



Syllabus

STEP Advanced Certificate in Trusts: Law and Practice (International)



www.step.org/diploma

Trusts: Law and Practice

Introduction

This document contains the detailed syllabus for the STEP Advanced Certificate in Trusts: Law and Practice (International).

For more information about the course and how to apply, please visit the programme website: www.cltint.com/courses/step-advanced-certificate-in-trust-creation-law-practice



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Module 1

REVIEW OF THE TRUST CONCEPT

The purpose of this module is to:

- Define a common law trust and explore the identities of and roles played by the main actors
- Review the function and capacity of the settlor
- Explore the legal ownership in trust property and explain the trustee's role, powers and duties
- Explore the nature of the equitable ownership in trust property and identify the beneficiaries' rights
- Compare a trust with other legal concepts, namely:
 - A company
 - A contract
 - A testamentary instrument or will
 - A foundation.

By the end of this module you should be able to:

- Define a trust and describe a trust's essential characteristics
- Advise a prospective settlor who is contemplating creating a new trust upon matters such as the settlor's role, capacity, control and reserved powers
- Recognise the conflicts that can arise in relation to a trust between the law of the settlor's domicile and governing law of the trust
- Define a legal ownership interest and understand how such interest is transferred
- Understand the role, powers and duties of a trustee
- Understand the rights of the beneficiaries, in particular their *in personam* and *in rem* equitable rights
- Distinguish a trust from other legal concepts, in particular:
 - A company
 - A contract
 - A will, and
 - A foundation.

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Module 2

MARKETING TRUST SERVICES AND ACCEPTING NEW BUSINESS

The purpose of this module is to:

- Review some of the elements involved in marketing trust services including selling:
 - The jurisdiction
 - Your institution
 - The trust concept
- Identify some of the pitfalls of over-selling the service or making unjustifiable claims
- Set out the theoretical rules relating to trustees' remuneration
- Describe the ways in which trust services are rewarded and practical marketing strategies employed by those involved in the fee bargaining process
- Review recommended best practice procedures before and upon acceptance of new business, both in terms of accepting a new trust and upon taking on an existing trust.

By the end of this module you should be able to:

- Appreciate how trust companies can market trust services in a competitive environment
- Explain to a third party the virtues of the offshore jurisdiction from which you carry on business
- Explain the trust concept to a potential client who is unfamiliar with it
- Market the trust concept in a responsible manner (and avoid the pitfalls of over-selling)
- Understand some of the marketing strategies adopted in negotiations with prospective settlors or protectors when discussing fees
- Appreciate the aspects of a trustee's fiduciary duty that apply to the charging of fees – the so-called remuneration rule – and be able to draft or construe a charging clause

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Module 2

MARKETING TRUST SERVICES AND ACCEPTING NEW BUSINESS continued

By the end of this module you should: continued

- Know the proper procedures to follow before accepting the office of trustee in relation to:
 - Know your customer (KYC) requirements
 - The practice and procedures involved in the removal of an outgoing trustee
 - The appointment of an incoming trustee and vesting of trust property
 - The trustee's duty upon accepting a trust
- Comply with the appointment process, in relation to both
 - New trusts, and
 - The taking on of existing trusts.

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Module 3

THE TRUST INSTRUMENT – PART 1: PRELIMINARY PROVISIONS

The purpose of this module is to:

- Give an overview of the process of obtaining instructions from an international client to establish an offshore trust
- Review the use of precedents in the drafting process and analyse the pros and cons of using different forms of trust instrument
- Familiarise you with the framework of a typical trust instrument
- Review some of the standard preliminary provisions found in a typical trust instrument
- Illustrate the use of conventional supplementary documentation.

By the end of this module you should be able to:

- Appreciate some of the issues involved in obtaining instructions to establish an offshore trust for an onshore settlor (in particular, the importance of obtaining specialist onshore legal and tax advice)
- Use some drafting techniques and precedents in the drafting process
- Construe some of the standard preliminary provisions found in a typical offshore trust instrument, including
 - The formal parts
 - Recitals
 - Use of definitions
 - Trusts for sale
 - Power to accept additional trust property
- Use relevant supplementary documentation.

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Module 4

THE TRUST INSTRUMENT – PART 2: DISPOSITIVE PROVISIONS

The purpose of this module is to:

- Review some of the standard dispositive provisions found in different kinds of trust
- Describe trust industry practices and procedures when making distributions
- Illustrate the use of conventional supplementary documentation.

