

Qualification Discovery Pack

International Finance and Administration Level 5



Overview

This discovery pack has been created to give you an in-depth understanding of what is involved in studying the International Finance and Administration (IFA) Level 5 qualification suite.

Introduction

The introduction to IFA Level 5 tells you, at a glance, what the qualification suite involves. It provides key details such as entry requirements, study mode, content and benefits of the qualifications.

The short syllabus

The short syllabus provides more details about the qualifications: key features and qualification structure. There is also an overview of the core modules and the three optional specialisms.

Study text sample

We have included a sample from the core modules study text to give you a taster of the subject matter and format of the material that we provide to support your learning.

Sample exam paper

An exam paper adapted from the November 2018 session is included in this pack. This will give you an accurate example of what could be asked in the Trust and Company Administration (core module) exam and how it is structured.

Tuition options

We recommend our students take tuition and we have a number of partners who provide tuition in person and through distance learning. We provide a list of our partners.

How to register

The final section of this pack explains how you can register for the IFA Level 5 qualifications.

Introduction



Introduction to International Finance and Administration (IFA) Level 5

Advance your understanding and career prospects

Experience/qualifications: A recognised finance qualification is required. See details online.

Study mode: Tuition from one of our partners is highly recommended, but you can also self-study using the text

Support: We provide textbooks and support resources such as examiner reports and past papers. Students are also very welcome at our events

Dates: Register anytime. Exams are in June and November

Web: cgi.org.uk/discoverifa5

Expand your portfolio of skills and knowledge in international financial services provision to enhance your career or prepare you for entry to the Chartered Governance Qualifying Programme*.

Building on our IFA Level 4 suite, these qualifications provide a more detailed understanding of international finance, with a flexible structure that can be tailored to suit the needs of different sectors or areas of work, including fund administration, business management and financial reporting and governance. Ideal for those who already work in a supervisory or junior management finance role, and have an introductory professional qualification (such as the IFA Level 4 Certificate or equivalent), an IFA Level 5 qualification can give you a competitive advantage in jurisdictions where regulator-recognised qualifications are a requirement.

Content

The compulsory core modules take 150 hours study and each optional specialism takes 150 hours. This means there are three possible qualifications available which can be awarded depending on your combination of modules from either:

- Trust and Company Administration (core modules, 1 exam)
- Fund Administration (optional specialism, 1 exam)
- Business Management in Practice (optional specialism, 1 exam)
- Financial Reporting and Governance (optional specialism, 1 exam)

Benefits

You will gain:

- advanced understanding of international finance and trust and company administration practices;
- clear insight into how to apply codes of practice and guidance to meet regulator requirements;
- in-depth knowledge of specialist topics;
- a regulator-approved qualification to enhance your career prospects; and
- *eligibility for entry onto the Chartered Governance Qualifying Programme through completion of all four exams.

The short syllabus



Key features

The International Finance and Administration suite of qualifications:

- are aimed at individuals working in the offshore financial environment who would like to build on their current knowledge and skills. It is ideal for those who are undertaking either a supervisory or junior management role and looking to progress their management career
- are Level 5 qualifications – which means they are set at second year undergraduate level
- comprise the following titles:
 - Level 5 Advanced Certificate in International Finance and Administration
 - Level 5 Subsidiary Diploma in International Finance and Administration
 - Level 5 Diploma in International Finance and Administration
- contain core and specialist modules
- present knowledge in a work-related context
- The Chartered Governance Institute UK & Ireland will set and mark all assessments
- are assessed twice a year – in June and November
- are graded at Pass (P), Merit (M) and Distinction (D) – students whose level of achievement is below Pass will be classified as Fail A, Fail B, Fail C or Fail D, depending on the number of marks achieved.

Prior knowledge, skills and understanding

These qualifications are open to those who have successfully completed the Level 4 Certificate in International Finance and Administration (or the former COFA qualification), or have a university degree or Higher National Diploma (HND) or hold a Society of Trust and Estate Practitioners (STEP) Diploma in International Trust Management.

Assessment

All modules within these qualifications are externally assessed via closed-book examination. The examinations are set and marked by us. See the *Qualification structure* section for further information.

The examinations will provide independent assessed evidence of learning. They will also enable students to demonstrate the range of transferable skills they have developed throughout their programme of study by requiring them to apply their knowledge in unfamiliar contexts.

The modules in this syllabus are assessed via **four** closed-book examinations.

- Paper 1: Trust and Company Administration – this paper assesses the core modules.
- Paper 2: Financial Reporting and Governance – this paper assesses the specialist Group A modules.
- Paper 3: Fund Administration – this paper assesses the specialist Group B modules
- Paper 4: Business Management in Practice – this paper assesses the specialist Group C modules.

The pass mark is 50% for each of the examinations.

Qualification structure

Level 5 Advanced Certificate in International Finance and Administration

This qualification comprises six core modules and four specialist modules and students must successfully complete all 10 modules to receive the qualification.

Advanced Certificate – Combination 1

This qualification is assessed via **two** closed-book examinations:

- Paper 1: Trust and Company Administration – 3-hour examination covering Modules 1–6
- Paper 2: Financial Reporting and Governance – 3-hour examination covering Modules 7–10.

Students must pass both papers to be awarded the qualification. The pass mark is 50% for each examination.

Module number	Core modules – Trust and Company Administration	Total hours study time	Description
1	Introducing Trusts	35	This module introduces the concept of a trust and trust legislation. It then explores how to create a valid trust, the parties involved in a trust and their rights throughout the lifetime of the trust. Finally, it covers the ways in which a trust arrangement may be terminated.
2	Directors, Companies and Company Officers	35	This module introduces company structures and the company constitutions that govern them. It then goes on to examine the roles of the director and company officers and their roles, duties, powers and liabilities.
3	Trust and Company Administration	25	<p>This module explores the policies and procedures that are used within the offshore finance sector for accepting new business. It incorporates due diligence measures, risk management processes and other issues that need to be considered when entering into new business relationships.</p> <p>The module then covers some of the basic tasks involved in trust and company administration, how transactions should be monitored, and how administrators should manage trusts and companies under their management. It examines the difficulties administrators may encounter when managing trusts and companies and looks at the statutory records that company administrators are required to maintain</p>
4	Reviews, Record Keeping	25	This module examines why reviews are undertaken by offshore service providers and the

