

NEW ZEALAND: SEPARATION OF TRUSTEE FUNCTIONS

NZ trust law provides a point of difference from many other jurisdictions in that sections 49 and 50 of the Trustee Act 1956 permit family advisors, settlors and beneficiaries to influence the exercise of powers by the trustees through the use of a mechanism which separates powers between (1) custodian trustees, (2) managing trustees and (3) advisory trustees.

These are sometimes referred to as "remote control" provisions and, it is believed, were brought into NZ trust law to facilitate early settlement by British migrants to NZ who were reluctant to hand over absolute control of their NZ situs assets to colonial trustees.

Interestingly, these provisions can now be used for a similar purpose by international wealth planners in relation to assets that are not usually situated in NZ. They can be invaluable tools to cut across time zones and appease settlors unwilling to cede complete control to "formerly colonial" trustees.

For example, all things being equal, a NZ resident custodian trustee (perhaps a private or managed trust company) could hold registered title to an investment portfolio comprising equities and bonds listed on major international exchanges.

The client relationship management and day to day administration of the trust could be exercised by a managing trustee company based in Jersey. That managing trustee could delegate discretionary investment management over the investment portfolio to an investment firm in Singapore.

Meanwhile, a trusted family advisor resident in the jurisdiction in which the settlor resides, say Italy,

could hold office as advisory trustee. Interestingly, section 49 of the Trustee Act 1956 provides that where any advice is tendered or given by the advisory trustee, the managing trustee may follow the same and act thereon but, if it does do so, shall not be liable for anything done or omitted by reason of following that advice or direction.

Binding directions in relation to the assets held by the the NZ resident custodian trustee would, from time to time, be given to it by the Jersey resident managing trustee. All transactions would be implemented by the NZ resident custodian trustee on an "execution only" basis. However, the NZ resident custodian trustee would retain power to apply to the court for directions and retain certain core fiduciary duties. The NZ resident custodian trustee would not be liable for acting on properly given directions.

Crucially, as far as the outside world is concerned the "owner" of the investment portfolio is the NZ resident custodian trustee. This may provide a solution for the Jersey managing trust company which worked hard to develop the relationship with the Italy resident settlor only to be constrained by Italian tax policy.

Provided there are no NZ resident settlors and there is no NZ source income then the trust could still be regarded as an NZ "foreign" trust and retain its tax neutrality in NZ.

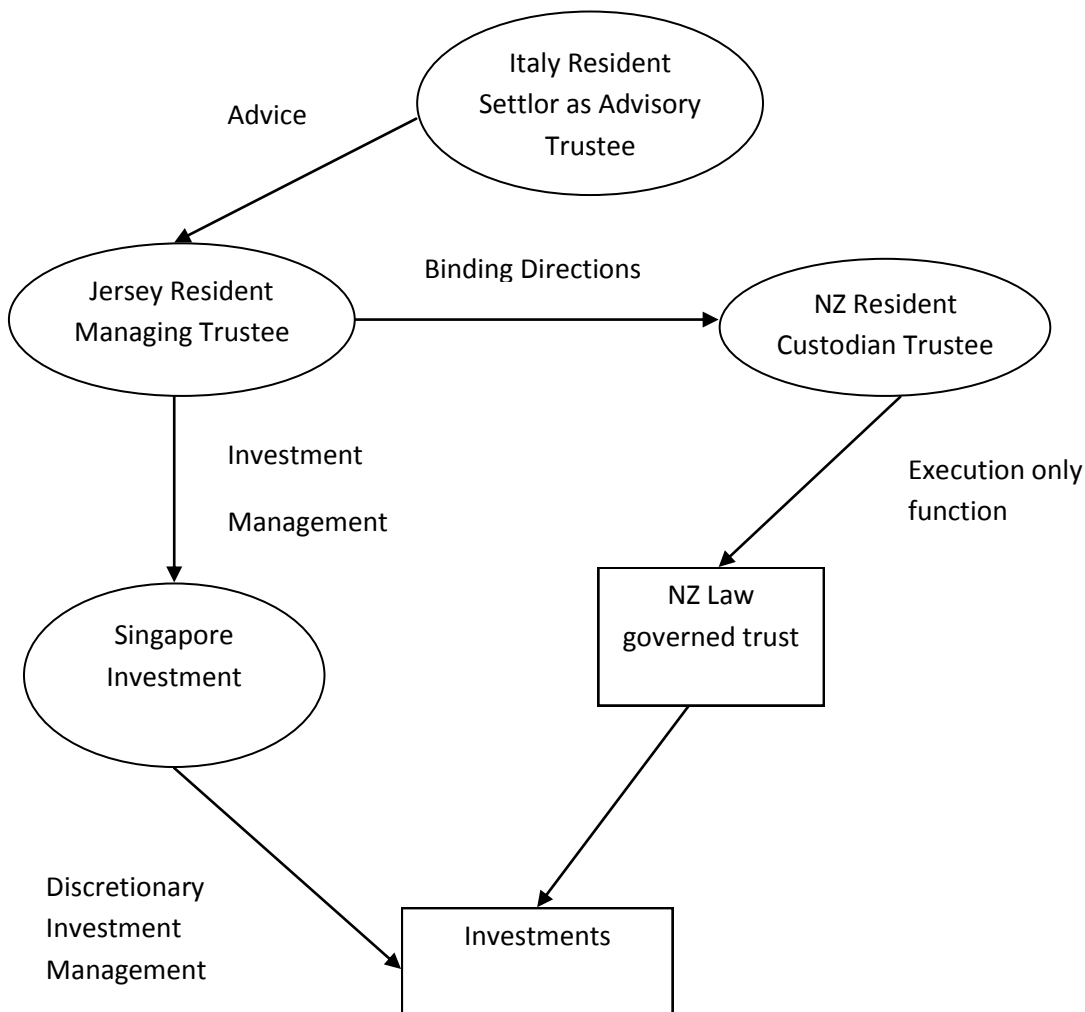
This is a relatively unique and attractive feature of NZ trust law the potential of which has not yet been fully realised by international wealth planners.

Taxation of trusts in NZ

Where the settlor of the trust is resident outside NZ the trust will be exempt from assessment in respect of NZ tax on income and capital gains arising outside of NZ. Accordingly, the trustee may make distributions out of a trust fund established in NZ without any withholding or deduction for NZ income or capital gains tax. There are no

inheritance, wealth or capital gains taxes levied in NZ nor is there any gift duty, stamp duty, value added tax or equivalent forms of indirect taxation charged on the creation or transfer of assets to a trust by a non-resident of NZ.

The diagram on the following page provides a basic illustration of how such a structure can work.



NOTES:

Client relationship management is carried out by Jersey managing trustee.

Advice is given by the Italian advisory trustee to Jersey managing trustee. In the normal course of events the Jersey managing trustee will not be liable if it acts on such advice.

Jersey managing trustee provides binding directions to the NZ custodian trustee which implements such directions.

The end result is that a “white list” resident administrative office is provided by the NZ trustee.

For further information, please contact Palladium.

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