
Overseas Trusts

International family law property settlements can involve overseas trusts. Typically, these trusts are established in overseas tax havens or in countries which permit the secrecy of bank holdings.

How Do They Work?

In some overseas countries, particularly tax havens such as the Jersey Islands and Canary Islands, trusts are established in a form where:

- someone lends a sum of money or property to a trust
- the trustee of the trust (effectively the administrator of the funds invested) is a corporation or a legal firm
- the trust will have specified beneficiaries to the income and sometimes capital of the trust.
- the trust repays the lender the amount borrowed over time

In other situations, particularly where banking regulations permit high levels of secrecy of bank account ownership, such as Switzerland, trusts or "foundations" can be established, across international borders. Complex documents establish the legal relationships between the person who originally deposits the funds, the organisation that invests the funds (usually a Swiss bank) and the organisation that administers the distribution of the funds (often a legal firm or corporation).

How Are Overseas Trusts Dealt With In Australian Family Law?

Australian courts are able to take into account not just property owned by the parties in Australia, but all of the property that they own around the world. Thus, the mere fact that monies are held in an overseas trust or bank account does not necessarily mean those funds are excluded from the property pool to be divided between a husband and wife in Australia.

An important question is whether the funds held in the trusts are "property". Whether funds held in an overseas trust are the property of one of the parties to the marriage will often depend on whether that party has effective control over that overseas trust. Sometimes the court determines that the funds held in an overseas trust are not "controlled" by a party to the marriage and therefore cannot be included in the property pool to be divided. On other occasions the court might only treat the regular flow of income or capital sums from the trust as property. The court may "lift the veil" (and look at what lies behind the trust including who exercises the power) of the complex rules of the trust to find that a party of the marriage controls the trust and that therefore the funds owned by the trust funds ought to be included in the property pool.

At Forte Family Lawyers we have experience in advising clients about the legal implications of overseas trusts. We also have experience in investigating and obtaining documents which are necessary to establish the existence and intricacies of individual overseas trusts. In recent years, our lawyers have dealt with overseas trusts in Switzerland, Liechtenstein, South Africa, the Jersey Islands, the Guernsey Islands and the Canary Islands.