By the end of this module you should be able to:

- Construe some of the standard dispositive provisions found in a typical:
 - Discretionary trust
 - Settlor-directed trust, and
 - Life interest trust
- Understand how a trustee should exercise a dispositive power:
 - To pay or apply income
 - Of appointment of an absolute interest
 - Of appointment upon new trusts
 - Of re-settlement
- Appreciate the factors to consider when deciding whether to exercise a dispositive power
- Follow common distribution procedures
- Appreciate the express terms of a settlor-directed trust, the governing law relating thereto and how the administration of such a trust differs from a conventional discretionary trust
- Know how to manage a life interest trust.

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Module 5

THE TRUST INSTRUMENT - PART 3: ADMINISTRATIVE PROVISIONS

The purpose of this module is to:

- Review some of the standard administration provisions found in a typical long-form trust instrument
- Help you decide whether a particular provision should be included in a draft trust instrument
- Explain the meaning of common clauses in order that you may interpret them for the settlor, a beneficiary or a third party
- Construe some of the standard provisions and powers that you may wish to exercise during the administration of a trust.

By the end of this module you should be able to:

- Construe some of the standard provisions and powers that you may wish to exercise during the administration of a trust
- Understand the administrative powers contained in modern trust legislation, which apply even if not listed in the trust instrument
- Appreciate the standard administration provisions found in a typical long-form trust instrument
- Understand the prudent investor rule and its modifications
- Explain the *Bartlett* rule
- Explain when it is permissible to delegate and the clauses typically included to allow this
- Understand when it might, and might not, be appropriate to pay foreign taxes on behalf of the trust, the settlor or the beneficiaries
- Decide the particular provisions that should be included in a draft trust instrument, given what the trust is designed for and the particular risks faced
- Explain the meaning of common clauses in order that you may interpret them for the settlor, a beneficiary or third party
- Understand the limits on the indemnification and exoneration clauses that may be included in a trust instrument.

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Module 6

CHOICE OF LAW TO GOVERN THE TRUST

The purpose of this module is to:

- Introduce some common law conflict of laws principles used to ascertain which system of law should govern a particular transaction or occurrence
- Explain the significance of conflict of laws rules in relation to multi-jurisdictional offshore trust issues whereby a trust is governed by its proper law
- Analyse typical modern statutory conflict of laws rules enacted in offshore jurisdictions in relation to the governing law of a trust
- Familiarise you with the terms of a typical trust instrument that:
 - Makes an express choice of law and forum selection
 - Provides for a change of governing law
 - Contains a flee clause.

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Module 6

CHOICE OF LAW TO GOVERN THE TRUST continued

By the end of this module you should be able to:

- Appreciate some of the basic common law conflict of laws principles in order to be able to determine which system of law to apply to a multi-jurisdictional transaction, including broad knowledge of the meaning of:
 - Forum
 - Characterisation
 - Conflict of laws, and
 - Renvoi
- Understand the significance of conflict of laws rules in relation to issues affecting a multi-jurisdictional trust
- Appreciate that, according to common law principles, a trust is governed by its proper law and be able to establish the proper law of a trust
- Construe modern offshore statutory provision whereby the validity of a trust, its interpretation and administration, etc. are determined by the governing law
- Analyse simple conflict of laws problems affecting an offshore trust, to identify its governing law and appreciate the broad exceptions to the general rule whereby the governing law will not apply to certain transactions, issues and controversies
- Understand whether and in what circumstances the governing law of a trust may be changed to a new law
- Recognise the terms of a typical trust instrument that makes an express choice of law and forum selection, makes a provision for its change, and contains a flee clause.

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Module 7

THE ROLE AND STATUS OF A PROTECTOR

The purpose of this module is to:

- Introduce the role of the trustprotector
- Explore who may be appointed as protector
- Review some of the typical powers conferred upon the protector by the settlor in the trust instrument
- Ascertain the duties and obligations, if any, of the protector, as well as restrictions on the exercise of a protector's powers
- Analyse the position of a trustee who is obliged to administer the trust alongside a protector
- Summarise of the position of the beneficiaries in relation to the protector.

By the end of this module you should be able to:

- Appreciate why a settlor may wish to appoint a protector
- Identify the various types of protector and be able to advise upon which type is most suitable in given circumstances
- Explain the typical powers given to a protector, and be able to distinguish dispositive and administrative powers as well as positive and negative powers
- Appreciate the duties owed by a protector to comply with the terms of the trust, and to exercise their powers in a fiduciary manner and with reasonable care and skill
- Know how to manage a trust which confers extensive dispositive and/or administrative powers upon a protector
- Summarise the broad rights and remedies of the beneficiaries against the trust protector.

