



House Of Human Capital

Offshore Trusts: Can you retain some control over your assets?

November 2020

Presenter

Johan Odendaal

- Attorney of the High Court, MTP (SA)
- International Legal and Tax Counsel
- Worked for Licensed Trust Companies in Singapore and Hong Kong 4+ years
- Managing Director – Corpag South Africa
- (<https://www.we-are-corpag.com/>)

- Email: johan@corpag.com
- Cell: 083 284 7308



Background

Basics:

- The concept of a trust not well understood by many.
- A trust can best be described as a relationship: an arrangement whereby property or assets are transferred from one person (the “settlor”) to another person (the “trustee”) to hold for the benefit of others (the beneficiaries).
- When dealing with personal wealth, the idea of transferring legal ownership of assets to a trustee can make people uneasy or suspicious – despite the high-level of fiduciary duties imposed on the trustee by equity and law and local regulators in licensed jurisdictions.
- For SA clients considering an offshore trust, this may be even more of a concern despite trustees being formally regulated / requiring licenses in many of the foremost jurisdictions.
- Offshore trust laws and practice, unlike domestic SA trusts, usually don’t allow settlor individual or someone close to him/her to act as co-trustee.
- There are ways to limit the ‘absolute control’ which Trustees may be regarded to have to ensure balance and peace of mind for Founders / Settlers.
- Lets look at some of the alternatives....

Solutions

1. Purpose Trusts

- In certain jurisdictions (Guernsey and Singapore for example) domestic trust laws allow for the creation of a specific type of non-charitable trusts (NCPT)
- The trust fund can be used for a purpose which is not charitable provided that its purpose cannot be regarded as “impossible”, “against public policy” or “immoral”. Factual question.
- NB for Purpose Trusts - There is no requirement to identify beneficiaries at the outset.
- The trust deed must state the purpose for which the trust has been created and must appoint an “enforcer” to ensure that the terms of the trust are met.
- The enforcer must be independent of the trustees and will be in a position to police the trustees to ensure that his/her wishes – set out in the trust deed – are carried out.
- NCPTs are especially popular with clients who wish to put the shares of a private company that owns a business into a trust, but who do not want to create the potential trustee intervention on behalf of the beneficiaries.

Solutions

1. Purpose Trusts

- The NCPT does not have beneficiaries so in theory the trustee is relieved of any obligation to intervene. This could also be applied to clients with controlling interests in listed companies.
- NCPTs provide an efficient, controlling structure and an added layer of privacy. They also help clients who want to protect the succession of their family business through the generations.
- The trustee of a NCPT can hold the shares for the purposes of supporting the continuation and the growth of the business thereby acting neutrally and independently of the family.

Solutions

2. Private Trust Companies

- Certain jurisdictions (such as Singapore and Hong Kong) allow for the creation of a Private Trust Company (PTC) to act as the trustee of the foreign trust governed by local laws provided that each beneficiary of the trust is a person connected.
- A PTC is exempt from any licensing requirements but must engage the services of a licensed trust company to provide administration services.
- PTCs provide the settlor with a means of retaining a greater degree of control over trust assets without compromising its validity.
- PTC Board usually comprises family members, advisors and specialists.
- Appointing a PTC to act as trustee would give a settlor the opportunity to ultimately retain a degree of control over the his/her business, whilst having the added benefit of growing his/her wealth through a trust in a reputable financial jurisdiction.

Solutions

2. Private Trust Companies

- PTCs are also preferred vehicles for establishing a family office structure because they provide a mechanism for family members, such as children and grandchildren, to become involved through functions within the PTC; for example, as a member of an investment recommendation committee.
- Careful structuring is of utmost importance!

Solutions

3. Appointing a Protector

- A protector is a person appointed under the trust deed to direct or restrain the trustees (when necessary) in relation to their administration of the trust.
- Historically, the concept of a protector developed in offshore jurisdictions where settlors were (perhaps understandably) concerned about appointing a trust company in a small, distant country as sole trustee of an offshore which is to hold a great deal of the settlor's wealth.
- Protectors now form a part of mainstream trust and tax planning in most jurisdictions which recognise trusts.
- There are a number of reasons that a settlor may wish to appoint a protector in relation to a trust:
 - protectors allow a great degree of flexibility when dealing with changes in circumstances, including both factual circumstances (death, premature divorce, previously unknown children) and legal changes (any legal changes, but most frequently changes to applicable revenue laws);
 - the settlor may be concerned that the trustee may not pay sufficient attention to his wishes;
 - the settlor wishes certain powers to be withheld from the trustees; or
 - the settlor wishes a third party to act as a main point of contact

