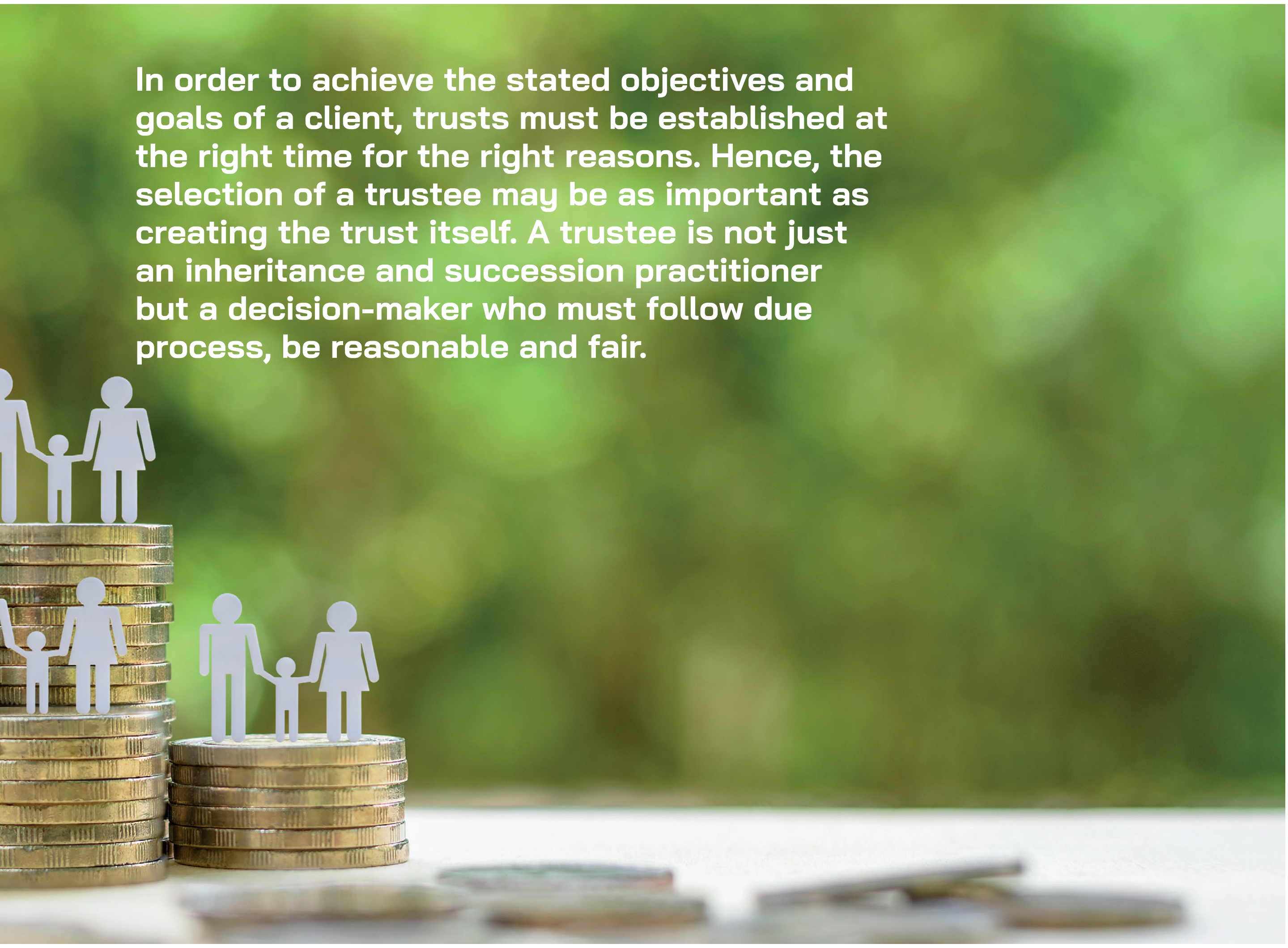
Selecting the right Fiduciary and Jurisdiction: Benefits and Considerations



In order to achieve the stated objectives and goals of a client, trusts must be established at the right time for the right reasons. Hence, the selection of a trustee may be as important as creating the trust itself. A trustee is not just an inheritance and succession practitioner but a decision-maker who must follow due process, be reasonable and fair.

