

# STEP Foundation Certificate on Trusts for Civil Law Practitioners

## Syllabus

### Module 1: Introduction to International Financial Centres

This module covers:

- an overview of the main features of the offshore financial industry
- why a global high net worth individual may wish to use an offshore asset-holding structure (such as a trust or managed company)
- the financial services provided offshore, including banking, professional trust and corporate services, insurance services and asset management
- some of the factors that influence a client's choice of jurisdiction

By the end of this module you should

- have a broad overview of the main features of the offshore financial industry
- be able to describe some of the services provided offshore
- appreciate why high net worth individuals may wish to hold assets in an offshore structure (such as a trust and/or managed company)
- be able to use this general knowledge as a foundation upon which to build a more detailed understanding of financial services provided offshore as the course progresses.

### Module 2: Evolution of Equity and the Law of Trusts

This module covers:

- how common law and equitable principles developed
- common law and civil law (continental) jurisdictions and how the two systems of law evolved
- a definition of the relationship of the parties to a trust
- the general principles applicable to the exercise of a trustee's decision-making powers
- how trustees should comply with their fiduciary obligations and meet appropriate standards of care.

By the end of this module you should

- understand the relationship between common law and equity
- be able to distinguish between legal and equitable ownership rights

- appreciate how the trust concept has been allowed to develop
- be able to distinguish between common law (trust) and civil law (non-trust) jurisdictions
- be able to define the relationship between the parties to a trust.
- understand what is meant by a fiduciary relationship
- know how to comply with a trustee's fiduciary duties.

### Module 3: The Fundamentals of a Valid Trust

This module covers:

- the requirements for creating a valid trust
- an explanation as to how a trust must be properly constituted
- the settlor's capacity – both personal and proprietary
- the formal requirements to transfer the property into trust
- the 'three certainties'
- the common law rules against perpetuities and how these law rules have been modified by statutory offshore provision
- an introduction to the topic of sham trusts.

By the end of this module you should know how to create a valid trust by:

- applying the 'three certainties'
  - of intention
  - of subject matter
  - of objects
- constituting the trust by understanding how to transfer trust assets to trustees properly
- ensuring that the trust is established with essential certainty and that it is not liable to be set aside as a formal sham
- ensuring that the settlor has capacity to create the trust under its governing law
- being familiar with the general concept of perpetuities (though not in any detail).

## Module 4: Types of Trust

This module covers:

- an examination of the basic anatomy of a typical trust instrument
- a detailed review of certain types of express trusts and equitable interests
  - life interests
  - interests in remainder
  - vested interests
  - contingent interests
  - discretionary trusts
  - protective trusts
- the effect of a letter of wishes
- the role of the protector.

By the end of this module you should

- know how to navigate your way around a standard trust instrument
- understand and be able to explain to a third party the features of
  - fixed interests such as a life interest, a determinable life interest, a contingent interest
  - discretionary trusts
  - protective trusts.

## Module 5: Modern uses of International Trusts

This module covers:

- the main advantages of offshore trusts, namely in the fields of
  - tax planning
  - risk management and asset protection
  - estate planning.

By the end of this module you should

- understand how tax is levied on individuals and companies that are domiciled or deemed resident for tax purposes in an onshore jurisdiction
- understand how income and capital taxes are levied upon trusts, and how tax advantages accrue to trusts whose trustees reside and carry on trust business offshore
- appreciate how and in what circumstances a trust structure can offer protection to assets against
  - claims made by creditors of a beneficiary
  - claims made by creditors of the settlor
- be able to explain how an inter vivos trust can be used for estate planning purposes to plan who gets what upon an individual's death
- appreciate that certain countries impose 'forced heirship rules', and you should start to understand how this could affect a trust created by a settlor from a forced heirship state.

