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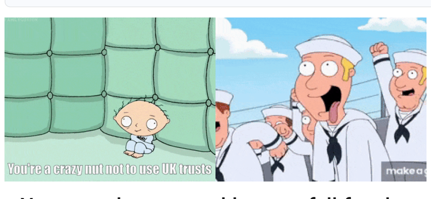

You must be a crazed loon to fall for the exorbitant offshore trust fees instead of UK trusts

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UK trusts can be not much more than a tuppence, while offshore trusts cost a bitcoin to set up, plus annual multi-Ethereum level maintenance costs.

Executive summary

UK trusts do not need to register the UBO, do not register with HMRC, do not need a UK person to form the trust, do not need a licensed trustee in the UK or elsewhere, and do not need to be witnessed or notarized in the UK. Do not need a UK office address, do not need a UK representative agent. Do not need UK Lexus or UK investments or assets, do not need a UK lawyer to draft the deed. So what the hell are you doing paying thousands for offshore trusts?

My recent article shows offshore corporate service providers charge up to 100 times the fees levied by UK corporate service providers.

I present the same comparison but for UK trusts vs Offshore trusts

Why choose England / Wales as jurisdiction law of Trust

- It is considered just and fair in the interpretation and enforcement of trusts.

What is a non-UK trust?

Also known as UK non-resident trust

- None of the trustees are resident in the UK for tax purposes, or
- At least one of the trustees are resident of the UK

o and the settlor of the trust was one of the following when the trust was set up or funds were added:

- not ***resident*** or **normally resident** in the UK

a person is ordinarily or normally resident if they are living in the UK lawfully and voluntarily, as part of the regular order of their life for the time being, whether for a long or short duration

- not ***domiciled*** or ***deemed domicile*** in the UK
- ***Domicile*** *refers to the country where someone intends to make their permanent home. There can only be one place of domicile.*
- ***Deemed domicile, is if either of two conditions is met:***

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Condition A (need not be living in the UK)

- *Born in the UK, and*

UK is their domicile of origin (where your father was domicile when you were born),

and

Be UK resident for 2017-2018, or later year.

Condition B

Has been a UK resident for at least 15 of the 20 tax years before the tax year.

What makes a trust subject to UK jurisdiction law

A trust shall be governed by the law chosen by the settlor*

** Hague Conference on Private International Law (HCCH): 1985 Convention on the Law Applicable to Trusts and on their Recognition:* ***Article 6***

- The jurisdiction choice must be expressed in the terms of the writing evidencing the trust**
- Where no applicable law has been chosen, a trust shall be governed by the law with which it is most closely connected.

*** HCCH 1985 Convention* ***Article 7***

UK trust law shall govern:***

Appointment, resignation, and removal of trustees

1. Distribution of the trust assets.
2. Right of trustees to delegate in the discharge of their duties.
3. Power of trustees to administer or to dispose of trust assets, or to acquire new assets.
4. Powers of investment of trustees.
5. Power to accumulate income of the trust.
6. Relationship between the trustees and the beneficiaries.
7. Termination of the trust.

**** HCCH 1985 Convention* ***Article 8***

No UK person is required to be involved in forming or maintaining a UK trust

- Non-UK residents can be trustees of UK trusts and need not be licensed.
- UK Trust Deed need not be formed by UK persons, UK lawyers, UK notaries, or UK corporate service providers.
- No UK representative agent is needed.
- UK Deed of Trust need not be witnessed in the UK

Must a UK trust be notarized?

Requirements for a Deed of Trust to be valid in the UK:

- Law of Property Act 1989 requires a deed:

use of appropriate wording; **and**

be signed by each party in the presence of attesting witnesses.

- No notarization is needed for a UK Deed of Trust.

English law on attesting witnesses

- Only one individual witness per signature is needed for a Deed of Trust.
- Where two or more people are executing a deed, the same witness may witness each signature, but each signature should be separately attested.
- A party to a deed cannot also act as a witness, i.e., they cannot be a beneficiary, settlor, or trustee, or protector.
- A relative is not prohibited from acting as a witness but it is practice that this be avoided.
- Minors are allowed to witness, but it is recommended they be at least 18 years old, or at least of sufficient maturity.
- The witness is not required to vouch for the identity of the signatory or read and comprehend the document.

Attesting the signature

- The witness watches the signatory sign and then *attests* the signature by signing an attestation clause confirming that the Deed was signed in their presence.
- The witness should print their name, address, and occupation in the attestation clause.
- The witness must be present when the executing party signs the deed. Signatures must be manual as facsimiles and e-signatures are not acceptable.

