



APPOINTING A TRUST CORPORATION AS A TRUSTEE

Either when a trust is created or during the lifetime of a trust, the settlors or existing trustees may ask their professional adviser to take on a role as a trustee. The appointment of a professional individual can create problems when that professional dies, retires, loses capacity or moves overseas. Appointing a trust corporation however introduces an enduring professional that can act as trustee, giving stability, consistency and professionalism without losing the personal input of the professional advisers behind the entity who will continue to provide support as required. A trust corporation can take away the administrative burden from the wider body of trustees, and can act as sole trustee if necessary.

Why appoint Moore Kingston Smith Trust Corporation?

Moore Kingston Smith Trust Corporation Limited is a separate legal entity to Moore Kingston Smith LLP whose directors comprise members of the Executive of Moore Kingston Smith LLP, complemented by specialist tax partners who bring technical expertise, professionalism, and common sense to the table. The Moore Kingston Smith Trust Corporation will seek professional support outside of Moore Kingston Smith LLP where it is in the client's best interest, or where any conflicts of interest could arise. Providers of investment advice and management, banking support and other regulated services will be provided by specialist regulated third parties and it will be the responsibility of the Moore Kingston Smith Trust Corporation as trustee to monitor performance annually to ensure that the needs of the beneficiaries are being met by those specialists.

Appointing Moore Kingston Smith Trust Corporation Limited as a professional trustee ensures that the manner in which duties are carried out are subject to scrutiny and regulation by a professional body such as the ICAEW.

It can also act as Executor (of a Will), Administrator (on an Intestacy), Attorney (under a Power of Attorney) or Deputy (under a Deputyship Order).

The significance of appointing professional trustees

The legal ownership of trust assets sits with the trustees who hold them for and on behalf of its beneficiaries. There are onerous legal obligations placed on trustees who could become personally liable for actions undertaken in their trustee capacity when personally appointed, irrespective of any professional indemnity cover in place if they are also a partner in a professional firm. A corporate entity may have greater substance than an individual.

An entity can only be called a trust corporation if certain legal and financial requirements are met, such as having a minimum paid up share capital of £100,000, whereas a trust company can be created with as little as £1. Moore Kingston Smith Trust Corporation Limited has formal protocols in place to dictate the way that the directors of the trust corporation undertake their duties, and interact with their co-trustees and third parties. The experience and credibility of the directors of a trust corporation will dictate the way that the trust is operated to adhere to the objects of the trust and meet the requirements of its beneficiaries.

A professional trustee should charge a fee for undertaking their duties as trustee, differentiating that role from any advisory services and compliance functions that may be delegated under the direction of the trustees, even though they remain responsible to the beneficiaries for carrying them out. There are certain aspects of a trustee role that cannot be delegated and to recognise this, beneficiaries have to accept that time will be required to undertake those duties, and fees rendered to recognise that time input. Trustees would be seen to be failing to carry out their legal obligations if they did not undertake their duties in full, and document that those duties have been undertaken impartially and with due care and attention. The existence of a trust corporation acting as trustee can therefore help to differentiate the roles carried out by the trustees to those undertaken by the advisers to the trust, even though in practice they may be one and the same people in different capacities.

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Practical advantages of appointing Moore Kingston Smith Trust Corporation Limited as a trustee

- replacement trustees are never needed as the Trust Corporation is an enduring entity;
- the Trust Corporation is always available to sign as one or more of its directors will usually be available whereas individual partners are not always available;
- the Directors of the Trust Corporation include people with private client, trust and IHT knowledge;
- an individual acting as trustee is personally responsible for managing the trust's assets and liabilities and may be more concerned about personal risk than actively managing the trust;
- the Trust Corporation acting as trustee owes a higher duty of care to beneficiaries than a lay trustee;
- the directors of a Trust Corporation will change over time and this will ensure that there is a freshness of approach and current thinking and rigour applied to the appointment at all times.