

Trust Terms

AMERANT

GLOSSARY

- ▶ **Articles of association:** Also known as bye-laws, the articles govern the way in which a company is managed.
- ▶ **Assets:** A fund of money or property of any kind. Trust assets originally belonging to the settlor that have been transferred to trustees to hold on trust. Asset management is the management of assets on behalf of another.
- ▶ **Authorized capital:** Nominal share capital of a company.
- ▶ **Authorized investments:** Investments suitable for trust funds.
- ▶ **Bank:** An institution traditionally engaged in taking deposits and offering loans to customers.
- ▶ **Bank draft:** Cashier's check drawn by a bank.
- ▶ **Bank secrecy:** Implied term, in the contractual relationship between a bank and its customers, that the bank will keep the financial affairs of its customers confidential. There are situations when a bank must disclose information relating to its customer to authorities or third parties, for example under money laundering legislation or under an order of court.
- ▶ **Bearer shares / securities:** Share (or other securities) whose ownership may be transferred to another by delivery.
- ▶ **Beneficial owner:** Synonymous with equitable owner. The person who enjoys the property, may or may not also be the legal owner.

- ▶ **Beneficiary:** A person does, or might, benefit from a trust. Used for a person who owns a beneficial or equitable interest in trust property. Also used in respect of a person who is within the objects of a discretionary trust.
- ▶ **Board of directors:** See director.
- ▶ **Bond:** Document issued by a government or company promising to repay borrowed money together with an agreed rate of interest at a specified time. When issued by a company usually called a debenture. Usually unsecured.
- ▶ **Capital:** See asset. The capital value of assets must be distinguished from the income earned by those assets. In relation to company law, the capital of a company belongs to the company, not to the shareholders, who owns the shares (or share capital). Capital is subject to the capital maintenance rule so that it may not generally be distributed to shareholders until the company is wound up.
- ▶ **Certificate of incorporation:** Document issued by Registrar of Companies upon a new company being registered under relevant Companies legislation, evidencing the company's birth and the fact that it is now a legal person.
- ▶ **Close company / closed company / closely held corporation:** Company with only a limited number of shareholders.
- ▶ **Conflict (of interest):** Arises when a person or firm acts (for example in a transaction) for two sides whose interests are not identical.
- ▶ **Constitution:** (i) Of a company – the Memorandum and Articles of Association (ii) Of a jurisdiction – the document that represents the supreme law of the state and that sets out the role and powers of the legislature and executive, etc. (iii) Of a trust – refers to the transfer of the trust assets to the trustees.
- ▶ **Contingent interest:** An interest in property that will lead to possession of trust property only if a specified event occurs, such as attaining 21 years, or marriage.
- ▶ **Corporation:** A company.
- ▶ **Corporation tax (corporate tax):** A tax levied on the profits made by a corporation or company.
- ▶ **Death duties / taxes:** Tax levied upon the value of a person's estate on death.
- ▶ **Debt:** Sum of money owed to another. Debt instrument includes a promissory note recording the terms of a short – term loan.
- ▶ **Debtor:** Individual or entity who owes money to another (the creditor).

- ▶ **Declaration of trust:** Trust instrument executed by the trustees. It may also mean the particular clause in any trust instrument, including a settlement that declares that the trustees are to hold on trust and what those trusts are.
- ▶ **Deed:** A legal document executed with certain formalities, including, traditionally, the signature and seal of the maker, although a seal is no longer required under English law. The virtue of deed is that, contrary to the general rule, promises made in it are enforceable even though nothing is given in exchange for the promise.
- ▶ **Default:** Failure to do something required by law.
- ▶ **Defendant:** An individual or entity who has been sued in a court of another, the plaintiff.
- ▶ **Director(s):** Individual(s) appointed to manage and control a company.
- ▶ **Discretionary trust:** A trust where the trustee has a discretion as to how distribute the trust property among the class of beneficiaries.
- ▶ **Dissolution:** Refers to the winding-up, liquidation and death of a company when it is removed from the Register of Companies.
- ▶ **Dividend:** Distribution of the profits of a company to its shareholders.
- ▶ **Domicile:** Normally the permanent home of an individual.
- ▶ **Double taxation:** Occurs when the same income bears tax in more than one country. Double-taxation treaties are agreed between jurisdictions to alleviate the burden.
- ▶ **Due diligence:** Internal procedures and analysis (used to identify risk, liability and corrupt practices, etc.).
- ▶ **Equity:** Body of law that complements the common law. An equitable right is enforceable in personam.
- ▶ **Equities:** Share of public companies that are therefore quoted and traded on a stock exchange.
- ▶ **Escrow:** Contractual arrangement in which a third party receives and disburses money or property for the primary transacting parties, with the disbursement dependent on conditions agreed to by the transacting parties.
- ▶ **Estate:** An individual's assets (less liabilities) at death.
- ▶ **Exchange control:** Laws of a country that control the movement of its currency abroad.
- ▶ **Exemption clause; otherwise known as exclusion or exoneration clause:** Agreement between two or more parties whereby one party agrees to exclude or limit the potential liability of the other for certain acts or omissions to act.