## Module 6: Basic Trust Administration

This module covers:

- the information that a service provider should request from a prospective trust client
- the files that trust companies usually maintain
- how a trust must be administered with integrity to avoid it being set aside as an administrative (or substantive) sham
- a review the decision-making process of trustees, in particular in relation to the exercise of their
  - powers of investment, and
  - dispositive powers
- how trustees of a discretionary trust should make and record their decisions.

By the end of the module you should be able to

- comply with 'know your client' due diligence obligations
  - upon accepting new trust business, and
  - upon taking on existing business, and
  - throughout the business relationship
- appreciate the need for, and be able to create and maintain, trust files to record and retain information in a logical, clear and efficient manner
- understand how a trust may become at risk of being set aside as a sham and be able to avoid that situation occurring
- act properly and comply with a trustee's fiduciary duties in the light of a letter of wishes generally and when such letter
  - is inconsistent with the trust instrument, and/or
  - is unreasonable
- act properly and comply with a trustee's fiduciary duties in the light of the trust instrument appointing a protector, both generally and when the protector withholds his consent to a proposed course of action
- know what is expected of a trustee when exercising his powers and what is involved in the decision-making process, in particular in relation to
  - investment decisions, and reviews, and
  - distributions of trust income and/or capital.

## Module 7: The Role and Status of the International Asset Holding Company

This module covers:

- an introduction to the concept of the privately owned limited liability company
- an exploration of the features of a private limited company
- how incorporation of a company in an offshore jurisdiction may carry certain advantages to a private client
- how companies are
  - formed (born)
  - constituted (live)
  - dissolved (die).

By the end of this module you should be able to

- understand the features of a limited liability company and be able to put the limited company in context by comparing it with other business media
- appreciate how and why ownership of a company is distinct from its control
- describe the advantages of offshore incorporation and management in terms of
  - tax avoidance
  - confidentiality
  - regulation
  - asset protection
- incorporate a company
- advise upon funding or capitalising a company
- find your way around the constitution of a company and know how to determine any particular point concerning internal procedures
- know how and in what circumstances a company may be dissolved.

## Module 8: Company Shareholders, Directors and Other Officers

This module covers:

- how the theories and principles that have governed the development of traditional company structures onshore have been exported to offshore financial centres, and there modified
- separation of power between shareholders and directors
- a working knowledge of
  - the rights and powers of shareholders
  - the powers and duties of directors
- some of the administration issues that may confront an offshore corporate administrator in practice.

By the end of this module you should be able to

- understand how and why basic company law principles developed in the onshore industrial economies, particularly

- the separation of power between shareholder and director
- the capital maintenance doctrine
- appreciate the features and rights of shareholders, including
  - how they may join the company
  - features of different types of share
  - the broad rights of shareholders
  - how they exercise their voting rights
- appreciate the rights and duties of directors, including
  - how they are appointed, and may be removed
  - their powers
  - their duties to the company.

## Module 9: International Corporate Services

This module covers:

- a review of some of the services offered by corporate service providers in offshore financial centres
- an explanation of some of the features of company management and practical issues faced by corporate service providers in the offshore environment
- the risks involved in providing directors for offshore companies and some helpful solutions.

By the end of this module you should:

- be able to give an overview of the corporate services offered in offshore financial centres, including
  - incorporation and registration
  - provision of registered office and registered agent
  - maintenance of corporate records and provision of company secretary
  - provision of nominee shareholders
  - provision of directors appreciate why it is important to ‘know your client’ in order to avoid constructive trustee liability and possibly criminal liability as in *Agip (Africa) Ltd v Jackson* [1992] 4 All ER 385
- understand the role of a nominee shareholder, his duties and the fact that he is generally a mere agent of the beneficial owner governed by the terms of a Nominee Declaration
- understand the role of a director and the fact that the nomenclature is misleading in so far as a nominee director owes all the same duties to the company as an executive director
- be aware of the risks involved in providing directors for managed companies, and of the problems that can be created by excessive beneficial owner control and appreciate ways to handle the problem and reduce risk
- be familiar with a standard Company Management Agreement.