When does a trust in the UK not need to register

HMRC for tax: UK co-ownership express trusts do not register

- A **bare trust** is where assets are held in the name of a trust…
- … but the beneficiary has the right to all the capital and income at any time
- The trustee has no discretion other than to transfer the property directly to the intended beneficiary.
- Tax liability for **bare** trusts is incurred by the beneficiaries rather than the trust or settlor.
- A co-ownership express trust is a **bare trust and** thus does not register with HMRC for tax.

HMRC Trust Registration Service: Non-UK trusts generally do not register

- The Trust Registration Service (TRS) was introduced by the UK government in 2017 to prevent the misuse of trusts for illegal purposes.
- The TRS records the beneficial ownership of assets held in trust. So, if the trustee legally owns an asset, there is a separate record of who benefits from the asset.
- If registrable, trustees must provide information to the TRS regarding:

• Settlors, trustees, beneficiaries, protectors, **and**

• Assets held, such as money, buildings and land, company shares, partnerships, yachts, cars, jewelry, art, etc.

A non-UK trust should only register with the TRS if:

- it acquires, directly or indirectly, UK land and buildings, unless it's a co-ownership express trust **A or**
- is liable for taxes relating to UK assets or UK-sourced income (income, capital gains, inheritance, stamp duty reserve tax, stamp duty land tax), **or**
- at least one trustee is a UK resident and the trust enters a relationship **B** with UK relevant persons **C**

A Money Laundering and Terrorist Financing (Amendment) Regulation 2020 Part II Beneficial Ownership.

B Business, professional, or commercial relationship.

C Financial Institutions, Credit institutions, Auditors, Insolvency Practitioners, External Accountants, Tax Advisers, Legal Professionals, Trust or Company Service Providers, Estate Agents, High-Value Dealers, and Casinos.

Untaxed non-UK trusts do not register with HMRC for tax

Non-UK trusts do not register with HMRC for tax unless the trustee is liable to pay taxes on UK assets or UK-sourced income:

- income,
- capital gains
- inheritance
- stamp duty reserve tax
- stamp duty land tax

What is an express trust?

- An express trust is created deliberately by a settlor, in express terms, in the form of a written **Deed of Trust 1**, or **Declaration of Trust 2**
- Express terms are those specifically agreed between parties to a contract and must be unambiguous.
- Express trusts are contrasted by implied & and constructive trusts arising through Court power and do not result from the intent of a settlor.

1 Deed of Trust

An agreement where the settlor:

- appoints trustees.
- identifies the beneficiaries.
- conditions under which beneficiaries are eligible to benefit.
- identifies the assets to be held by the trust.
- conditions under which the trust may be revoked.
- a witness must attest to the signing of the deed. The settlor then transfers the legal title of the assets to the trust.

2 Declaration of Trust

- An informal written document signed by the trustee that the assets they already legally hold are for the beneficial interest of someone else.
- The trustee is thus often a nominee settlor.
- The settlor is not party to the documentation and their name need not be mentioned.

UK lawyer based in in Switzerland argues against my assertion that a non-UK settlor of a UK trust can choose England/Wales as the jurisdiction law that governs a UK co-ownership trust when:

- all trustees are not UK residents (deemed or domiciled or other)
- all beneficiaries are not UK residents;
- all settlors are non-UK residents;
- All protectors are not UK residents;
- no investing or assets in the UK;
- no liability for UK Income Tax, UK Capital Gains Tax, UK Inheritance Tax, UK Stamp Duty Land Tax, or UK Stamp Duty Reserve Tax;
- owns no UK assets, immobile or mobile, directly or indirectly;
- does not enter into a business relationship with UK-relevant persons
- signatures are not witnessed in UK;
- is not represented by any UK agent or incorporation service representative;
- trustees are not licensed anywhere;
- Assets are held in tenancy in common before being settled to the trust

This is my response

My assertion is based on Article 6 of the Hague Convention on the Law Applicable to Trusts and on their Recognition permits the settlor(s) of non-UK trusts, without any nexus to the UK, to choose the jurisdiction law that governs a trust.

> Article 6 of Hague Trust Convention: A trust shall be governed by the law chosen by the settlor. The choice must be express or be implied in the terms of the instrument creating or the writing evidencing the trust, interpreted, if necessary, in the light of the circumstances of the case.

i) A UK lawyer challenges my assertion that a settlor of a non-UK trust without any UK nexus can choose the jurisdiction law that governs a trust, by retorting the Hague Convention on the Law Applicable to Trusts and on their Recognition does **not** apply to co-ownership trusts because they do not fall within "trust" as defined in the Hague Convention's **Article 2 regarding the term "trust".**

ii). The lawyer also retorts that as far as English law is concerned **bare** and co-ownership trusts do not fall within subsection (**C**).

iii). The lawyer also retorts that as far as English law is concerned **bare** and co-ownership trusts do not fall within subsection (**C**).

iv) The lawyer finally retorts that **Tenancies in Common** and **co-ownership trusts** usually won't fall within subsection (**A**) either because the parties are the same.