- ▶ **Fiduciary (noun):** A trustee. The word is also used for a person who stands in a trustee-like relationship to another person. See fiduciary relationship below.
- ▶ **Fiduciary duty:** A duty owed by a fiduciary to act in the best interests of person to whom the duty is owed.
- ▶ **Fiduciary relationship:** This exists where one person stands in a particular position of responsibility and good faith towards another person. Fiduciary relationships include trustee / beneficiary; director / company; lawyer / client; confidential employee / employer; business partners.
- ▶ **Financial year:** Also known as a fiscal year, it represents a company's accounting period.
- ▶ **Foreign exchange (FX or Forex):** International markets at which currencies of different countries can be bought and sold at the current exchange rate.
- ▶ **Formation (of a company):** Incorporation.
- ▶ **General meeting:** Meeting of shareholders of a company.
- ▶ **Income:** Money received on a recurring basis, often in the form of a reward for business (profits, wages) or investment (dividends, interest, rents.)
- ▶ **Income tax:** Direct tax on profits of an income nature.
- ▶ **Incorporation:** The formal initial registration of a company under Companies legislation: its birth.
- ▶ **Indemnity:** Agreement whereby one party undertakes to compensate another in the event of loss or expense.
- ▶ **Insolvency:** A situation that arises when an individual or entity is unable to pay its debts.
- ▶ **Insurance:** A contract with an insurance company that if an uncertain event occurs (i.e. an event that might or might not happen), the company will pay compensation for any loss coming from the event. Typical examples are fire insurance and public liability insurance. Compare with assurance.
- ▶ **Insurer:** Person or company who insure another (the insured) in respect of certain agreed risks set out in the insurance policy.
- ▶ **Internal Revenue Service (IRS):** Branch of US federal government whose function is collect taxes.
- ▶ **Intestacy:** Arises when an individual dies without a valid will. His estate will pass to his heirs as defined in the relevant intestacy laws.
- ▶ **Investment analyst:** Individual employed to give investment.
- ▶ **Lease / leasehold:** A legal interest in land, whereby the owner (the landlord) allows another (the tenant) exclusive possession of land for a fixed term (e.g. 99 year) or for what is known as a periodic term, e.g. from year to year until terminated by a notice to quit.

- ▶ **Legal owner:** Person who owns the legal interest in an asset and is said to have rights in rem enforceable against the whole world. May hold the legal interest on behalf of another, i.e. the beneficial, equitable owner.
- ▶ **Limited liability:** A company whereby each shareholder has limited his liability to pay any debts incurred by the company.
- ▶ **Liquidation:** See dissolution of a company.
- ▶ **Listed company:** A public company whose shares may be bought and sold in a stock exchange.
- ▶ **Litigation:** Legal proceedings in a court of law.
- ▶ **Mandate:** Document giving details of the operation of a bank account, including specimen signatures of the persons authorized to draw from the account.
- ▶ **Member:** Shareholder (of a company).
- ▶ **Memorandum of association:** With the articles, comprise the constitution of a company.
- ▶ **Minority shareholder(s):** Person(s) who own 49% or fewer of the shares of a company and is (are) therefore less able to have an impact upon the way the company is run, as he (they) can be outvoted by the majority shareholder(s).
- ▶ **Mortgage:** See charge.
- ▶ **Mutual Funds:** Type of open-ended collective investment scheme in the US.
- ▶ **Negligence:** Falling below the standard of prudence expected of a reasonable man. Breach of a duty of care.
- ▶ **Net worth:** Value of assets less liabilities.
- ▶ **Next of kin:** In a legal context means the people who are entitled to the property of the deceased if he has died intestate. See intestacy.
- ▶ **Nominee:** An agent acting on behalf of another, the principal. A nominee shareholder is a person who holds shares as agent subject to a bare trust on behalf and in favor of the beneficial owner of the share.
- ▶ **Objects of a company:** The purposes for which the company was incorporated.
- ▶ **Objects of a trust:** the beneficiaries. If the trust is for people, the people are the object's the trust. If the trust is to achieve a purpose, the purpose is the object of the trust.
- ▶ **Off balance sheet transactions:** The practice of structuring a company's activities so that certain assets do not appear on its balance sheet.
- ▶ **Officer:** The officers of a company include its directors, secretary and, in some cases, its accountant and lawyer.