Solutions

3. Appointing a Protector

- The powers vested in the protector vary both according to the proper law of the trust and the terms of the trust instrument. They include power to:
 - remove and appoint trustees;
 - approve a change of proper law;
 - approve the addition or removal of beneficiaries;
 - approve proposed trust distributions; etc.
- Conceptually many commentators have difficulty with the idea of a protector, as this undermines the role which in law has historically been fulfilled by the trustees.
- As protectors are a relatively recent innovation in trust law, case law is scant.
- It is sometimes suggested that where the protector is too close to the beneficial interest in the trust (for example, if the protectors have power to confer benefits upon themselves, directly or indirectly) this may destroy the essential nature of the trust. Also issues regarding management and control of the trust should be considered in SA context.
- If the protector has power to grant beneficial interests in the trust fund to the Settlor, this may have disastrous tax consequences in some jurisdictions.

Solutions

4. Trustee Adviser / Advisory Committee

- A commonly used technique is to name a trustee advisor.
- A trustee advisor can advise the trustee without actually making decisions.
- In most cases, the independent trustee will rely on the trust advisor for advice concerning distributions, to ensure that proposed distributions are not improper.
- The trustee advisor's role is to review the financial records of the trust and to meet with the trustee and the family to ensure that the trust is being administered smoothly.
- He or she serves as a neutral third party with regard to disputes between the trustee and the beneficiary. More appropriately the trustee advisor can be given the power to remove or replace a trustee.
- The appointment of the trustee advisor gives the family a sense of participation, which gives them a comfort level necessary to accomplish the appointment of an independent trustee.

Solutions

4. Trustee Adviser / Advisory Committee

- **Trust Advisory Committee.** Another solution to the problem of grantors and beneficiaries feeling uncomfortable with strangers, such as banks and financial institutions, is the establishment of a Trust Advisory Committee (“TAC”).
- The document can be designed so that the bank or financial institution is the trustee, but a separate TAC is appointed for purposes of advising the trustee as to distributions.
- The TAC may consist of three to five individuals, which may include a parent or other family member, an attorney, a social worker, a care manager, an accountant, a nurse, a physician, or any combination thereof.
- The TAC can even be given authority to remove and replace the professional trustee. Where both parents serve as members of the TAC, it is common to have them divide one vote.

SA Clients

Offshore Trusts for South African Private Clients who –

- Are looking for more financial certainty & hedging risk against domestic political and economic risk in SA
- Require international family succession planning for various reasons, example children will study abroad or alike
- Own or are acquiring assets (property, shares in family businesses etc) outside South Africa

Things to consider

- Willingness to relinquish legal ownership
- Generally not a good solution for cost-sensitive clients as offshore service providers charge in hard currency.
- Always imperative to obtain bespoke tax advice on such structures to address things like:
 - Place of Effective Management of Trust
 - Section 7(8) and para 72 attribution rules (to Founder)
 - Transfer Pricing provisions Section 31 (interest on loan)
 - Section 7C deemed donations (interest on loan deemed a donation)

SA Clients

Recent Example

- Cape Town based client with online procurement business which imports goods from China to be sold online on Takealot, One-Day-Only etc.
- Double-layer structure: Hong Kong trading entity owned by New Zealand trust.
- Hong Kong entity will be doing buying from China and sells to SA entity
- Careful tax structuring and transfer pricing, portion of profits to be retained offshore.
- Shares in offshore Hong Kong entity owned by Offshore Trust in New Zealand so dividend distribution to be made to trust account which will retain the money in a private banking account in Singapore.
- In future funds will be used to acquire property abroad, pay for children's study etc.

Corpog History

Our logo displays the building in Curaçao where it all started for Corpog in March 1972.

Our services had a focus on structuring real estate investments in the U.S.A. and various corporate structures between the U.S.A. and the Netherlands.

In the nineties Corpog reinvented itself under new management and ownership. It was the start of Corpog as a global professional services provider and resulted with the opening of the first “international office” in Miami. Following this, Corpog expanded its global presence and services and continued as a fully independent professional services company.

Today, after a second management buyout was completed early 2017, Corpog puts full focus on investing in the human capital within and around our company.

Corpog currently has offices in over 20 countries globally from where it can provide a range of corporate, trust and administration services. The Group is “boutique” and completely management owned. Corpog Services South Africa was set-up in August 2020.

