



**TRUST SERVICES, S.A.**  
(SERVICIOS FIDUCIARIOS, S.A.)  
Established 1981  
Professional Business Services

**OFFSHORE ESTATE PLANNING: MAKING GRAVE MISTAKES**

In centuries past the Catholic church amassed a fortune from wills which left money for prayers to be said for the souls of the departed. John Shakespeare, William's father, for example, died in 1601, the year that Hamlet was written, and left a plea, along with a spiritual, if not an actual, last will and testament, that his relatives should pray for his salvation. In today's world, salvation can concern temporal matters as well, and needs the intercession of not just prayer if one has assets offshore.

A lot of personal wealth is held in companies registered offshore, but what happens to the assets when the owner dies? Although Plato contends that nothing in the affairs of men is worthy of great anxiety, I can guarantee that not getting your affairs in order before your rendezvous with death can cause great anxiety for those left behind.

If a will exists, it will be either a domestic or an offshore one; there may be both kinds. In any case, control of the deceased's offshore assets will pass to his executor upon his demise. If there is no special offshore will covering the company assets, there will be a delay whilst the domestic will is dealt with and the executor obtains the court's authority to represent the deceased's estate (a grant of probate or its equivalent) in the place where the will is registered. Once probate has been granted, there will be a further delay whilst the domestic will is then recognised by the foreign court that must deal with the offshore assets. Often, official translations, because of language barriers, will be needed which adds delay, as well as costs, to the process. Meanwhile, the ensuing passage of time might impact on the operations of the offshore company managing the assets.

Then there is intestacy which is the worst-case scenario. Without a will anywhere an executor has still to be named and so even before a grant of probate can be obtained there will be a delay while families decide who to appoint as executor. Often family rivalries (and the fact that some members may live in different countries) can exacerbate



the process. And intestacy doesn't guarantee that the eventual beneficiaries will be the ones that the deceased would have chosen.

Very often, the far-sighted company owner has established either a trust or foundation. A trust, *inter alia*, is a will with all the extras, you could say, but without the need for probate. Usually a special offshore trust has been created to set out clearly the manner in which the offshore company assets are to be managed and how they are to be dealt with after the owner's death. It's also true that the offshore company's assets can fall under a domestic trust or a foundation, but this is less common.

Offshore foundations are popular, especially in Panama which has particularly attractive laws concerning them. In Panama a foundation is known as the "Foundation of Private Interest", but it is also called either a "Private foundation" or a "Family foundation". It is the civil code equivalent of the common law trust and performs the same functions. It is more akin to a company, however, except that instead of having shareholders, the foundation owns its assets. A trust can never own its assets and the trustee is under an obligation to hold them in trust for the beneficiaries.

The frequent failure to cover the contingency of death, either onshore or offshore, is what I describe as the Achilles' heel of estate planning which is illustrated by the following actual case. An individual from central Europe opened a bank account in the Cayman Islands back in the 1980s. A large sum was placed on deposit in his personal name and he did not want a trust. His wife was not added as a signatory on the account, in order to create a joint tenancy so that at least there would be a right of survivorship if he died and she survived. In other words, allowing her access to the funds in the bank account. A year or so passed and his wife contacted the bank in Grand Cayman to say that her husband was dead. She thought that by also sending a copy of his death certificate the bank could release the money to her. It was explained to her, however, that the only legal representative of her late husband was his executor and that the authenticity of his appointment would need to be recognised in the Cayman Islands before anything further could be done. It was nearly another year before the process moved forward and a translation of the executor's appointment by the foreign court was accepted by the Cayman court so that the bank could release the money. A simple trust from the outset would have avoided all the problems and delays that were encountered, including the financial hardship which the widow suffered.



In securing the orderly and desired transfer of your corporate assets without the delays and costs involved with probate, it need not involve the expense of either a conventional trust or foundation. It does not mean, however, that one of the key purposes (conveying wealth) of the foreign trust cannot be achieved with minimum fuss. Trust Services, S.A. can provide you with a fiduciary vehicle that is simple, secure, practical and inexpensive. It is, in essence, a shortened version of the conventional trust. This simple trust would certainly have solved all problems for that widow I mentioned earlier who was seeking access to her deceased husband's funds in the Cayman Islands.

The average individual client does not want to lose control or ownership of his assets while he is alive (which often deters him from creating a trust) and wants to have his assets managed by professionals who can perhaps continue to do the same for his widow or surviving children. He doesn't want any elaborate or special provisions set down, as is common in a conventional trust or foundation, because all he wants to do is pass on the shares which hold title to the assets to his heirs. The solution is our one-page fiduciary deed with tailor-made provisions to meet each client's personal needs. Unlike a conventional trust, there are no annual fees.

During the client's lifetime, Trust Services, S.A. serves as a bare trustee, only a custodian of the shares of his offshore company (or, perhaps, companies) which are held under the deed. This means that the client retains complete control of his assets and we merely carry out his instructions. The testamentary provisions of the fiduciary deed can be altered and the deed itself can be revoked at any time. Nothing is set in stone. Only after the client dies does Trust Services, S.A. arrange the transfer of ownership of the shares instead of automatically having the underlying assets flow back into the deceased client's domestic estate if no offshore planning has been made. The fiduciary deed is not a public document, so its contents remain confidential, and there is no probate. As an accredited trust company we are authorised to provide this service.

This uncomplicated mechanism gives you total control, combined with continuity and peace of mind. There are no annual fees, unlike a conventional trust or foundation, except for a small annual charge for holding the shares in trust. Extra costs will arise only if the deed has to be amended in the future. Trust Services, S.A. can provide the necessary technical skills, as well as experience, and we will be happy to discuss this very important subject with you. Our advice is given in complete confidence and you can go to the Articles section of our website ([www.trustservices.net](http://www.trustservices.net)) for further related information.



Finally, some common sense from the Book of Common Prayer: “We have left undone those things which we ought to have done; and we have done things which we ought not to have done”. Make sure that this is not the case with your estate planning.