- ▶ **Offshore company:** A company incorporated in a different jurisdiction from that where the investors/ shareholders reside.
- ▶ **Ordinary shares:** Also known as common stock. A holder of ordinary shares will generally be paid a dividend after payment to holders of preference shares (preferred stock).
- ▶ **Perpetuities, the rule against:** A rule limiting the duration of a trust.
- ▶ **Personal representative:** On the death of an individual, his estate vests in his personal representative to administer and transfer to the beneficiaries named in the deceased's will or who are otherwise entitled under the law of intestacy. A personal representative may be either an executor (a person chosen by the deceased's will), or an administrator (a person chosen by the court if there is no executor).
- ▶ **Portfolio:** List of investments in shares and other securities. Portfolio management is another name for investment management.
- ▶ **Powers:** Authority to carry out an act. Power of appointment is a discretionary power to dispose of property generally or for the benefit of a specified class of persons, which the donee (the person given the power) may or may not exercise.
- ▶ **Private bank:** A bank that transacts banking business on behalf of a limited number of customers.
- ▶ **Private banking:** Banking services provided to private individuals on a personal basis.
- ▶ **Private company:** A company that is not a public company.
- ▶ **Probate:** Legal document issued by a court to authorize the executor or person named therein to administer the estate of the deceased.
- ▶ **Promissory note:** An IOU. A document containing a promise to repay the lender the principal sum set out therein (with interest) either on demand or on a future date.
- ▶ **Property:** Something that is owned; possessions. May be of any sort, e.g. land, personal property such as furniture, investments, intellectual property, or equitable interests belonging to a beneficiary of a trust.
- ▶ **Proxy:** An agent appointed by a shareholder to vote on his behalf at a meeting of shareholders.
- ▶ **Real property, real estate:** Land and buildings on it.
- ▶ **Registered office:** Official address of a company.
- ▶ **Registers (of a company):** Records that a company is required to maintain. Often separate registers of shareholders (the share register), of directors and officers, and mortgages of the company.
- ▶ **Registrar of companies:** Person empowered by companies' legislation to exercise a supervisory function over the formation, etc. of companies in accordance with duties given to him by statute.
- ▶ **Resolution:** Decision made by a committee at a meeting, e.g. directors, shareholders, trustees.

- ▶ **Secretary:** Administrative officer of a company but without the power of a director.
- ▶ **Settlement:** A trust. Also a document creating a trust, particularly a document with two parties. Compare declaration of trust.
- ▶ **Settlor:** Person who creates a settlement or trust.
- ▶ **Stock:** Name for an ordinary share in the U.S.
- ▶ **Tax shelter:** Term used to describe investments or structures that allow a taxpayer to reduce his tax liability.
- ▶ **Tax treaty:** Agreement between state relating to the collection of tax.
- ▶ **Testament:** A will.
- ▶ **Testamentary gift:** A gift made by will.
- ▶ **Testator:** Person who makes a will.
- ▶ **Trust company:** A non-banking financial institution that provides trust services.
- ▶ **Trust instrument:** Generic name of the document that creates a trust. Covers both settlements and declarations of trust.
- ▶ **Trust services:** Provision by banks and trust companies of corporate trustees, and of management and administration of trusts.
- ▶ **Trustee:** Fiduciary owner of trust assets.
- ▶ **Vested:** A present fixed right to future enjoyment of property. Does not depend upon the satisfaction of some future condition.
- ▶ **Will:** Document that disposes of a person's estate upon death.
- ▶ **Withholding taxes:** Provision in some onshore tax legislation that obliges a payer of income such as company dividends or bank interest to deduct tax at source and pay the sum deducted over to the revenue authority.