



## Protectors

### Fact Sheet

#### 1) What is a Protector?

A Protector is person appointed under the terms of a trust instrument and whose role is to oversee or control the actions of trustees in the manner described in the trust deed

#### 2) Who is a Protector meant to protect?

During the lifetime of the trust a protector should ensure the interests of the beneficiaries always takes priority when any decisions or actions are being contemplated

#### 3) Who can be appointed a Protector?

Protectors can be individuals, a committee of individuals or a legal entity, such as a “Bahamas Executive Entity”. Very often they are closely acquainted with the settlor, but increasingly Protectors are specialists or professionals with experience in the role

#### 4) What are typical powers granted to Protectors?

- ❖ Appointment and removal of trustees
- ❖ Adding and excluding beneficiaries
- ❖ Distributions of assets to beneficiaries
- ❖ Changing the law of the trust
- ❖ Terminating the trust

#### 5) Why would a Settlor appoint a professional Protector?

- ❖ To preserve tax neutrality
- ❖ To have the choice between a corporate protector and an individual protector
- ❖ To find someone able and willing to act also in a fiduciary capacity
- ❖ When it is important to have someone who is independent of all parties and therefore has no conflicts of interest
- ❖ To secure the services of someone who brings knowledge and experience of trust industry matters
- ❖ The place of residence of protector may be important

#### 6) What kind of Protector Services can IPG provide?

- ❖ Acting in an individual, corporate or protector committee capacity
- ❖ Providing or managing a “Bahamas Executive Entity” to perform the role
- ❖ Safekeeping of duplicate trust records
- ❖ Overseeing the investment review committee
- ❖ Providing consent or otherwise to actions proposed by trustees
- ❖ Attending settlor / trustee meetings
- ❖ Accepting an appointment as a successor protector
- ❖ Managing a company or foundation that acts act as protector
- ❖ Acting as an authorized applicant (enforcer) to purpose trusts

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- ❖ Reviewing financial statements and other documents as provided by trustees
- ❖ Periodic reviewing of trust matters and reporting to settlor/ beneficiaries thereon
- ❖ Providing advice to other Protectors

7) Why might a Protector decide to withhold his consent to an action proposed by the trustees?

- ❖ The action might conflict with the settlor's letter of wishes and the Protector considers that the wishes should be followed
- ❖ The Protector may have lost faith in the trustees' ability to act properly and in the best interests of the beneficiaries
- ❖ The Protector might find himself named in a class of beneficiaries and feel that he cannot act with such a conflict of interest
- ❖ The Protector may have information of his own which makes granting consent unwise

8) What should a Protector do when he believes the trustees have acted without obtaining his consent?

- ❖ He must inform the trustees that they have acted improperly and satisfy himself that the incident will not be repeated. If he would have granted his consent to their action, then he need take it no further
- ❖ If, however, the interests of one or more beneficiaries have been impaired he must ensure that the trustees undo their deed or recompense the trust themselves
- ❖ If the Protector is not satisfied that the position has been completely rectified, he should seek legal advice and explore legal remedies
- ❖ If the settlor is still alive, he should seek his views
- ❖ If he has powers under the terms of the trust, the Protector can remove the trustees and appoint new ones
- ❖ If he does not have such powers, he can consider seeking directions of the court to have the trustees replaced

9) Is it better if the Protector is an individual or a legal entity?

Where an individual is contemplated, care should be taken to nominate and complete all the necessary documentation to appoint a successor protector. A legal entity is permanent by nature and such matters need not be attended to. Nominating an individual is the common choice, but using a legal entity, such as a "Bahamas Executive Entity" can have significant advantages. *(Further information is available from IPG)*

10) What happens when a Protector becomes unfit to act or dies?

It is normal for the trust deed to provide for such eventualities and there would be provisions for a protector to be replaced

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