Rhone

CONTROL OF NON-INVESTMENT ASSETS IN TRUST

It is not surprising that in many cases trust assets simply comprise a balanced portfolio of bankable investments; given that many trusts are set up as a form of long term savings fund and that the trustee has a general duty to preserve capital and diversify investments.

In principle, however, there is no restriction on the types of assets that a trust can hold and as long as the trust terms permit such, assets can be purchased purely for the use and pleasure of the beneficiaries with no income being produced and any increase in value being purely incidental.

Trustees must retain a certain level of control and oversight.

Such "non-investment assets" might include art, jewels, classic and high value cars, yachts, aircraft, even race horses. Whilst real estate may also be a non-investment asset it is effectively a separate category of assets and is not considered here.

Non-investment assets will be in the possession of the beneficiaries and as such are somewhat distanced from the trustee. Nevertheless, the trustee's obligation to safeguard and preserve the assets as part of the trust remains the same.

Trustees must therefore retain a certain level of control and oversight, which would generally include the following measures:

- Agreements should be put in place between the trustee and the beneficiary or beneficiaries to formalise the use and respective obligations of the beneficiaries and trustees;
- The trustee should ensure that the assets are fully insured and are tax and regulatory compliant. For example, art may be subject to import/export controls; yachts and aircraft are subject to indirect taxes (VAT) in the EU and may be subject to taxes elsewhere and are subject to various safety and other regulations;
- The assets of the trust should be valued on a periodic basis by independent professional valuers;
- Up-to-date inventories should be maintained on trust property and agreed with the beneficiary who has possession in order to prevent any disputes arising in the future over ownership;
- Professional agents should be appointed to manage the assets where appropriate, for example art collections may need to be managed by a curator and large yachts and aircraft should be managed and operated by specialist companies. Where aircraft are put into commercial use they must by law be operated by licensed operators;
- Site visits should be made by the trustee to verify the location, maintenance and custody arrangements of the assets generally on at least an annual basis.

Beneficiaries will often treat the assets of the trust that they hold or use themselves as if they were their own but allowing a beneficiary to exercise too much control over such assets may in fact undermine the nature and integrity of the trust itself.

Whilst many of the assets of a trust may be out of sight of the trustees they should never be out of mind.

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