	and Decision Making		different types of reviews required to meet industry standards and legal requirements. The module then explores how offshore service providers can meet trust and company record keeping requirements, how accounting records and annual reports are kept and how accounts are prepared.
5	Regulation of Offshore Service Providers	20	<p>This module explores how offshore trust and company service providers are regulated and how to apply codes of practice and guidance to meet regulatory requirements. It then examines the role and power of financial services regulators and outlines the criteria a regulator may use when granting authorisation to a trust or company service provider. It then looks at how offshore services providers can operate effectively under ongoing supervision.</p> <p>The module also covers the importance of preventing money laundering activities in offshore finance centres and the guidance available to service providers.</p>
6	Taxation and Tax Planning	10	<p>This module covers the fundamental concepts of tax planning and the impact these concepts have upon clients of offshore centres. It explores different types of taxes, the basis of taxation in offshore jurisdictions and measures governments have recently enacted to combat tax evasion and avoidance.</p> <p>The module then examines how trusts and companies are taxed, double taxation treaties, withholding tax and concludes with information on tax information exchange agreements.</p>
Module number	Group A specialist modules – Financial Reporting and Governance	Total hours study time	
7	The Form and Content of Financial Statements	80	<p>This module covers the provisions of the UK Companies Act 2006 that relate to financial reporting and the accounting frameworks within which UK companies must operate. It also examines the use of different accounting frameworks in offshore centres, and outlines the IASB's draft conceptual framework.</p> <p>The module then looks at the reason for, and content of, each of the major statements in a full set of financial statements and provides an insight into how revenue or turnover is calculated, the main types of company expenses and different types of asset and liability.</p>

8	Understanding and Analysing Financial Statements	40	<p>This module looks at different types of investment that a parent company may have in other businesses and provides a broad understanding of how each is treated for accounting purposes. This includes how parent companies prepare groups accounts, the main rules around their preparation and the treatment of business combinations.</p> <p>The module then explores the use of financial ratio analyses and covers the key ratios used for measuring liquidity, profitability, efficiency and gearing. It concludes by examining how a single performance measure looked at in isolation cannot tell the whole story about the financial performance of a company.</p>
9	Trust Accounts and Other Forms of Entity	15	<p>This module covers trust income and capital and the significance of the income and capital split in the context of life interest trusts. It will then go on to examine the main financial statements and the components they are comprised of.</p> <p>The module also explores different types of company that may be formed in the UK and offshore jurisdictions and how they can be financed.</p>
10	Corporate Governance	15	<p>This module covers the key issue of corporate governance and why it is necessary for companies to implement good governance practices to ensure their sustainability. The module examines cases of governance failure during the financial crisis of 2007-8 and the resulting developments in legislation and regulation designed to prevent such failures in the future.</p> <p>The module then explores the duties of directors according to the UK Companies Act 2006 and the development of additional corporate governance codes for listed companies and financial institutions. This will cover board conduct and composition, board remuneration, the role of the audit and other board committees and internal controls.</p> <p>The module concludes with a look at key issues surrounding the controversial issue of directors' remuneration and how it is regulated in the UK and finally, examines the issue of wider corporate responsibility in the context of narrative reporting to support a company's audited financial statements.</p>

Advanced Certificate – Combination 2

This qualification is assessed via **two** closed-book examinations:

- Paper 1: Trust and Company Administration – 3-hour examination covering Modules 1–6
- Paper 3: Fund Administration – 3-hour examination covering Modules 11–14.

Students must pass both papers to be awarded the qualification. The pass mark is 50% for each examination.

Module number	Core modules – Trust and Company Administration	Total hours study time	Description
1 - 6	Core modules	150	See above
Module number	Group B specialist modules – Fund Administration	Total hours study time	Description
11	Understanding the Investment Environment	20	<p>This module explores the world of investment, the drivers behind it and the objectives people seek to achieve through investment. It then goes on to consider how investment aims can impact on decision making and risk versus reward.</p> <p>The module also examines how portfolios are constructed, the risk considerations during this process. Finally, the module covers how modern portfolio theory has evolved to enable the use of a mathematical basis for designing a balanced portfolio that is appropriate for the aims of the investor.</p>
12	Fund Administration and Regulation	70	<p>This modules examines how an investment fund comes together from the spark of an idea through to expertise and structuring. In considering this, the module explores the roles of the key principals to any fund, the fund manager, the fund administrator and the fund's governing body (such as its board of directors). It then breaks down the key components of the fund administrator's role. Finally, the module considers the over-arching concept of governance and its growing place in fund administration practice.</p>
13	Fund Products and Services	30	<p>This module breaks down individual asset classes and the nuances each brings with it. In exploring those nuances, the module examines key components as well as challenges and opportunities to assist fund administrators not only to perform the practicalities of their role, but also to consider the value-added role of the</p>

			fund administrator when administering different types of fund.
14	Fund Sector Regulation	30	<p>This module examines the legislative framework in place in relation to funds, the management and administration of them within the European Union and the effect of being outside of the EU for the marketing of funds into Europe. It then covers the role of international regulatory bodies in relation to management and oversight of financial crime, securities regulation and stability of global financial markets and the interaction between different regulators.</p> <p>Finally, the module explores the different regulatory and legislative forces that impact upon the operation of funds, the parties that provide services to them, and the jurisdictions in which they are based.</p>

Advanced Certificate – Combination 3

This qualification is assessed via **two** closed-book examinations:

- Paper 1: Trust and Company Administration – 3-hour examination covering Modules 1–6
- Paper 4: Business Management in Practice – 3-hour examination covering Modules 15–18.

Students must pass both papers to be awarded the qualification. The pass mark is 50% for each examination.

Module number	Core modules – Trust and Company Administration	Total hours study time	Description
1 - 6	Core modules	150	See above
Module number	Group C specialist modules – Business Management in Practice	Total hours study time	Description
15	Management and Leadership	40	<p>This module introduces the fundamentals of effective management and leadership in business. It explores the differences between leadership and management and examines the different theories, styles and techniques managers and leaders apply to achieve organisational objectives.</p> <p>The module also looks at how leaders and managers can motivate groups and manage conflict to ensure effective group performance.</p>

16	Business Structures and Functions	40	This module explores how business functions can be organised into effective structures and how work can be efficiently organised, resourced and supported to help organisations achieve business objectives.
17	Business Strategy	30	This module explores how organisations can analyse the business environment in which they operate to assist in the development of business strategy. The module then examines how development, management and realisation of effective strategies can help businesses achieve their organisational objectives, improve business performance, develop new market opportunities and remain appealing to customers.
18	Innovation, Entrepreneurship and Change	40	This module explores how organisations create innovative and entrepreneurial strategies to implement change and grow their business. It looks at how organisations manage the change process and implement effective methods to overcome resistance to change within their organisations. The module then examines the drivers for organisations to develop into multinational enterprises and the challenges involved in managing their operations on a global scale.

Level 5 Diploma in International Finance and Administration

This qualification comprises eight core modules and twelve specialist modules and students must successfully complete all 18 modules to receive the qualification. It is assessed via **four** closed-book examinations:

- Paper 1: Trust and Company Administration – 3-hour examination covering Modules 1–6
- Paper 2: Financial Reporting and Governance – 3-hour examination covering Modules 7–10.
- Paper 3: Fund Administration – 3-hour examination covering Modules 11–14.
- Paper 4: Business Management in Practice – 3-hour examination covering Modules 15–18.

