT THEY ARE WELL TAKEN CARE OF, NOW AND IN THE FUTURE. A TRUST CAN BE A POWERFUL TOOL IN THAT ENDEAVOUR. THROUGH THIS ARTICLE, THE WESTPORT TRUST COMPANY LIMITED WILL DEMYSTIFY AND INFORM ABOUT THIS EFFECTIVE ESTATE PLANNING OPTION THAT CAN SECURE A BRIGHT FUTURE FOR YOUR FAMILY

A TRUST IS A LEGAL RELATIONSHIP ESTABLISHED WHEN ANY INDIVIDUAL (THE "SETTLOR") TRANSFERS HIS ASSETS OR PROPERTY TO ANOTHER PERSON (A "TRUSTEE") TO BE HELD BY THE TRUSTEE UPON TRUST FOR THE BENEFIT OF CERTAIN PERSONS (THE "BENEFICIARIES") OR FOR SPECIFIC PURPOSES.

For example, perhaps you have a child or other relative who you may wish to provide for, but that person has a tendency to waste his or her money. In such a case, it may be a good idea to require that relative to receive money at intervals from a Trustee instead of giving him or her an outright gift in your will. A discretionary trust would give the Trustee the flexibility to give your relative as much or as little as the Trustee thinks appropriate in the circumstances.

Trusts have been around for a long time, and originate from the middle ages. A landlord would leave his property and servants to a trusted person for as long as he was away hunting or at war. The trusted person (or Trustee) had full control over the assets until the landlord's return.

Trusts have several uses in the modern day and can be of considerable benefit when properly set up and managed. The Trustee, in modern times, is obliged by law to manage and care for Trust Property with which he is entrusted, in accordance with the terms of the Trust Deed. Certain essentials are necessary to create a valid trust, including a Settlor, Trustee, Beneficiary, Trust Property (or Fund) and Trust Deed.

The Settlor is the person who sets up a trust by transferring legal ownership of his assets to the Trustee to hold upon trust for the benefit of the Beneficiaries.

The Trustee is the person who holds legal title to the Trust Property given to him or it by the Settlor and is responsible for managing and administering the assets on the terms set out in the Trust Deed. In modern times, the Trustee may be an individual or a Corporate Trustee. All Trustees, whether they are individuals or Corporate Trustees, hold legal title to the Trust Property given to him or it by the Settlor and

are responsible for administering the assets on the terms set out in the Trust Deed and in accordance with relevant Bermuda law.

The Beneficiaries are the persons who are named in the Trust Deed who will benefit from the Trust. Beneficiaries under a Trust are often the Settlor's children. The Trust Deed may also give Trustees the flexibility to include future generations of the Settlor's family as beneficiaries.

To be valid, a Trust must hold some assets to be administered by the Trustee, called the Trust Property. A Trust is usually created with a nominal sum of money, and other assets such as real estate, a business, cash, real or personal property may be added to the Trust Property at any time.

The Trust Deed formally expresses the agreement between the Settlor and Trustee. It generally describes the manner in which the trust property is to be held and invested, the purposes for which its benefits (such as income or principal) are to be used, and the duration of the agreement.

Certain trusts may also have a Protector who is appointed to oversee certain aspects of the administration of the trust assets as defined in the Trust Deed.

One of the uses of a trust is to provide flexible control of the assets for the benefit of minor children. A Trust can ensure that the child will benefit but will not have direct access to the trust assets. A Trust is commonly set up to provide for the support, care and education of the children. There may also be a family business which requires protection for future generations. A Trust can offer a structure aimed at providing protection for such generations.

Trusts can be set up while you are alive; the legal term for this is *inter vivos*. Alternatively, trusts can be established upon your death by your Will; these are known as testamentary trusts.

Trusts are most often irrevocable, meaning that they cannot be changed or terminated, even during the life of the Settlor. In this manner the trust assets are placed outside of the Settlor's control.

Trusts have common benefits including (but not limited to):

- ASSET PROTECTION;
- CONFIDENTIALITY/PRIVACY (THE TRUST DEED IS NOT NORMALLY SUBJECT TO PROBATE IN THE COURTS);
- FLEXIBLE ESTATE PLANNING OPTIONS;
- NO DISRUPTION OF MANAGEMENT OF TRUST PROPERTY ON DEATH;
- TAX SAVINGS.

Bermuda is an ideal choice for setting up a Trust as it is a first-class jurisdiction with an excellent reputation internationally. A premier offshore financial centre, Bermuda boasts political, economic and social stability with a thriving international business sector and is also easily accessible from the other leading financial centres around the World.

Bermuda law relating to trusts is set out in the Trust (Regulation of Trust Business) Act 2001 and the Trustee Act 1975. The 1975 Act contains provisions concerning the creation and administration of Trusts. The 2001 Act sets out licensing criteria for Trust Companies carrying on trust business in Bermuda and regulates the conduct of such business.

The Trustee is, under law, required to carry out due diligence with respect to each Settlor and Beneficiary and each new addition of funds or other assets. In compliance with the law, the Trustee must ascertain the source of funding or additional trust funds or assets.

All Trustees must administer the trust property only for the designated beneficiaries and may not use trust principal or income for their own benefit. The Bermuda Monetary Authority regulates and continually monitors the conduct of licensed corporate trustees to ensure they are controlled by fit and proper persons, meet minimum net asset requirements, have adequate insurance, records, systems and controls and also that they carry out their business with integrity and skill.

Before establishing a trust you should seek legal advice from an attorney who is knowledgeable on trust and estate planning matters. You have worked hard for your family and wealth. Why not take steps during your lifetime to protect and preserve them?