

**BEST PRACTICES IN TRUST AND COMPANY MANAGEMENT
[SUNBORN HOTEL] GIBRALTAR MONDAY 17 SEPTEMBER 2018**

MAIN SUBJECT	SUB-HEADINGS	SLIDE No.	EST. TIME
09:00 TO 10:30			
INTRODUCTION			
The need for continuous training	The potential cost of not training is vastly greater than the cost of training.		
	Reputational issues (yourself/your company/your jurisdiction/your industry)		3
	Panama/Paradise/Your papers!		3
	Litigation		3
	Losing licence and livelihood for not being "Fit and proper"		4
	"Four Eyes principle" (and not just any eyes).		3
	Avoiding disasters generally. Journalists in disguise!		3
COMPANIES			
Uses for Offshore Companies	Passive investment		2
	As above underlying a Trust/Foundation		3
	Trading companies, ring fencing risk, limited liability		3
	Never cut corners		2
Choice of jurisdiction of incorporation	Your own may not always be the most suitable		5
Constitution	Memorandum (restricted objects or complete freedom)		5
	Articles		6
Capital	Minimum/ maximum?		2
	NPV companies		2
	Bearer shares		2
	Issues in your jurisdiction		3
Directors	Role		3
	Appointment		3
	Removal		3
	Powers		3
	Duties		3
	Risks		4
	Written resolutions v minutes		3
	Meetings, notice, waive of notice, voting, minutes, resolutions		5
	Personal liability for company debts!		4
	Nominee Directors??		6
10:30 to 10:45 Coffee break		Sub total	90

10:45 TO 12:30			
Other Officers	Secretary		2
	Registered Agent etc.		1
	Effective transfer of share (<i>re Rose</i>)		3
Division of Power between Shareholders and Directors			
Shareholders' decision- making process	AGM, EGM, notice, waiving of notice, voting, resolutions, practical procedures for client entities that you control.		10
	Show of hands, poll		2
	Forms of proxy		2
	Minutes v resolutions		2
	Frequency of meetings		2
Taxation	Jurisdiction of Incorporation		4
	Where business is conducted		4
	Management and Control		4
	Some tax case examples		4
	Take specialist advice!		2
Regulation of company management business	Relationship with Regulators		4
	Registers of shareholders, directors, beneficial owners?		5
Termination of companies	Winding up/liquidation		5
	Striking off/reinstatement and the dangers		5
Companies underlying a trust	See above (<i>Bartlett v Barclays Bank</i>).		3
QUESTIONS			6
	Companies total		160
11:50 a.m.			
TRUSTS			
Background	A brief comparison between the two legal systems of Civil Law and Common Law		4
	Why and how they are used today		6
	Discretionary v Fixed		4
	Who can be a Settlor?		2
	Avoiding a Resulting Trust		2

Choice of Governing Law	Does it have to be that of the Trustees' jurisdiction?		8
	In cases of conflict of laws, when does the governing law of the trust take precedence over:		4
	Settlor's ability to create a trust		3
	Forced heirship laws of Settlor's home state		4
	When governing law does not take precedence?		3
		Sub total	40
12:30 to 13:30 LUNCH BREAK		morning	200
13:30 TO 15:00 Trusts continued			
Documentation	A Typical discretionary Trust Instrument – brief overview		5
	Declaration of Trust v bilateral instrument		3
	Letters of wishes, dated? confidential?		3
Protector	Role, duties, obligations, rights		7
	Negative or positive powers		4
Reserved Powers Trusts	Post <i>Rahman</i> , what are they and how extensive can the powers be?		5
	Can a trust still be a "sham"?		2
	What happens if it is?		2
	Negative or positive powers? Can be a double-edged sword.		4
	Taxation and other considerations		4
Investment delegation	How, to whom, types of arrangement		6
Investments	Risk appetite		3
	Appointing investment managers		3
	Continued supervision of them		2
	Appointments must be in good faith		2
	Appointment of investment manager who is part of the same group as the Trustee		3
	Asset allocation model		2
	Fiduciary duty		2
	Common law duty of care		2
	Trustee must comply with Trust Instrument		2
	And comply with applicable Statute law		2
	Real Estate		3
	Insurance aspects		4
	Chattels		4
	Investing in underlying company previously owned and still managed by Settlor		6

	The lessons to be drawn from Bartlett v Barclays Bank		2
	Using other “anti-Bartlett” Structures		4
15:00 to 15:15 Tea break			
		Sub total	100
15:15 to 17:00			
Accounting			
Discretionary Trust	Income account		7
	Capital Account		7
	Balance Sheet		3
Fixed Interest Trust	Income account (different from above)		3
Distributions			
	Who can benefit?		3
	Income or capital distributions?		3
	How to decide to make a distribution		4
Beneficiaries’ rights to information and keeping them informed generally			
	Pre and post <i>Schmidt v Rosewood 2003</i>		8
Conflicts of Interest	Trustee wearing “two hats”		5
Risk mitigation	Indemnities from Settlers		2
	Indemnities from Beneficiaries		2
	General exculpation clause		2
	Specific exculpation clause		2
	Not drawn too wide (<i>West v Lazard’s</i>)		2
	Trustee appointed director of underlying company		6
FOUNDATIONS	Time will be limited to explaining the essential differences between Foundations and Trusts. They provide just about the same purpose and outcome and therefore, the best practices are like those of Trusts		15
Documentation	A creature of Statute and not Equity		5
	The Charter and Regulations		6
Sham	Cannot exist		2
Control	The Council (may be just one person or corporation).		5
Founder	Any role he wishes		4

Accounting	Depending on "style" of Foundation, probably not unlike that of a Trust.		4
QUESTIONS - TRUSTS AND FOUNDATIONS	And closing comments		15
			115