The pass mark is 50% for each examination.

Module number	Core modules – Trust and Company Administration	Total hours study time
1	Introducing Trusts	35
2	Directors, Companies and Company Officers	35
3	Trust and Company Administration	25
4	Reviews, Record Keeping and Decision Making	25
5	Regulation of Offshore Service Providers	20
6	Taxation and Tax Planning	10
Module number	Group A specialist modules – Financial Reporting and Governance	Total hours study time
7	The Form and Content of Financial Statements	80
8	Understanding and Analysing Financial Statements	40
9	Trust Accounts and Other Forms of Entity	15
10	Corporate Governance	15
Module number	Group B specialist modules – Fund Administration	Total hours study time
11	Understanding the Investment Environment	20
12	Fund Administration and Regulation	70
13	Fund Products and Services	30
14	Fund Sector Regulation	30
Module number	Group C specialist modules – Business Management in Practice	Total hours study time
15	Management and Leadership	40
16	Business Structures and Functions	40
17	Business Strategy	30
18	Innovation, Entrepreneurship and Change	40

Study text sample



CGIUKI Study Text

International Finance and
Administration Qualifications

Trust and Company Administration

Colin Tanner
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**Chartered
Governance
Institute
UK & Ireland**

Chapter six

Trust and company administration

List of topics

1. Trust and company administration
2. Monitoring of activities
3. Management and control of offshore entities
4. Administration of trust and company assets
5. Receipts and payments
6. Investing trust and company assets
7. Court orders relating to trusts
8. Disclosure requests
9. Statutory returns and filings

Introduction

This chapter outlines some of the basic tasks involved in trust and company administration. It explains how administrators should monitor transactions throughout the course of a business relationship and discusses important factors such as the management and control of trusts and companies under their management. The chapter outlines some considerations when dealing with the assets of entities that are administered by the service provider and considerations when receiving funds or making payments, including distributions. Investment of trust and company assets is discussed, including the difficulties that can be encountered when investments are made in family companies. Court orders relating to trusts are discussed, as are some of the issues that the trustee may encounter when receiving requests for disclosure of information. Finally, the chapter concludes with a discussion about the statutory records that company administrators are required to maintain.

1. Trust and company administration

Trust and company administration will involve the management and control of trust and company assets. Offshore service providers (OSPs) will ensure they follow their regulatory and statutory duties and that their employees are fit and proper and maintain competency.

The administration of trusts and companies under administration may involve:

- ◆ Maintaining accounting records of the trust and company assets.
- ◆ Maintaining updated and accurate permanent records of the trust and company.
- ◆ Maintaining accurate and updated bookkeeping of the trust and company.
- ◆ Preparation of periodical financial statements of the trust and company.
- ◆ Preparation of records of any distributions and or payments made by the trustee to the beneficiaries and/or agents of the trust.
- ◆ Preparation of records of all payments made by the company to the beneficial owner(s) and/or agents of the company.
- ◆ Maintaining updated due diligence on the settlor(s), beneficiaries of the trust and the beneficial owner(s) of the company, if different.
- ◆ Maintaining documents of title of the assets of the trust and/or the company in safe custody.
- ◆ Preparation of minutes and resolutions for the trust and company.
- ◆ Preparation of correspondence for the trust and company.
- ◆ Maintaining correspondence and permanent files for the trust and company.
- ◆ Being appointed as authorised signatories on trust and company bank accounts.

1.1 Company administration

In order to ensure a smooth administration of their companies under management, company administrators would include the majority of the following checks and/or procedures to ensure that their written policies and procedures are always met. The service provider must also demonstrate that they have a robust risk management system and procedures in place to assist in identifying and manage any possible risks:

- ◆ a summary of clients' backgrounds and the reasons for setting up the company is noted in the records;
- ◆ the company administration document is correctly and effectively executed by all parties concerned;
- ◆ the initial funds and additional assets (as confirmed by the beneficial owner(s)) are received;
- ◆ full due diligence on the beneficial owner(s) is obtained as appropriate;

- ◆ the inaugural company minutes are prepared, confirming the incorporation of the company and to record any decisions exercised by the board of directors;
- ◆ a fee agreement is prepared to cover both the cost of setting up of the company and maybe an administration charge or fixed charge for the rest of the calendar year or for the next 12 months;
- ◆ bankers and other agents are appointed by the company and accounts opened so that the assets can be held in the name of the company;
- ◆ any assets received from the beneficial owner(s) are promptly acknowledged by the company administrator and adequate controls and systems are in place to record and suitably invest the assets received;
- ◆ bookkeeping of the receipt of assets and all future transactions are carried out correctly and on a timely basis;
- ◆ ensure that appropriate diary notes are prepared for all future transactions;
- ◆ ensure that an initial review is undertaken (usually within four months of acceptance of the company) to ensure that all administration matters have been successfully undertaken and are complete;
- ◆ ensure that a periodic review is undertaken on all company structures; and
- ◆ record any outstanding issues from the reviews and/or follow-up points in a diary system or on a review database and track on a regular basis.

1.2 Trust administration

In order to ensure a smooth administration of the trust, a trustee would include the majority of the following checks and/or procedures to ensure that their internal controls and policies are met and that any possible risks are identified at an early stage:

- ◆ a summary of clients' backgrounds and the reasons for setting up the trust is noted in the records;
- ◆ the trust deed and any supporting trust documents are correctly and effectively executed by all parties concerned;
- ◆ the initial funds (as stated in the trust deed) are received;
- ◆ full due diligence on the settlor and beneficiaries of the trust is obtained as appropriate;
- ◆ trustee minutes are prepared, confirming the appointment of the trustee and the constitution of the trust and to record any decisions exercised by the trustee;
- ◆ a fee agreement is prepared to cover both the cost of setting up of the trust and maybe an administration charge or fixed charge for the rest of the calendar year or for the next 12 months;
- ◆ the agreed additional assets are also received from the settlor;
- ◆ bankers and other agents are appointed by the trustee and accounts opened so that the assets can be held in the name of the trustee;

- ◆ any assets received from the settlor are promptly acknowledged by the trustee and adequate controls and systems are in place to record and suitably invest the assets received;
- ◆ bookkeeping of the receipt of assets and all future transactions are carried out correctly and on a timely basis;
- ◆ ensure that appropriate diary notes are prepared for all future transactions;
- ◆ ensure that an initial review is undertaken (usually within four months of acceptance of the trust) to ensure that all administration matters have been successfully undertaken and are complete;
- ◆ ensure that a periodic review is undertaken on all trust structures; and
- ◆ record any outstanding issues from the reviews and/or follow-up points in a diary system or on a review database and track a regular basis.