What we do

- We optimize doing global business in a smarter, safer, more efficient and more personal manner, by making it all about the people not the profit.
- We have been a successful and healthy company for close to 50 years which puts us in a privileged position in deciding which type of client we want to work with.
- Though legislation varies in different countries Corpag's ethical code is strict and equal worldwide. We are very happy to help companies and private individuals that are, just like us entrepreneurial, transparent and earn their money in a sustainable and responsible manner.
- It does not matter whether you are a private or corporate client, private equity fund or a company listed on the stock market. It does not matter if your company is small or big.
- We work with you as long as you are financially sustainable and if our business practices and principals are aligned.
- Because we are small: Bespoke & personalised services.

Our Clients

Globally our clients consist of:

- Privately held, international operating companies
- Multinationals, either listed or private equity owned
- High net worth families with international exposure and assets in multiple jurisdictions
- Start-ups expanding into new countries
- International trading companies

South African clients we are looking to assist:

• Private Clients who -

- Are looking for more financial certainty & hedging risk against domestic political and economic risk in SA
- Require international family succession planning
- Own or are acquiring assets (property, shares in businesses etc) outside South Africa

• Corporate Clients that -

- Are already doing business outside South Africa or those who intend to expand their business globally
- Procure or sell their goods or services outside South Africa
- Hold investments abroad or have international shareholders

Services

International Companies (Trading and Investment Holding)

Set up, administration and management of companies in over 20 countries, including:

- The USA (all 50 states)
- The United Kingdom
- Switzerland
- Luxembourg
- Singapore
- Hong Kong
- BVI
- Netherlands
- Spain

Trust and Foundation Services

Establishment, administration and Trustee services to Private Trusts (Inter Vivos and Testamentary) and Trust Companies in a number of jurisdictions, including:

- The USA (Nevada)
- Hong Kong
- Switzerland
- New Zealand
- Netherlands
- BVI

Services (continued)

Other services

- Independent Directorships & Corporate Governance
 - Real Estate Transaction Support
 - Start-Up Support
 - Assisting with Foreign Residency programmes
 - Foreign Bank Account opening
 - Accounting and Financial Administration
 - Transfer Pricing documentation
 - Trade Administration and compliance
 - FATCA, CRS, Tax Compliance and Filings
 - Brexit Services
- Importantly – Corpag does not provide tax or legal advisory services but we have long-standing relationships with reputable advisory firms in all the jurisdictions that we operate in.

Questions

- Thank you.

Appendix 1

Corpag Worldwide



Argentina (rep. office)

Sinclair 3106
Piso 5, Oficina 502
(1425) Buenos Aires
Argentina
T: +54 11 4773 0749
-

Brasil (rep. office)

Rua Haddock Lobo
846 - Cj. 703 A
São Paulo/SP
CEP 01414-000, Brasil
T: +55 11 3044 4343
-

British Virgin Islands

PO Box 438
Palm Grove House
Road, Town Tortola
British Virgin Islands
T: +1 284 494 0045
-

Chile (rep. office)

Av. El Golf 99
Oficina 693, Piso 6
Las Condes, Santiago
Chile
T: +562 3210 9702
-

Colombia

Carrera 11 No. 79-66
Oficina 503
Bogota
T: +57 3 102 269 830
-

Curaçao

Bon Bini Business Center
Schottegatweg Oost 10,
Unit A1K Willemstad
Curaçao
T: +599 9 736 4500
-

Cyprus

Agias Fylaxeos
& Zinonos Rossidi, 2
2nd floor
3082 Limassol
Cyprus
T: +357 2582 3160
-

Hong Kong

Room 101,
The Lucky Building,
39 Wellington Street,
Central, Hong Kong
T: +852 3709 2930
-

Luxembourg

52-54, avenue
du X Septembre
L-2550
-

Mexico (rep. office)

Blvd. Manuel Avila
Camacho No. 36 -10
Col. Lomas de
Chapultepec
11000 Mexico City
Mexico
T: +52 55 9171 2294
-

The Netherlands

Zuidplein 116
1077 XV Amsterdam
The Netherlands
T: +31 20 333 8320
-

New Zealand

Level 5, 68
Shortland Street
Auckland 1010
New Zealand
T: +64 9 302 3398
-

Peru (rep. office)

Av. Santo Toribio 173
Vía Central 125,
Torre Real 8
Piso 16, Oficina 1605
San Isidro, Lima
Perú
T: +51 1 710 32 27
-

