

## Trust Laws of England and Wales

### Constitution and Legal System

The trust laws of England and Wales are based on common law principles, where courts follow principles decided in other cases, *stare decisis*, which may be superseded by legislation.

### Applicable Trust Laws

The trust laws of England and Wales are set-forth in the Trustee Act 1925, Trustee Investments Act 1961, Recognition of Trusts Act 1987, Trustee Act 2000, and the Charities Act 2011.

### Trust Period

The maximum trust period is 125 years for Trusts established after April 6, 2010.<sup>1</sup> For trusts established before April 6, 2010, the trust deed may stipulate a fixed period of up to 80 years or “lives in being plus 21 years.”<sup>2</sup>

### Reserved Powers

The Trustee Act of England and Wales does not provide for settlor reserved powers trusts, and it is likely that if too many powers are reserved under the trust instrument, the trust may be considered illusory.

### Disclosure of Information to the Beneficiaries.

English common law rules apply under England and Wales trust law to the disclosure of information to Beneficiaries. The leading case, *Schmidt v Rosewood*,<sup>3</sup> established that a beneficiaries right to information should not turn on whether the beneficiary has a proprietary interest in the trust, and should include discretionary beneficiaries as well as objects of powers of appointment depending on a number of factors, including the nature of the beneficiary’s interest in the trust, the reasons for the request, the effect of disclosure on the other beneficiaries, etc.

### Private Trust Companies

The provision of trust services is not a regulated activity under the laws of England and Wales, and therefore Private Trust Companies (PTCs), as they are known in the offshore jurisdictions, are not provided for under England and Wales law.

### Purpose Trusts

Trusts governed under England and Wales law must have beneficiaries to enforce the terms of the trust. Therefore, Purpose Trusts are not authorized, other than wholly charitable trusts and trusts of “imperfect obligation,” such as arrangements to maintain specific animals, for the saying of private mass or for the upkeep of graves.

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<sup>1</sup> The Perpetuities and Accumulations Act 2009

<sup>2</sup> The Perpetuities and Accumulations Act 1964

<sup>3</sup> Schmidt vs. Rosewood (2003) UKPC 26

### **Firewall Provisions**

The England and Wales Trustee Act does not contain express *firewall* provisions shielding trust assets from foreign law claims arising from a *personal relationship* (matrimonial or community property rights) with the settlor and claims arising from *heirship*, or barring the recognition or enforcement of foreign judgements recognizing such rights. *Firewall* provisions are, however, found in the laws of many offshore trust jurisdictions, including the Bahamas, the British Virgin Islands, and Cayman.

### **Asset Protection**

England and Wales law does not contain express asset protection legislation. The Fraudulent Conveyances Act,<sup>4</sup> referred to as the Statute of Elizabeth, was replaced by the Law of Property Act,<sup>5</sup> and subsequently replaced by the Insolvency Act.<sup>6</sup>

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<sup>4</sup> 13 Eliz 1 c. 5. (1571)

<sup>5</sup> The Law of Property Act, Part IX (1925)

<sup>6</sup> The Insolvency Act, Part XVI (1986)