After the creation of a trust or the incorporation of a company, high standards of administration must be maintained throughout their existence in order to ensure that:

- ◆ The objectives of the entity are achieved. For example, that the intended beneficiaries benefit from the trust assets at the intended time and for the reasons intended by the settlor.
- ◆ The structure is administered in accordance with the taxation and/or legal advice and that the taxation and legal consequence of any activity is considered.
- ◆ High levels of customer service are maintained, enhancing the reputation of the service provider, the industry and the offshore jurisdiction.
- ◆ Risks are identified and adequately managed. Such risks include regulatory risk as well as fiduciary risks.
- ◆ The entities do not pose a risk to the service provider in becoming involved in an arrangement involving the proceeds of crime and that all requirements of the anti-money laundering legislation including due diligence requirements are met.

2. Monitoring of activities

OSPs are required to scrutinise transactions undertaken and activities carried out throughout the course of a business relationship to ensure that they are consistent with the relevant person's knowledge of the customer as documented within the customer profile. Transaction monitoring is a requirement of the money laundering legislation which is discussed further in Chapter 10 and is designed to ensure that money laundering is prevented, detected and deterred.

Trust and company administrators should therefore be referring to the customer profile on a regular basis and whenever activity occurs, for example, when funds are received or when payments are made.

Making it work 6.1



Client profiles

'A retired businessperson who settled their trust with the bulk of their assets. Their only income is their pension, which is sufficient for them to live comfortably.

It is not expected that further funds will be settled into the trust.

No withdrawals are anticipated until their grandchild reaches the age of 18 at such time the trust will be wound up and the entire fund paid to their grandchild'.

In the event that the trustee received an amount of £500,000 from the businessperson, the administrator's actions would be expected to include, but not be limited to the following:

- ◆ Refer to the client profile.
- ◆ Note that no further additions to the trust were expected.
- ◆ Note that this activity therefore falls outside of the service provider's expectations.
- ◆ Note that the client had settled the bulk of their assets into the trust and therefore would not necessarily have had means to settle such an additional sum.
- ◆ Note that the client's only income is that arising from their pension which they live on.
- ◆ Contact the client and find out the nature of the receipt (for example, are they intending to settle the funds into the trust?), the source of the funds (for example, how have they arisen?) and the reason that they wish to transfer the funds into the trust (are these funds also to be made available to their grandchild or have circumstances changed?)
- ◆ Assess the information provided by the client to establish whether or not there is a reasonable explanation (the funds could have been an inheritance, for example).
- ◆ Consider whether there is a need to make further enquiries or request documentation following the receipt of the explanation.
- ◆ If the explanation is inadequate and/or gives rise to suspicion, the administrator must make a suspicious activity report to their money laundering reporting officer (discussed further in Chapter 10).
- ◆ Hold a trustee meeting if required (e.g. to resolve to accept the funds as an addition to the trust fund).
- ◆ Consider whether there are formalities that need to be undertaken, for example, if the funds were to be settled, a deed of addition of funds may be required.

- ◆ Book-keep the receipt of the funds (if they are to be retained).
 - ◆ If the expectations for the customer have changed, for example, because the client received a substantial inheritance which will provide him with means to send further funds, the client profile should be updated.
 - ◆ Consider whether the risk rating for the client should be updated.
-

3. Management and control of offshore entities

Quite a number of factors can be considered when looking for the best OSPs. Some of these include professionalism, honesty, confidentiality, expertise in the line of service and adherence to regulatory standards. But surely, there is no limit on the characteristics that a client may want from their OSP according to the business and personal values that are held close.

The best OSPs make it a point of duty to implement and enforce regulatory measures. This is important as regulatory measures provide a means for standardising offshore services and filtering the persons who access the services of OSPs. Respect of regulatory measures is indicative of the professional standards that the best OSPs have set for themselves to ensure that they deliver the quality offshore services.

In seeking to determine where 'central management and control' of a company incorporated outside the UK lay, for the purposes of assessing liability to pay tax on chargeable gains, it is essential to recognise the distinction between cases where management and control of the company is exercised through its own board of directors or at the GM of the shareholders. They could be known as the 'constitutional organs of the company'.

There could be extreme regulatory and possible taxation issues if the functions of these constitutional organs are 'usurped', in the sense that management and control is exercised independently of, or without regard to, those constitutional organs.

Any attempt by anyone (the client or any third party) to usurp the OSP's control over the company should be resisted. It is very unlikely the client will thank the OSP for not preventing too great an involvement which leads to the 'central management and control' of a company being determined as where they reside rather than in the offshore location it was intended to be.

Laerstate BV v HMRC was a 'first instance HMRC tribunal decision' that gives an interesting indication of the extent to which activities can be carried on in the UK by an offshore company without resulting in that offshore company becoming UK tax resident.

But more than that it is useful because of the guidance it offers re how it can be decided where a company's 'central management and control' is. If a CSP

knows how this can be decided, they know what they need to do to get that right (and be able to evidence it to).

The dispute concerned a Netherlands incorporated company owned by a single individual. It was not necessary for the tribunal to conclude that the owner was UK tax-resident but it seems to have been accepted that the owner was UK resident. The owner served for a while as a formal director of the taxpayer company alongside one other director but the owner later resigned, leaving the other director as the only formally appointed senior officer of the company.

The company acquired a stake in a major UK company and later sold that stake at a multi-million pound profit. The UK tax authorities sought to tax the gain realised by the company. This was on the basis that the company had been tax-resident in the UK during the relevant period by virtue of its central management and control having been exercised from the UK.

The company in trying to avoid the tax pointed:

- ◆ to the significant number of formal managerial meetings that had been held in the Netherlands and various other locations outside the UK; and
- ◆ many of which were not actually attended by the owner so that the company's other officer appeared to be acting alone.

The Tribunal, however, refused to look simply at where resolutions had been signed. They looked at all the activities of the owner (whether the owner was a shareholder or director) in the UK. This included attending meetings with lawyers and other advisers of the company relating to its activities.

The Tribunal considered whether the activities carried on inside and outside the UK were concerned:

- ◆ only with ministerial matters and matters of good housekeeping; or
- ◆ with policy, strategic or management matters relating to the conduct of the business of the company.

The Tribunal thought that the activities of the owner (shareholder/director) in the UK were related to policy, strategic or management matters rather than ministerial matters and matters of good housekeeping and that these activities included decision making in relation to the company's business, as such it supported the claim from HMRC that the company was liable to be taxed.

Expertise in the line of offshore services provided is an essential factor as anyone going offshore would want to be confident of the legal and financial advice obtained. The best OSPs are equipped with lawyers, as well as financial and corporate secretarial professionals, that are capable of delivering updated information, reliable advice and sound offshore tax planning strategies to their customers.

