RUBIK

WHAT WILL OCCUR TO MY ASSETS?
HAVE A LOOK THE DISCRETIONARY TRUST AND FOUNDATION

PHASE 1

How does a Discretionary Trust work?

In a discretionary trust the beneficiaries do not have a permanent entitlement or interest in the trust funds. The trustee has the possibility to decide which of the beneficiaries are to receive the capital and income of the trust and how much each beneficiary is to receive. The trustee only distributes to beneficiaries within a nominated class as set out in the terms of the trust deed.

The beneficiaries of a discretionary trust do not have an interest in the assets of the trust. They merely have a right to be considered or a mere expectancy until such time as the trustee exercises its discretion to make a distribution.

PHASE 2

FROM THE RUBIK AGREEMENT TEXT:

*"An individual resident in the "Country" is not considered to be a relevant person with regard to assets of associations of persons, asset structures, trusts or foundations, **if it is not possible to ascertain the beneficial ownership of such assets, e.g. due to the discretionary nature of the arrangement**."*

PHASE 3

FROM THE FOOTNOTES OF THE CLARIFICATION OF THE MEANING OF BENEFICIAL OWNER IN THE OECD MODEL TAX CONVENTION (JULY 2011)

Footnote to paragraph 12.1 - DIVIDENDS

1. For example, where the trustees of a discretionary trust do not distribute dividends earned during a given period, these trustees, acting in their capacity as such (or the trust, if recognized as a separate taxpayer), could constitute the beneficial owners of such income for the purposes of Article 10 notwithstanding that the relevant trust law might distinguish between legal and beneficial ownership.

Footnote to paragraph 9.1 - INTERESTS

1. For example, where the trustees of a discretionary trust do not distribute interest earned during a given period, these trustees, acting in their capacity as such (or the trust, if recognized as a separate taxpayer) could constitute the beneficial owners of such income for the purposes of Article 11 notwithstanding that the relevant trust law might distinguish between legal and beneficial ownership.

Footnote to paragraph 4 - ROYALTIES

1. For example, where the trustees of a discretionary trust do not distribute royalties earned during a given period, these trustees, acting in their capacity as such (or the trust, if recognized as a separate taxpayer) could constitute the beneficial owners of such income for the purposes of Article 12 notwithstanding that the relevant trust law might distinguish between legal and beneficial ownership.

CONLUSION

In the irrevocable trusts with wide discretionary powers, the trustee will have to be considered as the beneficial owner, because he, for the duration of the trust, has the use of the assets.

Please feel free to contact us with any questions or queries.

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