

ANGUILLA TRUSTS FACT SHEET

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What is a Trust?

A trust is defined by the Trusts Act (the "Act") as a legal arrangement whereby property is transferred by a Settlor to a Trustee for the benefit of one or more persons including himself and known as the beneficiaries or for a stated charitable or non-charitable purpose (for e.g. commercial) provided that the non-charitable purpose is specific, reasonable and capable of fulfillment and is not immoral, unlawful or contrary to public policy. A trust may also be created which is of a type recognised by a settlor's religion, nationality or community.

Formalities and Registration

No strict formalities are required to create a trust. A trust can be created by an oral declaration or an instrument in writing or by conduct or even by operation of law. There is also no mandatory registration requirement. A trust may nevertheless be registered if the settlor or trustee determines, but even if registered, it is not open for public inspection.

Management of Trust

Once the trust is created, all decisions in relation to property or assets of the Trust are made by the Trustee. The Trustee's powers are usually prescribed by the Trust instrument. Additionally, Anguilla law allows the Settlor to provide the Trustee with a Letter or Memorandum of Wishes with regard to the exercise of any or all his function as Trustee and once given, the Trustee may have regard to it. Non charitable purpose trusts are also required to have a Protector whose duty is to enforce the Trust.

Who can be Trustees

The Trust Companies and Offshore Banking Act provides that any person carrying on the business of acting as trustee must have a licence. A foreign company (provided it is re-registered in Anguilla) may be licenced as a trustee. The minimum capital requirement is US\$250,000.00 or equivalent in another currency or such greater sum as may be ordered depending on nature of business. All Licencees must have a principal place of business in Anguilla and the authorized agents must also be resident in Anguilla.

Solvency of the Trustee

The trust fund is a ring-fenced fund protected against the insolvency of the Trustee and further protected by the

Key Highlights

- No registration requirement
- Foreign Company may be trustee
- Trust fund protected against trustee insolvency
- Forced heirship rights not recognised

beneficiaries' rights in the traced product of the trust assets. Additionally, the provision for the appointment of a Protector, who usually has the power to add or remove a trustee, means that there is someone overseeing the activities of the Trustee.

Protection of Trust Assets

The Act specifically provides that where a trust is formed in Anguilla the Court shall not vary or set it aside or recognise the validity of any claim against the trust property from any other jurisdiction which arises from the personal or proprietary consequences of marriage or its termination; any succession right including forced heirship rights; creditor claims; or any foreign tax obligation. Furthermore, the Act provides that no Anguilla trust or no disposition of property by an Anguilla trust is void or voidable or liable to be set aside or defective by reason that the laws of any foreign jurisdiction does not recognise the concept of trust; or that the trust or disposition avoids or defeats forced heirship rights or contravenes any rule intended to recognise, protect, enforce or give effect to such rights.

Taxation of Trust

A Trust in which the trustee and beneficiary resides outside of Anguilla and the assets of the Trust do not include land in Anguilla or shares in a company that owns land in Anguilla are exempt from taxes.

Reasons for choosing Anguilla

Anguilla trust law provides a more robust framework than many of the other alternatives. By specifically declining to provide for the reservation of powers by the Settlor while allowing the Settlor to submit a Letter of Wishes which the Trustee may consider, the Anguilla trust is better able to withstand any scrutiny into the genuineness of the arrangement.



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