The case of *Wood v Holden* (2006) is important as it illustrates the fact that all situations must be looked at in a realistic way. It is unrealistic to say that a tax scheme created by a UK adviser will necessarily affect the residence of all the

companies that participate in that scheme. Additional evidence is required to the effect that the directors of the companies that take part in such a tax scheme have abdicated all control and management over their respective subsidiaries and have allowed the parent or another person to usurp central management and control.

3.1 Sham trust

A sham trust occurs when a settlor acts on the face of it as if they wish a trust to be constituted, but by their actions interferes in the day-to-day administration of the assets of the trust and appears to enforce their intentions and controls (or fetters) the actions of the trustee.

It is likely that the settlor is not named as a beneficiary or as another connected party, such as a protector or a co-trustee. The trustee by assenting to the requests and/or instructions of the settlor after the trust has been constituted will bring into question the true intentions of the settlor.

A trust that at face value appears perfectly valid may be set aside if it is a sham trust. The court will look at the reality and substance of the various transactions and determine whether the settlor has given false impression that a trust has been created.

There are two aspects to sham trusts that trustees should consider:

- ◆ Is this a deliberate attempt by the settlor and/or the trustee to enter into a trust arrangement which gives the impression to third parties that the arrangement is a trust? However, the actions of those parties indicate that this was NOT the intention of either the settlor or the trustee to create a trust.
- ◆ In other words, it is a trust that appears to have legal effect, but it was never intended to have any legal effect.
- ◆ The dangers in this area were brought to the fore by the case of *Rahman v Chase Bank Trust Company (Jersey) Limited* (1990), a decision of the Royal Court of Jersey (see Case law 6.1 on page 173).
- ◆ The legal interpretation of what constitutes a sham as set down in the judgment of Diplock LJ in *Snook v London and West Riding Investments Ltd*, Court of Appeal on 17 January 1967.
- ◆ This second point listed above is emphasised when considering the sanctity and validity of a trust instrument. In December 2004, The Regent Trust Company Limited (Regent), a Jersey Company, succeeded in striking out a claim that three trusts administered by it were invalid. The decision in this case is significant as it upholds the validity of trust deeds freely entered into by a settlor.

Case law 6.1



Rahman v Chase Bank Trust Company (Jersey) Ltd (1990)

This famous (perhaps infamous) case concerned a discretionary trust set up by Mr Rahman in favour of a class of named beneficiaries. The claimant was Mr Rahman's widow who was not one of the beneficiaries.

After his death she sought to set aside the trust (so as to be able to have the trust assets considered part of his estate from which she would benefit). This was on grounds that it was a sham.

She relied in support of her claim on the following provisions in the trust instrument which enabled the settlor to direct the trustees to make investment and administrative decisions:

- ◆ the settlor had power in his lifetime, with the trustee's consent, to appoint capital as he saw fit and, without the trustee's consent, to appoint one third of the capital in any 12-month period;
- ◆ the trustee had an independent dispositive power to transfer the capital to the settlor and in doing so had to have regard exclusively to the settlor's interests;
- ◆ all of the trustee's significant administrative powers, including powers of investment and delegation, required the settlor's prior written consent for their exercise; and
- ◆ the settlor had the power to appoint an investment adviser and if the trustee followed the investment advice given it would not be liable for the success or failure of the investment policy.

The Royal Court of Jersey recorded its decision as follows:

We were unanimously satisfied that the oral evidence, together with the documentation placed before us, established clearly that from the date on which [Mr Rahman] purported to constitute the settlement he exercised dominion and control over the trustee in the management and administration of the settlement, including distributions of capital to himself, to others as gifts or loans, and the making and disposal of investments.

He treated the assets comprised in the trust fund as his own and the trustee as though it were his mere agent or nominee.

We are unanimously of the opinion that the settlement was a sham on the facts, in the sense that it was made to appear a genuine gift when it was not.'

It was held that Mr Rahman's advisers and trustees 'lent their services to the attainment of his wishes'. It is not clear what the Court had meant by this.

It does not amount to a finding that the trustees shared Mr Rahman's intent to create a sham, and therefore it is possible that the case would have been decided differently today because the trustee's intentions are key in arriving at a finding of sham.

Experience has shown that it is sometimes difficult for trustees to avoid the failings as shown in the *Rahman* case; many settlors are overbearing, dominant and refuse to alter their behaviour. But well-regulated and well-managed OSPs must respect their statutory duties and monitor their actions against their procedures and policies to try to ensure that claims of sham trust are avoided or defeated if they are made.

Indeed, in this case Chase Bank offered as evidence its many attempts to suggest that Mr Rahman behave differently, but to no avail.

With this in mind, it is for the trustee to ensure that both they and the settlor as appropriate:

- ◆ understand and confirm the intentions behind the creation of the trust;
 - ◆ appreciate the reality of the transfer of legal title from the settlor to the trustee and control over the assets;
 - ◆ ensure that the settlor is aware exactly what a trust is and the part they can and cannot play in the administration of the trust assets;
 - ◆ must ensure that the trustee manages and controls the administration of the trust assets and does not leave this to the settlor (i.e. investments and distributions);
 - ◆ if a protector is appointed, ensure that their powers are not excessive;
 - ◆ ensure that the trustee does not follow the terms of any letter of wishes blindly but is seen to consider the exercise of their discretion; and
 - ◆ only exercise their powers after applying due consideration to the matter in hand and for the best interests of the beneficiaries.
-

3.2 Communications with clients and their advisers

Administrators should communicate with their clients and their advisers on a regular basis in a variety of ways.

Administrators should ensure that they manage their client's expectations from the outset of the relationship in order to ensure that they understand that, at times, they may not be able to fulfil their client's wishes, for example, when to do so would expose the TSP to an unacceptable level of risk.

During everyday activity, it is important that administrators bear in mind that as trustee and/or directors, it is important that the OSP is in control of all aspects of the administration of the trusts and companies to which they provide

services. Any activity that suggests that this is not the case should be addressed immediately and not simply accepted by the service provider.

Examples of instances which may need to be addressed with the client or third parties include:

- ◆ receipt of an 'instruction' rather than a request from a beneficiary for the trustee to pay funds to them;
- ◆ the settlor referring to trust assets as 'their' money; and
- ◆ the client requesting a broker directly to buy or sell shares that are owned by the trust or company.

4. Administration of trust and company assets

Trustees have a statutory duty to ensure that they have legal ownership and control over any assets settled or to be settled by the settlor into the trust.

The trustee must therefore ensure that the assets are properly vested (transferred) into the name of the trustee and that the assets and liabilities can be properly ascertained at any point. This is one reason why, whenever funds are deposited into or withdrawn from a trust or a company, the bookkeeping records and any registers maintained by the OSP in relation to its assets are properly maintained.

4.1 Cash and bank deposits

The trustee has a fundamental duty to protect and preserve and, as far as possible, enhance the trust fund. It is not, therefore, acceptable to simply place funds in a bank account without having given proper consideration as to the impact that inflation may have on the value of the cash in real terms and whether or not the interest rate is the best that the trustee could obtain in relation to the cash or whether the cash should be invested, for example, in an investment portfolio.

