PROTECTOR SERVICES

The role of a Protector in a trust structure is generally understood to be the oversight of certain areas of the trust, with the purpose of ensuring that the trustee properly exercises its administrative and dispositive powers in accordance with the terms of the trust instrument.

The principle is that the Protector is provided with powers under the terms of a trust instrument, which allows oversight and monitoring of certain aspects of the management of the trust. This may include control over how a trustee exercises its powers, and in some instances will affect management of the trust property by the trustees.

The Protector is usually appointed by the settlor of the trust and the Protector's role, powers and responsibilities are embodied in the terms of the trust deed. The powers given to a Protector may give rise to a fiduciary relationship, that is, whenever the Protector's involvement is required, the Protector will owe a duty of care to the persons for whose benefit the powers are to be exercised, normally the beneficiaries of the trust.

There is no legal requirement to appoint a Protector when creating a trust and the decision as to whether or not to have one is entirely for the settlor to make. However, a settlor may be somewhat hesitant to hand over complete control of their assets to a trustee about whom they may know very little, and will want to be confident that the trust will be administered and managed in accordance with the settlor's wishes, especially after their death. This is where the function of a Protector is ideally suited.

Ideally a Protector should be someone who understands the settlor's wishes for establishing the trust, someone who may be relied upon to oversee the actions of the trustee, and to ensure that the trustee executes the trust in accordance with the terms of the trust deed.

A Protector appointment is usually a long-term relationship, with careful thought required to be given when selecting the individual or entity for this role. It is imperative that the Protector understands the role, its obligations and responsibilities, is independent of other interested stakeholders, and has the necessary resources and expertise to properly fulfill their obligations.

With increasingly complicated trust structures, financial regulation and reporting requirements, it would be beneficial if the Protector were to have a financial or legal background that may assist in dealing with understanding the sometimes complex issues that have to be addressed.

Having this role fulfilled by R&H Trust & Corporate (operating as The R & H Trust Co. Ltd.) professionals adds strength, credibility and robustness to the Trust structure that will ensure that the Trust has the best possible opportunity to achieve its intended purposes. Benefits of the selection of a professional Protector include the following:

- independence
- professional skills
- expertise and experience in providing fiduciary Protector services
- succession
- personal relationship with the principals of the professional Protector entity

The extent of a Protector's oversight and power to control and direct will depend entirely on the terms of the trust deed. The powers may be such that the trustee requires Protector consent, sometimes referred to as a power of veto, before certain actions can be taken, or they may be more extensive, allowing the Protector to direct the trustee on certain matters.

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The following are examples of some of the powers commonly used that require consent or direction of the Protector:

- removal and addition of beneficiaries
- review of the trust accounts
- investment of the trust fund
- alteration or variation of the trust deed
- appointment of capital or distributions of income
- alteration of the trust period
- removal and appointment of trustees (usually a direct power)

As a professional Protector, R&H protector Limited will work with the settlor and their advisors to form an understanding of the rationale for the establishment of a trust structure and any other considerations or wishes the settlor may have.

Our Services

R&H Trust & Corporate is a licensed Cayman Islands trust company and is an affiliate of Rawlinson & Hunter LLP Cayman Islands.

The depth of our professional services and expertise sets us apart from the competition and our clients receive the benefit of our management and advisory expertise that is built on over 40 years of first-hand experience in trust services. Combining this with our independent and objective background, we are ideally placed to provide Protector services.

If you would like to find out more about the role of an Protector or our services, please email or call us, we would be pleased to answer any questions you may have.

The R & H Trust Co. Ltd.

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