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Choose trustees with care

Many high net worth individuals might, however, be unaware that not all trust service professionals are required to put their clients' interests first. Only financial professionals who are fiduciaries (as are all Asiaciti Trust's trust experts), are ethically and legally required to act in the best interests of their clients. Fiduciaries have a duty to carefully and judiciously consider all options before adopting strategies and jurisdictions that best meet the financial and life goals of their clients.

Since a financial professional is critical to building a robust framework for asset protection and preservation, it is essential to appoint an experienced trustee capable of exercising all the required fiduciary duties in a manner that is economical and free of bias.

Fiduciary duties will include:

- knowing the intention of the trust and adhering to its terms
- giving impartial advice
- exercising diligence and prudence
- maintaining proper accounts and accurate information
- exercising genuine discretion
- always acting in good faith and for the beneficiaries benefit

Selecting a trustee is a critical decision during the estate planning process. Options include bank-owned, private equity-owned, truly independent or individual trustees.

Issues to consider for each type of trustee are potential conflicts of interest, inflexible policies, a trustee being driven by other lines of business for short-term gains, lack of corporate governance, or the client being too close personally to allow for objectivity.

Benefits of an independent trustee

Truly independent trust companies offer the key benefits of traditional trustees, including structure and

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oversight, whilst mitigating many of their disadvantages. Independent companies also have greater flexibility and a higher practitioner to client ratio.

A truly independent trust company is not affiliated with any higher controlling financial unit that may influence decision-making. Further, such a trust company which is not backed by private equity, can act impartially with the long-term interests of all clients.

An independent trust company focuses on its core business and employs experienced trust and fiduciary professionals who are dedicated to building and sustaining a close relationship with clients and their family members, and with professional advisers, such as investment advisers, bankers, lawyers and accountants, whilst remaining independent from any influences that detract from the client's best interests.

As there are different trust types, only a trust expert who truly understands his client's specific purpose and asset locations can help leverage the full benefits of a trust as circumstances change and evolve.

Importance of stewardship

Stewardship is integral to successful businesses and enduring legacy. Because they understand their clients' financial objectives and life goals, professionals from independent trust companies are able to take a long-term perspective to offer bespoke - not "cookie cutter" - solutions.

An independent trust company provides continuity across generations, ensuring that the client's wealth is managed and administered as intended by experienced professionals committed to protecting and growing what they are entrusted with.

Is an independent trustee subject to the same regulations as a corporate trustee?

Yes. Independent trustees are regulated entities, and must operate according to the statutes that govern capital requirements and act to fulfil the interests of a trust.

Strict and rigorous legislations exist to safeguard against the abuse of financial systems - on a local as well as global level. These regulations include the Foreign Account Tax Compliance Act (FATCA), Common Reporting Standard (CRS), Anti-Money Laundering / Countering the Financing of Terrorism (AML/CFT). The trustee must understand the relevant legislation and ensure compliance by putting in place proper staff, policies and procedure.

Choosing a jurisdiction

Although sometimes there may be specific reasons that the law of a particular jurisdiction is most appropriate for creating a trust, in many cases the choice of law and jurisdiction comes down to a question of familiarity or personal preference.

Points to consider are:

- the trustee's capability in administering trusts written under any choice of law from the major trust jurisdictions worldwide
- the time zone in which the trustee operates, as this will affect communication
- whether the jurisdiction has an established reputation for trust business and a strong record of enforcing trust laws
- the political stability of the jurisdiction

Moving jurisdiction

This may become a consideration, or may even be required if the settlor or beneficiaries' circumstances change during the lifetime of the trust.

Due to its presence in multiple jurisdictions, both onshore and offshore, Asiaciti Trust is able to provide for the smooth migration of a trust.

Are there any professional bodies for trustees?

The Society of Trust & Estate Practitioners (STEP) is a global association for professionals specialising in family inheritance and succession planning. A STEP member must not only have specialist qualifications but also experience in inheritance and succession planning as well as the relevant knowledge and skills. At the same time, members are obliged to keep abreast of the latest legal, technical and regulatory developments.

The majority of practitioners at Asiaciti Trust, including the founding chairman of STEP Arabia, are STEP members. ■

About the writer

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