The trustee should ensure that capital (for example, funds settled into the trust) and income (for example, bank interest or dividends received) is kept separately in order to ensure that both income and capital is taxed appropriately and in the most efficient manner when it is distributed to the beneficiaries and to ensure that beneficiaries with specific entitlements receive only what they are entitled to. For example, the life tenant of a life interest trust is entitled to the income only.

The trustee should ensure that they manage any cash balances effectively and that:

- ◆ the bank mandate is completed and in accordance with the authorised signatory list of the trustee;
- ◆ the type of account(s) to be opened is appropriate, e.g. should it be interest-bearing, be a fixed-term deposit to accrue more beneficial interest;

- ◆ the maximum amount to be maintained in any deposit-taking institution is considered, taking into account the risk of a banking collapse and any depositors' protection legislation available;
- ◆ regular bank statements are obtained and reconciled in a timely manner to the bookkeeping records of the trustee; and
- ◆ full details of the source of any new and additional funds received are obtained and acceptable to the trustee.

4.2 Property (realty)

Property as an asset of a trust and/or company is becoming more common. However, so that OSPs reduce any issues relating to risk, they should ensure that:

- ◆ they hold the title deeds of the property or, if the original title deeds are held by a lawyer or a bank (in the case of a mortgage being arranged), have written confirmation that they are holding the title deeds to the order of the OSP;
- ◆ the insurance cover is adequate, the premium is paid and a copy of the current insurance certificate is held;
- ◆ if the settlor and/or beneficiary is living in the property, whether or not rent is paid, that an agreement to occupy or similar document is in place and a copy held;
- ◆ if the property is rented out, the OSP should consider appointing an agent to assist in the collection of the rent and to ensure that the OSP receives regular receipts of this rent;
- ◆ they consider appointing a property manager to ensure the maintenance of the property;
- ◆ they consider a periodic valuation of the property; and
- ◆ they consider any future tax implications of holding property.

4.3 Stocks and shares (investments)

When holding or managing investments, professionals such as brokers, custodians and investment advisers may be appointed.

Regular portfolio valuations relating to the investments should be received and performance reviews should also be undertaken. The frequency of any review will depend on the type and complexity of the underlying investments, the type of trust and its overarching purpose. For example, an authorised unit trust is required under its regulations to reconcile its holdings at each valuation point, which could be on a daily, weekly or monthly basis.

Test yourself 6.1



What would you do within your firm if you did not possess the experience and skills to assess the performance of the chosen investment manager?

4.4 Chattels

Chattels are tangible moveable assets such as jewellery, works of art, fine wines, rare books, race horses, private jets, yachts, vintage cars, antiques or precious gemstones. These assets are sometimes referred to as 'special assets'. These may be used or enjoyed by the beneficiaries and this may pose additional risk and potential liability. The asset will need to be stored in an appropriate manner and appropriately insured. Specialist insurance cover may therefore be obtained.

Test yourself 6.2



- 1 What factors affect the frequency of a performance review?**
- 2 Would it be appropriate to store a rare and valuable painting in a cardboard box in a safety deposit box at a bank in the same way as documents are stored?**
- 3 In what circumstance would a beneficiary be allowed to retain a special asset, such as a painting?**
- 4 What about a yacht that is held in a trust and the beneficiary sails around the world and gets caught in a storm? How could the trustee manage this risk and potential liability?**
- 5 If you stop to consider jewellery, fine wine or race horses as trust assets, for example, what are the possible additional challenges for the trustee?**

Trustees will not usually be enthusiastic about accepting special assets as an asset of a trust as they are often 'wasting assets' or pose additional risk in terms of their safekeeping and maintenance to the trustee. Some trustees may only accept such assets from their most valued and established clients and only where the asset is not the primary asset of either the structure or the client.

A trustee should consider the following principles if accepting special assets:

- ◆ legal advice and reporting procedures;
- ◆ any report held on its provenance (if it's a work of art, antique etc.);
- ◆ to obtain full details of the asset and its valuation;
- ◆ the insurance of the special asset would normally be placed with specialist brokers; and
- ◆ the monitoring of the asset.

underlying company

A company that is usually owned 100% by an overlying trust.

ring-fence

To identify and protect specific assets.

If special assets are to be held in a trust, the trustee must ensure that the terms of the trust deed allow this type of investment to be held.

An OSP usually prefers that such assets are held in a separate **underlying company**. The main reason being the need for the OSP is to 'ring-fence' these special assets away from the other assets of the trust and company structure.

The costs of the incorporation and the future administration of the additional underlying company and the cost of obtaining advice from specialised lawyers and third party agents will need to be taken into consideration when calculating fees to be charged.

Depending on the nature of the special asset, the trustee may require a service level agreement to be entered into with specialised agents or managers. Taxation advice should be sought to mitigate any potential tax effects of the acquisition of the special assets or of any income arising following their purchase and future use.

Beneficiaries using any special assets should be advised to obtain independent tax advice and to consider other legal and regulatory issues as appropriate as the use of a special asset by a beneficiary may create a taxable benefit in some jurisdictions.



Case law 6.2

AB v CD (2016)

On June 30 2016 a judgment in the case of *AB v CD*, was delivered, it was the first decision in the Isle of Man courts on the so-called *Hastings-Bass* principle, and on the law relating to relief for equitable mistake following its reformulation by the UK Supreme Court in *Pitt v Holt*.

The facts of *AB v CD* are relatively straightforward, however the main practical implication is that the court found that the trustee in this case was in breach of duty because it failed to take sufficient steps in relation to the taking of tax advice relevant to its decision-making process.

The court could be regarded as placing an onus on trustees to take and consider, or ensure that there is taken and considered, tax advice on the consequences of trustee decisions.

Other special assets require their own separate procedures, to be undertaken by trustees, for their safekeeping and their insurance.



Making it work 6.2

The ongoing requirements and/or issues faced by a trustee following the purchase of a special asset are:

- ◆ a regular professional valuation, which may be costly;
 - ◆ the title deeds or other satisfactory proof of ownership to be held in safe custody;
 - ◆ if the title documents are held elsewhere, a certified copy should be obtained and held;
 - ◆ confirmation from the external depository (who is holding the title documents) should be obtained;
 - ◆ suitable and adequate insurance arrangements should be made to cover loss, damage, and where appropriate, public liability; and
 - ◆ the retention and use of the special asset may usually be subject to periodic reviews to consider any amendments needed with regard to insurance and value.
-

4.5 Unquoted investments and/or non-managed assets holding companies

Most trustees have significant procedures in place in respect of holding unquoted investments or non-managed asset holding companies in trust structures.