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Module 8

ESTATE PLANNING AND FORCED HEIRSHIP ISSUES

The purpose of this module is to:

- Review some of the basics of estate planning
- Explain the meaning of forced heirship and distinguish it from testamentary freedom
- Distinguish domestic laws of succession and international conflict of laws principles that determine which country's law of succession should apply
- Study interrelationship between forced heirship provisions of a foreign state and the validity of a trust created offshore when the settlor is a citizen of the foreign state.

By the end of this module you should be able to:

- Understand basic estate planning methods
- Understand forced heirship provisions and be able to distinguish the concept from freedom of testamentary disposition
- Appreciate the opportunity to market *inter vivos* offshore trusts to persons from civil law jurisdictions who wish to take advantage of estate planning
- Discuss not only how forced heirship provisions affect testamentary gifts on death, but also how claw back provisions affect the recipients of certain gifts made during the lifetime of the deceased (including the creation of an *inter vivos* trust)
- Understand the interrelationships between forced heirship provisions of a foreign state and the validity of a trust created offshore by a settlor from that foreign state. In particular, you should be able to advise upon:
 - The type of claim that the trustees may face in the forum of the foreign state
 - The type of claim that the trustees may face in the forum of the offshore jurisdiction
 - The terms of typical offshore statutory conflict of laws rules that confirm that all questions concerning the validity of the offshore trust and disposition of property thereto should be governed by the laws of the offshore jurisdiction.

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Module 9

ASSET PROTECTION TRUSTS

The purpose of this module is to:

- Introduce the concept of asset protection planning
- Establish the common law principle that a person's assets should be available to meet their debts
- Review the remedies available to creditors of the settlor and related asset-protection legislation
- Explain how a settlor's bankruptcy may affect trusts created earlier
- Explore how offshore trusts may protect family wealth from the effects of asset division upon divorce.

By the end of this module you should be able to:

- Appreciate the ethical tension between the principle that the entirety of an individual's assets ought to be available to meet their unpaid debts, and the asset protection objective of safeguarding and preserving assets transferred into trust
- Understand how a trust may protect assets from claims brought against the settlor by third parties
- Explain how the Statute of Elizabeth sought to protect the interests of creditors
- Advise upon how offshore asset protection legislation has repealed the Statute of Elizabeth in key areas
- Know how to structure an APT
- Discuss how bankruptcy legislation empowers a court-appointed trustee in bankruptcy to set aside transfers (including transfers to trustees) made by a bankrupt within 'X' years before being declared bankrupt
- Apply asset protection principles to a typical divorce scenario.

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Module 10

PURPOSE TRUSTS

The purpose of this module is to:

- Explain why trusts established for the benefit of a purpose rather than persons are invalid under generally accepted equitable principles
- Identify the common law exceptions to the general rule that prohibits purpose trusts
- Examine modern trust legislation that permit trusts to be created in favour of a purpose
- Review some of the practical uses of purpose trusts, including trusts designed to hold shares of an operating company, private trust company or other commercial purposes.

By the end of this module you should be able to:

- Appreciate the reasons why trusts that have purportedly been established for the benefit of purposes rather than persons are invalid under common law principles
- Identify the common law exceptions to the general rule prohibiting purpose trusts
- Understand the basic terms of the first generation of purpose trust legislation found, and be able to explain the model form found in the Trusts (Special Provisions) Act 1998 of Bermuda
- Understand the basic terms of the second generation of purpose trust legislation found in the Trusts (Special Provisions) Amendment Act 1998 of Bermuda
- Appreciate an alternative purpose and person trust regime found in the Special Trusts (Alternative Regime) law 1997 of the Cayman Islands
- Appreciate some of the practical uses of purpose trusts, including holding shares in operating companies and PTCs, and their use in commercial financing transactions and other business activities.

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Module 11

PRIVATE FOUNDATIONS

The purpose of this module is to:

- Review the development of foundations in offshore centres
- Define a private foundation and summarise its essential characteristics
- Review the procedure to establish a private foundation
- Review the governance of a foundation and explain the roles, rights and duties of those involved
- Discuss factors that determine whether a private foundation or a trust is the most suitable structure for a client.

By the end of this module you should be able to:

- Understand the origins and characteristics of a private foundation and be able to give a working definition
- Explain how to establish a foundation
- Discuss conflict of laws issues that could affect the validity of the endowment of assets to a foundation
- Recognise the constitutive documents of a foundation and construe their provisions
- Understand governance issues and how to manage a foundation and, in particular, appreciate the division of power between founder, foundation council and guardian/protector
- Understand the legal position of the beneficiaries and be familiar with typical dispositive provisions usually found in the regulations
- Give objective advice to a HNWI client upon the pros and cons of the foundation when compared with a trust.

Contact us

For full details of the programme visit:

www.cltint.com/courses/step-advanced-certificate-in-trust-creation-law-practice

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