

Private Trust & Limited Partnership – FAQ

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What is a private trust?

A private trust is a formal transfer of assets (the trust fund) by the initial owner of the assets (the settlor) to a trustee on the instructions that the trustee shall hold such assets for the benefits of others (beneficiaries). Most corporate trustees hold the trust fund through a holding company.

What is a limited partnership?

A limited partnership is an agreement between one or more general partners, who are solely responsible for managing the partnership, and one or more limited partners, who are investors in the partnership with no involvement in its management.

Why combining a private trust with a limited partnership?

The use of a limited partnership combined with a private trust (the "LP structure") addresses the conflict between the prudence that the trustees are required to exercise and the commercial pressure on them to hold in the trust fund active companies or investments that they cannot reasonably be expected to manage.

From the settlor's point of view, the LP structure intends to enable the settlor to retain control over the direction and management of active companies or investment, whilst enjoying the traditional benefits of a private trust.

From the trustee's point of view, the LP structure relieves the trustee from the duty to monitor and intervene in the management of the active companies

and investment imposed upon him by the "prudent man of business" rule, which may delay the decision making process in the management of the trust fund.

Who will be the general and limited partner?

A limited partnership will have two kinds of partners, namely:

- ▶ The general partner, who will be the settlor, whether alone or with others, through an offshore company. The settlor, as general partner, is required by statute to manage and control the direction of the partnership business and assets; and
- ▶ The limited partner, who will be the trustee through an offshore company. The trustee, as limited partner, must not interfere in the partnership business and is only liable, as between the partners, to the extent that the limited partner has contributed funds to the limited partnership.

In which circumstances is the LP structure useful?

Context in which the LP structure might be useful include:

- ▶ To enable entrepreneurs to make quick decisions without referring to the trustee;
- ▶ To enable the settlor to remain as director and in control of an active company if he wishes so;
- ▶ To hold in a private trust "high risk" assets, such as real estates, controlling shareholdings in private or trading companies, or speculative investments; and
- ▶ To hold shares in off-balance sheet transaction companies (SPVs), used for capital market deals.

Why not using reserved powers as an alternative?

The settlor could reserve unto himself various powers regarding the ongoing administration of assets placed into the private trust.

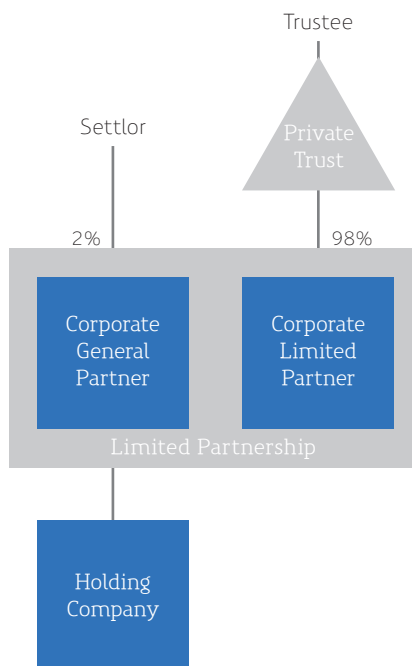
Nevertheless danger arises when the reserved powers become unnecessarily too wide.

In those circumstances, the settlor may be seen to fetter the discretionary powers of the trustee and lead to the allegations that the private trust is a sham.

Why not using exculpation clauses as an alternative?

An exculpation clause is a clause that relieves a trustee from liability for its negligent administration of a private trust.

As there are core obligations that trustees owe their beneficiaries, an exculpation clause cannot presumably exonerate a trustee for failing to fulfill those obligations.



Why LP structure rather than the Vista or Star trust?

LP structures gives a higher flexibility to choose the governing law of the private trust and partnership. It also gives the ability to transfer LP structure to another jurisdiction should the law of the present home becomes less favorable.

Furthermore, there is no constrain on the jurisdiction to incorporate the underlying holding company of the private trust.

Finally, traditional private trust and partnership have been around for a few hundred years and as a result are more established than the Vista or Star trust found in more liberal jurisdictions, respectively British Virgin Islands and Cayman Islands.


What are the benefits of using the LP structure?

Benefits of the LP structure include, amongst others:

- ▶ To remove the trustee from its monitoring and intervention obligations under general law while retaining the traditional benefits of a private trust; and
- ▶ To allow the trust fund to be managed as intended by the settlor while being less vulnerable to the allegation that the trust is a sham.

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