A trustee should carry out due diligence and sufficient monitoring on these types of assets and ensure that they are appropriately reviewed and sufficient information is obtained from the directors of these companies about underlying assets.

There is a risk of failure to oversee these types of companies, where the trustee does not provide the directors.

The usual requirements of a trustee before accepting these types of investments include:

- ◆ obtaining certified copies of the certificate of incorporation and the constitution documentation of the company;
- ◆ obtaining copies of register of directors, shareholders and secretary, and updated if any changes are made in the future;
- ◆ obtaining copies of the financial statements of the companies;
- ◆ ascertaining whether there are any requirements for regulatory approval for the activities being undertaken by the companies;
- ◆ obtaining full due diligence on all the directors (and maybe the beneficial owners of the companies if different); and
- ◆ ascertaining whether or not there are any tax-related issues.

Arrangements should also be made to ensure that the trustee is informed as to the company's progress, results and prospects, and it may be appropriate that a director of the trustee should regularly meet with the directors of these types of companies.

Sometimes these types of companies are kept at the request of the settlor and/or beneficiaries for sentimental reasons.

As seen in Case law 2.1 on page 44, as a result of speculative property development, the company had sustained large losses and the beneficiaries sued the trustee for failure to prevent the company from undertaking the loss-making project.

This case decided that the trustee had neglected to obtain copies of the agenda and minutes of board meetings and receipt of monthly management accounts. If the trustee had received this information, it could and should have stopped the loss-making property development.

As seen in Case law 6.3 on page 187, in the *Re Lucking's Will Trusts* (1968) consideration was given as to the various methods by which a trustee, who had a controlling interest in a private company, could place themselves in the position of making informed decisions as to how to protect their assets.

5. Receipts and payments

There are a number of different types of receipts and payments that may be received by or paid from client entities. These include but are not limited to:

- ◆ loans to and from beneficiaries or beneficial owners;
- ◆ repayments of loans to or from beneficiaries or beneficial owners;
- ◆ loans between associated trusts and companies;
- ◆ trust capital or income distributions;
- ◆ payment of expenses of the entity such as property maintenance expenses;
- ◆ **initial and additional settled funds;**
- ◆ receipt or payment of a dividend; and
- ◆ the issue of further shares in the company.

There are some basic considerations that OSPs should always address whenever funds are received or paid from an entity to which they have been appointed.

These could include but are not limited to:

- ◆ whether the receipt or payment is in line with the customer profile;
- ◆ the identity of the remitting person and the relationship that they have with the entity;
- ◆ the source of the funds and whether these need to be verified;
- ◆ whether the rationale for the payment is understood and acceptable;
- ◆ whether the nature of the payment is understood;
- ◆ whether the entity has authority under its trust deed or articles of association to receive funds or make a payment;
- ◆ whether there are any taxation consequences;
- ◆ whether there are any legal requirements or issues relating to the payment;

initial settled funds

The assets that must be transferred from the settlor to the trustee to create/constitute a trust.

additional settled funds

Additional assets that are settled into the trust after its creation/constitution.

- ◆ whether sufficient, up-to-date customer due diligence is held;
- ◆ whether there are sufficient liquid funds to make the payment;
- ◆ whether minutes of a meeting or a resolution will be required; and
- ◆ whether the remitting jurisdiction is subject to financial sanction or otherwise considered as a 'high risk' jurisdiction.

Test yourself 6.3



What considerations should an offshore service provider address whenever funds are received or paid from an entity to which they have been appointed? Name at least three.

OSPs will usually have procedures and checklists that will assist administrators to consider all of the relevant matters when undertaking a transaction. Checklists may include:

- ◆ receipt of funds checklist;
- ◆ loan checklist;
- ◆ dividend checklist;
- ◆ distribution checklist; and
- ◆ payments checklist.

5.1 Loans

In addition to the basic considerations described in Section 5 above, the following matters may also be included within the internal procedures of the OSP and may include:

- ◆ the completion of a loan checklist;
- ◆ the preparation of minutes;
- ◆ the creation of any diary notes in respect of repayments or expiry dates;
- ◆ the repayment terms and the interest rate and its calculation;
- ◆ agreement of any arrangement fee;
- ◆ obtaining full details and due diligence in respect of the borrower/lender;
- ◆ the amount and purpose of the loan;
- ◆ identifying the proper law under which the loan is governed;
- ◆ which assets will be offered as security, where applicable; and
- ◆ whether the security for the loan will need to be registered.

It is common for funds to be transferred between overlying trusts and their underlying companies by way of unsecured, interest free and repayable on demand loans.

It is a common mistake that administrators bookkeep the receipt/payment of a loan in one entity and fail to remember to bookkeep it in the other.

It can cause difficulty at the financial year end of the entities where the loan balances do not reconcile. It can be especially difficult to keep the balances aligned, particularly if the loan is made in a different currency to that of the base currency of the account and the interest rates are automatically populated by the system.

The decision making accompanying the making of loans should also bear in mind the commerciality of doing so, by which I mean the loan might need to be made on terms generally available or it might be challenged.

5.2 Distributions

Trust distributions may occur during the period of the trust either by income payments or by capital payments. Alternatively, the distribution may be for the whole of the trust fund. This latter event normally arises when all of the beneficiaries have reached full age and are all in agreement or when the trustee agrees that the trust should be wound up as it is no longer required.

With a fixed trust a trustee is under a duty to distribute the trust assets to the beneficiaries in accordance with the terms of the trust deed; while in the case of discretionary trusts the trustee's duty is to consider whether to exercise its discretion.

Failure to comply with the duty of distributing funds in accordance with the terms of the trust deed would only be a breach of trust if the beneficiary complained to the court and in the situation where a trustee makes a distribution(s) to a non-beneficiary; this could also deem the trustee to be in a possible breach of trust situation.

It is a duty of a trustee of a discretionary trust to consider any requests from a discretionary object (beneficiary) for a distribution, but the trustee must be seen to exercise their own judgement in deciding whether or not to agree and approve the distribution.



Making it work 6.3

The Code of Practice for Trust Company Business in Jersey provides that where a registered person is responsible for exercising discretion for or in relation to its customers, it must take all reasonable steps to obtain sufficient information in order to exercise its discretion or other powers in a proper manner.

Sometimes trustees may be faced with the problem of having the duty to distribute trust assets to a particular beneficiary, who cannot be found.

The problem of finding a known beneficiary who may or may not be dead can be overcome by a **Benjamin order** (or its equivalent in other jurisdictions). This authorises the trustee to distribute the trust assets on the basis that the missing beneficiary is dead.

Benjamin order

An order made by the court for the distribution of assets when it is uncertain whether or not a beneficiary is alive.

A result of such an order is that it avoids undue delay in the further administration of the trust or the estate in a will. The order could allow the trustee to ignore the potentially dead beneficiary and distribute the assets, and the trustee would be protected by the court order if the beneficiary or their descendants ever appeared to claim.