> Article 2 Hague Trust Convention: For the purposes of this Convention, the term "trust" refers to the legal relationships created - *inter vivos* or on death - by a person, the settlor, when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose. A trust has the following characteristics A) the assets constitute a separate fund and are not a part of the trustee's own estate; B) title to the trust assets stands in the name of the trustee or in the name of another person on behalf of the trustee; C) the trustee has the power and the duty, in respect of which he is accountable, to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed upon him by law. The reservation by the settlor of certain rights and powers, and the fact that the trustee may himself have rights as a beneficiary, are not necessarily inconsistent with the existence of a trust.

If no UK nexus, does this invalidate non-UK trusts with Tenancy in Common assets or bare trusts?

Bullshit says HMRC.

- I assert that non-UK trusts do not need any nexus to the UK to be a valid trust governed by England / Wales law. This means no UK trustees, no UK beneficiaries, no UK assets, no UK income, no UK taxes, and no business relationships with UK-relevant persons can be valid non-UK trusts
- The UK-trained lawyer challenges my assertion "There are no cases in the English Chancery Division relating to non-UK assets and non-UK parties that have purported **English Tenancy in Common or bare trusts** and there's a good reason for that, there is zero nexus.
- See Article 13 of the Convention". I note the lawyer refers to Article 13 of the Convention but asserts bare trusts are not a "trust" according to Article 2 of the Convention.
- So why base the argument on the Hague Convention?

> Article 13 of the Hague Trust Convention: No State shall be bound to recognise a trust the significant elements of which, except for the choice of the applicable law, the place of administration and the habitual residence of the trustee, are more closely connected with States which do not have the institution of the trust or the category of trust involved.

- What if the jurisdiction where the trust is being used or where the trustees/beneficiaries/settlors reside does not have trust laws, e,g., being civil law, and is not a member of the Hague Convention?

Non-UK trust according to HMRC

A non-UK trust (aka UK non-resident trust) is a strange beast. HMRC defines a non-UK trust as :

- none of the trustees are resident in the UK for tax purposes, or
- only some of the trustees are resident in the UK and the settlor of the trust was one of the following: not resident or not normally resident when the trust was set up or funds were added not domiciled or deemed domicile in the UK when the trust was set up or funds were added

Non-UK trusts generally do not register with the Trust Register Service (TRS)

Non-UK trusts will need to register on the TRS only if:

1. The non-UK trust is an express trust and receives income from a source in the United Kingdom or has assets in the United Kingdom, on which it is liable to pay these taxes: Income Tax, Capital Gains Tax, Inheritance Tax, Stamp Duty Land Tax, or Stamp Duty Reserve Tax;
2. Any other non-UK trust but whose trustees:

- acquire an interest in land in the United Kingdom; **or**
- enter into a business relationship with any relevant UK persons** where at

- east one of those trustees is resident in the United Kingdom and the trust is not an EEA-registered trust.

**** Relevant UK Persons: UK** Financial Institutions, UK Credit Institutions, UK Auditors, UK Insolvency Practitioners, UK External Accountants, UK Tax Advisers, UK Legal Professionals, UK Trust or UK Company Service Providers, UK Estate Agents, UK High-Value Dealers, and UK Casinos.

Non-UK trusts generally do not register with HMRC for tax

Non-UK express bare trusts do not register with HMRC for tax unless it is liable for any of the following UK taxes:

- Taxes on UK assets or UK-sourced income: income, capital gains, inheritance, stamp duty reserve tax, stamp duty land tax.

Final Conclusion on non-UK Trusts

- HMRC says a UK trust can have non-resident trustees, settlors can be non-resident and beneficiaries can be non-residents. Knows as non-UK trusts
- UK co-ownership trusts are defined by HMRC where trustees and beneficiaries are the same persons owning jointly held assets. This is a bare trust and is tax-transparent.
- Non- UK express bare trusts do not register with HMRC tax unless it is liable for any of the following: taxes on UK assets or UK-sourced income, capital gains, inheritance, stamp duty reserve tax, and stamp duty land tax.
- Non-UK trusts do not register with the TRS (UBO register) unless the trust receives income from a source in the UK or has assets in the UK on which it is liable to pay any of these taxes: Income, Capital Gains, Inheritance, Stamp Duty Land, or Stamp Duty Reserve.
- Non-UK trusts also do not register with TRS unless the trustees acquire an interest in land in the UK; **or** enter into a business relationship with any relevant UK persons** where at least one of those trustees is resident in the United Kingdom and the trust is not an EEA-registered trust.

The UK Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020 ascertains that co-ownership trusts are where trustees and beneficiaries are the same persons.

On the fees charged in the UK Crown dependencies and British overseas territories to establish a trust

Below is my full doctoral thesis on the fees levied by offshore providers

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=========================END======================

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