

Registering a Trust

Creation and Establishment of Trusts

Any person can create a trust. The trust must have at least one trustee who is a resident of St. Kitts or the trust must carry on business from an office or other fixed place within the Federation.

A body corporate may be the settler or a trustee or a beneficiary of a trust. The settler or a trustee of a trust may be a beneficiary at the same time of the same trust.

Any of the trustees of a trust or a person acting on their behalf, may deliver to the Registrar of Trusts an attestation of the existence of the trust and upon payment of the prescribed registration fee apply for the registration of the attestation.



Types of Trusts

A trust under which the income or capital or the income and capital of the trust property is applied for a purpose regarded as charitable, is a **Charitable Trust**.

A trust under which the interest of a beneficiary is subject to restriction, diminution or termination, is a **Spendthrift or Protective Trust**.

A trust established for the purpose, or having the effect, of providing, for persons having funds available for investment, facilities for the participation by them as beneficiaries under the trust, in any profits or income arising from the acquisition of any property whatsoever, is a **Unit Trust**.

A trust which is not a charitable trust; or a spendthrift or protective trust; or a unit trust, is a **Common Trust**.

A **Common Trust** may be created for a purpose which is not a charitable purpose, provided that the trust must vest in natural persons within the perpetuity period applying or expressed to apply to the trust. Any trust so created must be enforceable by the settler or his personal representative or by a person named in the terms of the trust as the person appointed to enforce the trust. This trust must be enforceable at the instance of the person so named notwithstanding that such person may not be a beneficiary under the trust.

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Proper Law

The proper law of a trust is the law of the jurisdiction expressed by the terms of the trust as the proper law; or failing that, implied from the terms of the trust; or failing either, with which the trust at the time it was created had the closest connection.

The term of a trust may provide for the proper law of the trust or the law governing a severable aspect of the trust to be changed from the law of one jurisdiction to the law of another jurisdiction.



Duration of Trusts and Asset Protection Provisions

A trust which is not a charitable trust may continue until the one-hundredth anniversary of the date on which it came into existence.

The asset protection provisions of the Trust Act, Cap 5.19 outline the capacity of a settlor to transfer or dispose property to a trust, the retention of control and benefits by a settlor, the bankruptcy of a settler and the prevention of fraud on a settler's creditors.



Administration

Subject to the terms of the trust, the number of trustees must not be less than two, unless only one trustee was originally appointed or the sole trustee is a corporate trustee.

Every trust must have an office for service in the Federation.

Except as otherwise provided in the Trusts Act, legal proceedings by or against a trust can only be instituted by or against any one or more of the trustees.

Fees

Fees for the registration of the attestation of a trust and for filing of its annual statement are as follows:

- Ordinary Trusts—USD\$100
- Exempt Trusts—USD\$200

Accounts

The trustees of every trust must keep accounting records which are sufficient to show and explain their transactions in respect of the trust and are such as to disclose with reasonable accuracy at any time the financial position of the trust.

Unless the terms of a trust otherwise provides, the trustees of a trust need not appoint an auditor to audit their accounts in respect of the trust.

Tax and other Exemptions

A trust is not itself a subject for assessment to any tax in the Federation and the beneficiaries of a trust are exempt from all income, capital gains and withholding taxes which may arise out of their interest in the trust if the trustees of the trust are in respect of it effecting transactions exclusively with persons who are not resident in the Federation.

A trust is called an exempt trust if its beneficiaries qualify for the tax exemption mentioned above. An ordinary trust is a trust which is not an exempt trust.

No estate, inheritance, succession or gift tax, rate, duty, levy or other charge is payable by any person with regard to any property held in, or securities issued or created in respect of, an exempt trust.

No stamp duties are payable by any person with regard to any transaction in securities issued or created in respect of an exempt trust.

Termination of Trusts

A trust cannot be terminated by an act of its trustees until a statement of termination signed by one of them is delivered to the Registrar of Trusts.

Where all the beneficiaries of a trust are in agreement so to do, they may require the trustee to terminate the trust.

The Court has the power to order the termination of a trust if the Court is of the opinion that it is just and equitable that the trust should be terminated.

On the termination of a trust, the trust property will be distributed by the trustee in accordance with the terms of the trust to the persons entitled thereto.

Legislative References:

- * *Trust Act, Cap 5.19*
- * *Financial Services Regulatory Commission Act, No. 22 of 2009*
- * *Financial Services (Implementation of Industry Standards) Regulations (FSR) , No. 51 of 2011*