Although the trustee would be protected against any subsequent claims, the claimants may seek their share from the assets distributed to the other beneficiaries.

Regular reviews to ensure that any distribution plans reflect the needs of beneficiaries and is aligned with the terms of the trust deed is essential.

In the case of younger beneficiaries, the trustee may make distributions directly to (say) their parents, guardians, schools or universities. Trustees may also be obliged to provide information to the beneficiaries when appropriate.

Checklist – Trust fund distributions

Before making a distribution from the trust fund, the TSP should check certain points.

- ◆ That the request has been received from a beneficiary or an authorised person.
- ◆ That a facsimile or email indemnity is held for the beneficiary, if a request is made in this way.
- ◆ That the position of the other beneficiaries is considered (given the trustee's duty to act with impartiality).
- ◆ That the trust deed affords the trustee the power to make the distribution.
- ◆ That any supplemental deeds have been checked to ensure that the beneficiary has not been later excluded from the class of beneficiaries.
- ◆ That the content of the letter of wishes has been considered.
- ◆ That the protectors consent has been obtained, if required.
- ◆ That the reason for the distribution request is considered and appropriate given the trustee's duty to act as a prudent person would.
- ◆ That the nature of the distribution is clear (i.e. income or capital).
- ◆ That the trustee holds sufficient liquid assets of the correct nature (capital or income), whilst taking into account ongoing expenses.
- ◆ That sufficient and up-to-date customer due diligence is held.
- ◆ That the payee is the beneficiary or that special procedures are followed where the payment is to be made to a third party at the beneficiary's request.
- ◆ That there are no charges or liens against the assets of the trust.
- ◆ That the decision to make the distribution has been minuted.
- ◆ That a deed of appointment and indemnity of capital and indemnity has been received if required.
- ◆ That, where there are co-trustees, the trustees have acted together.

6. Investing trust and company assets

As discussed in Chapter 2, TSPs have a duty to protect and preserve the value of the trust fund and to enhance it as far as is reasonably possible. In order to do this, it is likely that the TSP will need to invest the trust fund. An OSP may choose to incorporate an underlying company to hold the investment.

The objectives of the trust will influence the TSP's investment choices. For example, if the trustee is required to provide an income for the beneficiaries the trust fund will be invested in a different manner to that that would be required if the TSP required capital growth. It is essential that the trust assets are properly invested and administered so as to achieve these aims.

TSPs, especially in offshore jurisdictions, will usually have express wide powers of investment included in their trust deeds and also benefit from further powers contained within the trust law of their jurisdiction.

6.1 Investment of trust assets

Historically there were no regulations in respect of the powers and duties of TSPs relating to the investment of trust assets. TSPs only had the necessary power to invest the trust assets in those investments that were specified in the trust deed.

In the UK, the TA2000 has substantially amended the investment powers and duties of TSPs in the UK and has also introduced prudent investment powers and rules. Section 3 (1) of TA2000 provides that, unless the terms of the trust deed say otherwise, all TSPs of all existing and future trusts may invest the trust assets as though they are beneficially entitled to the trust funds. The investment provisions are governed by a new statutory duty of care. This duty of care was discussed in Chapter 2.

6.2 Standard investment criteria

Under s.4 of TA2000, the TSP, when exercising any power of investment should:

- ◆ have regard to 'the standard investment criteria';
- ◆ review the performance of the investments of the trust; and
- ◆ consider whether, having regard to the standard investment criteria, they should be varied.

The standard investment criteria in relation to a trust are:

- ◆ the suitability to the trust of investments of the same kind as any particular investment proposed to be made or retained, and of that particular investment as an investment of that kind; and
- ◆ the need for diversification of investments of the trust, in so far as it is appropriate to the circumstance of the trust.

Sample exam paper



Trust and Company Administration

Adapted from the November 2018 exam paper

Section A

Answer **all** questions in this section.

Continue your answers on the continuation sheets at the back of the booklet, if necessary.

- 1 Give **two** characteristics of listed companies in relation to shares. (2 marks)
- 2 Outline **two** advantages of investing in unit trusts. (2 marks)
- 3 What is an Anton Piller order? (1 mark)
- 4 Give **two** uses of offshore trusts in tax planning. (2 marks)
- 5 The Hague Trust Convention can protect trustees against forced heirship in another jurisdiction.
Is this **true** or **false**?
(Tick **one** box only)
- True
- False (1 mark)
- 6 State **one** purpose of the UK Proceeds of Crime Act 2002. (1 mark)
- 7 Which of the following is **not** a company resolution.
(Tick **one** box only)
- A Ordinary resolution
- B Special resolution
- C Circular resolution
- D Compound resolution (1 mark)

Total for Section A = 10 marks

Section B

Answer **all** questions in this section.

Continue your answers on the continuation sheets at the back of the booklet, if necessary.

- 8 Explain the purpose of regulation and supervision of financial services. (6 marks)
- 9 Explain how base erosion and profit shifting (BEPS) and diverted profit tax could affect multi-national corporations. (4 marks)
- 10 Explain how breaches of trust may occur. (6 marks)
- 11 Outline the role of the Regulator in an offshore jurisdiction. (6 marks)
- 12 Explain dispositive trustee powers. (6 marks)
- 13 Explain why the regulation of offshore service providers requires the 'fit and proper' test. (6 marks)
- 14 Outline the main clauses in the Articles of Association. (6 marks)

Total for Section B = 40 marks

Section C

Answer **two** questions only.

Continue your answers on the continuation sheets at the back of the booklet, if necessary.

- 15 Evaluate the different types of director and their associated span of control, responsibilities and potential liabilities. (25 marks)
- 16 An offshore service provider, Globus International Trustees Limited ('Globus'), has appointed you to advise on trusts. Discuss the factors to consider in the establishment, maintenance and review of setting up new trusts. (25 marks)
- 17 You have been appointed to design and implement customer due diligence (CDD) procedures for New Vision Trustees Limited ('NVTL'), a start-up offshore service provider (OSP).

In your initial discussions, advise NVTL on how to ensure the procedures are effectively implemented and regulatory requirements are met. Include an assessment of how the procedures will affect NVTL's relationships with its clients and circumstances where enhanced due diligence (EDD) may be needed. (25 marks)

Total for Section C = 50 marks
Total for paper = 100 marks

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BPP Professional Education, Guernsey R	Y	Y
Chapter One, Jersey R	Y	Y
First Intuition, Guernsey R	Y	Y
First Intuition, Jersey	Y	Y
Isle of Man		
Manx Professional & Educational Services Limited (MPES)	N	Y
Ultratech Associates	Y	N
Jamaica		
Jamaica Stock Exchange	Y	Y
Mauritius		
Pronumeris Training Centre	Y	Y
Sagittarius	Y	N
The Gambia		
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