

SOME
COMMON
BUSINESS
APPLICATIONS:

Pensions/
employee benefit
plans

Real estate
investment trusts
(REITs)

Unit trusts

Security

Off Balance Sheet

Insurance



Commercial Financing with Trusts

WHY USE A TRUST FOR BUSINESS:

Many of the new and exciting innovations in trust law have been developed by non-trust lawyers seeking to achieve results that are not available using traditional tools. For example, commercial, funds or tax lawyers may find that they cannot achieve a desired result by using a corporation, partnership, contract, agency, or bailment. In some cases a trust is the ideal tool, it is a relationship governed by a body of legal principles, subject to modification by legislation. Business lawyers are coming to appreciate the appeal of a trust – it is incredibly flexible.

FINANCING OFF BALANCE SHEET:

Generally, trusts result in a transfer of legal ownership of the trust assets from the settlor to the trustee. Where the settlor retains a beneficial interest in the trust assets, the transfer of legal title may not be sufficient to obtain the intended tax or commercial objective. It is common in accounting and taxation practice to attribute the consequences of ownership to the beneficial 'owners' of the trust property. Since a purpose trust does not have beneficiaries, it is an ideal trust to move assets off the balance sheet of a company. There are many business reasons why this would be desirable, perhaps the trust property has a significant related contingent or actual liability, or ownership of the asset may impact the share value of a public company.

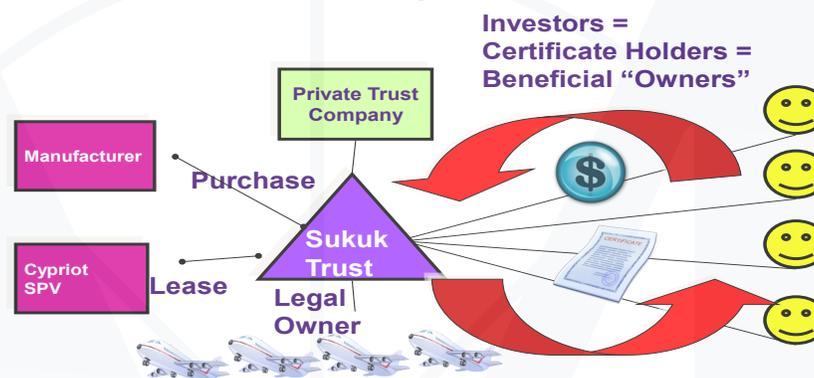


AN EXAMPLE:

For example, Air Bermuda may wish to purchase a new fleet of aircraft. The purchase of the aircraft can pose a number of problems, (i) it is very expensive to purchase a fleet of aircraft, (ii) many airlines are in a poor financial positions where financing can be difficult to obtain and (iii) the huge liability can easily impact share value of a publicly traded company. To avoid these problems, Air Bermuda could form a purpose trust whose purpose is to borrow funds to purchase the fleet, lease the aircraft to Air Bermuda, repay the indebtedness, and continue to maintain the aircraft during their useful life.

This structure has been frequently used for Sukuk financing, and might be illustrated as follows:

Sukuk Financing - Aircraft



Investors =
Certificate Holders =
Beneficial "Owners"

fiduciary,
in law, a person who occupies a position of such power and confidence with regard to the property of another that the law requires him to act solely in the interest of the person whom he represents. They may be contrasted with persons in an ordinary business relationship, in which each party is free to seek purely personal benefits from his transactions with the other.

Since Air Bermuda company merely has a contractual right to use the property, ownership of the new fleet and the related liabilities for repayment of borrowed funds do not appear on its balance sheet. The same model will work for financing of other 'big ticket' items, such as fleets of ships and factories.

There are other advantages. The trustee of the purpose trust may be able to borrow funds at a lower rate than otherwise available to Air Bermuda because the trustee is able to give a first charge to the bank/lenders over the aircraft and the income stream from the lease of the property to Air Bermuda. The structure can also be designed to qualify for islamic investors by giving them an ownership interest in the business and assets.

CONCLUSION

Commercial lawyers are coming to realize what trust lawyers have always known, that the trust is incredibly flexible. The future development of new and innovative uses of trusts in commercial applications is limited only by the imagination of the lawyers designing the commercial or tax structures.

NEXT STEPS:

If you are interested in forming or discussing Commercial Trusts, please contact our office.

Meritus Trust Company Limited
 8 Par-la-Ville Rd
 Mintflower Place, 4th Floor
 Hamilton HM 08, Bermuda
 PO Box HM 1436
 Hamilton HM FX, Bermuda

Tel: 441 405 9870
 Fax: 441 405 9871
 info@MeritusTrust.com
 www.MeritusTrust.com

Licensed to conduct trust business
by the Bermuda Monetary Authority