Singapore

137 Telok Ayer Street,
#08-01
Singapore 068602
T: +65 6260 2781
-

South Africa

Suite 1603 Portside
Building
4 Bree Street
Cape Town
-

Spain

Rambla Catalunya 60
Segundo 2a A
08007 Barcelona
T: +34 930 006 407
-

C/ José Ortega y
Gasset 25

Planta Baja
28006 Madrid
T: +34 930 006 407
-

St. Lucia

10 Manoel Street
Castries
St. Lucia
T: +1 758 452 4158
-

Switzerland

Rue Ami-Lévrier 9
1201 Geneva
Switzerland
T: +41 22 735 20 70
-

Turkey (rep. office)

Nejat Eczacıbaşı Binası
Sadi Konuralp Cd., Kat:2
Şişhane, İstanbul
Turkey
T: +90 212 401 35 47
-

United Kingdom

2nd Floor Berkeley
Square House
Berkeley Square
London, W1J 6BD
United Kingdom
T: +44 207 396 5577
-

United States (rep. offices)

999 Brickell Avenue
Suite 820
33131, Miami, FL
USA (Miami)
T: +1 305 358 7872
-

150 East 58th street,
22nd floor
New York, NY 10155
USA (New York)
T: +1 212 661 1025
-

Uruguay

Avda. Sarmiento 2332,
Of. 1202
(PO 11300)
Montevideo
Uruguay
T: +598 2606 0521
-

Appendix 2

Regulatory

The main internal focus of Corpag is to maintain full integrity throughout the entire organization ensuring reliable and safe service to our clients.

Local compliance officers act under supervision of the group compliance manager and external compliance auditors. Risk management plays a large role in the internal organization and Corpag has established a strong risk management position and framework in its Group.

Compliance and risk management go further than solely client acceptance and background checks: transaction monitoring, adverse media, fiscal integrity, employee screening and our commitment to social and environmental sustainability play a large role in our day to day compliance. Corpag tries to fulfil an active role in relevant branch organizations like ACAMS, STEP, CIFA and Holland Quaestor and stimulates self-regulatory efforts like quality labels.

Corpag falls under the following (AML) Regulators for its licenses and registrations:

- **British Virgin Islands (BVI Financial Services Commission)**
- **Curacao (Central Bank of Curacao and St. Maarten)**
- **Cyprus (Cyprus Securities and Exchange Commission)**
- **Luxembourg (CSSF registered as Cabinet de révision)**
- **Netherlands (Netherlands Central Bank)**
- **St. Lucia (Financial Services Regulatory Authority)**
- **Switzerland (OAR-G)**
- **Hong Kong (Hong Kong Companies Registry)**

- **Uruguay, National Secretariat for Combating the Money Laundering and Financing of Terrorism**
- **USA (Florida Office of Financial Regulation)**
- **New Zealand (Department of Internal Affairs)**
- **UK (HMRC)**
- **Singapore (Accounting and Corporate Regulatory Authority (ACRA))**

With regards to our Florida office, kindly note that certain described services are not offered to the general public in Florida, but are marketed by Corpag Services USA, Inc exclusively to professionals and current or prospective non-U.S. resident clients of the affiliated international trust entity.

The Florida Office of Financial Regulation DOES NOT provide safety and soundness oversight of this company, does not provide any opinion as to any affiliated companies or products, and does not provide any oversight of this company's affiliated international trust entities or the jurisdictions in which they operate. The company may not act as a fiduciary and may not accept the fiduciary appointment, execute or transmit fiduciary documents, take possession of any assets, create a fiduciary relationship, make discretionary decisions regarding investment or distribution of fiduciary accounts, provide banking services, or promote or sell investments.

Appendix 3

House of human capital

CORPAG CURIOSITY

CORPAG COMMITMENT

Corpog Curiosity

Internship Of Human Capital

Your own internship experience.

Corpog Curiosity is designed as a global internship program in accordance with Corpog's values and ambitions in order to foster development opportunities for you and Corpog.

Students put together their own internship experience and at the end of the program will be able to see the result of their work.

Please visit Corpog Curiosity for more information.

www.corpag-curiosity.com

Corpog Commitment

Fund Of Human Capital

Investing in the education of future generations.

Corpog Commitment offers student loans to talented young people who strive for the best education, but lack the financial means to obtain it. At the same time, Corpog Commitment offers a solid opportunity to invest in human capital with a fair interest rate.

As Corpog is a strong believer of assuming ownership, the Commitment student loans are not donations. We view these loans as an educational partnership in which students repay their loan plus modest interest, and we - in addition to loaning money - offer internship and mentoring possibilities.

Please visit Corpog Commitment for more information.

www.corpag-commitment.com