Considering sham trusts, trust basics and trust alternatives

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Introduction

This memorandum examines the issues around creating a valid and certain trust in a number of offshore jurisdictions. It focuses particularly on how certain mechanisms within a trust, which are introduced to address the common wish of settlors to maintain control over the function and disposition of the trust and trust assets, can invalidate a trust and / or render the trust vulnerable to litigation.

Themes considered in this memorandum include what elements a trust must necessarily contain, what a 'sham' trust in fact is, what modern day 'offshore trust' powers exist for protectors/settlors, how divorce proceedings may be affected by a settlor/protector arrangement, and whether foundations are preferable to trusts.

It should be noted that trust laws in many jurisdictions have attempted to keep up with the rapid pace of globalization in the past few decades but have not quite caught up. Thus anomalies and inconsistencies exist and the application of trust laws varies hugely between common law and civil/other law jurisdictions and also significantly between common law countries. While certain jurisdictions are more sympathetic to the vesting of powers on settlors, this legislation must be considered in the context of conflict of law principles where a settlor has assets or interests in more than one jurisdiction.

We also note that with Common Reporting Standard ("CRS") treating protectors as "account holders" of any given trust, protectors are seen in the same light as settlors – i.e. as controlling persons.

With that in mind as well as the increasing urge for transparency imposed by CRS and FATCA, it is our view that settlors should only become protectors of their own trusts in extremely limited circumstances and after close examination of all the material facts and circumstances. Otherwise there is a very real risk that, at law, the settlor may be imputed to be in control and possession of the trust's assets and the existence of the trust impugned – irrespective of whether the facts or the settlor's intentions support this outcome.

What certainties must a trust fulfil?

First we must consider the vital elements of a trust. There are 'three certainties' which must be fulfilled for a trust to exist correctly. Should these not be present, the trust will fail.

The three certainties are certainty of: intention, subject matter and objects.

This memorandum focuses on intention. The key principle is that when a settlor creates a trust he must manifest a clear intention to do so. If there is doubt, the trust fails.

A leading common law case on this is Rahman (see later), which establishes that if a trust is 'made to appear what it is not' or 'the settlor does not honestly expect the trust to have legal effect' it will be struck down and declared void as a sham.

What is a 'sham' trust?

Where a trust 'is made to appear what it is not' the trust will be struck down as void on the grounds that it is a 'sham'.

One underlying basis of the sham is that, at the time of the execution of the trust instrument, the settlor does not honestly expect the trust to be genuine and have legal effect.

Readers may already be aware of the facts of the Rahman case: Rahman v Chase Bank (CI) Trust Co. Ltd [1991] JLR 103. In this case the settlor retained extensive powers in the trust instrument to control the trust, in particular to distribute the entire income and capital of the trust fund to anyone including himself, and to veto any proposed investment of the trust fund.

The court held that notwithstanding the terms of the trust the settlor simply intended to treat the trust fund as if it were his own, with which to do what he wanted.

In support of that conclusion the court relied on the fact that the settlor 'retained de facto dominion and control of the assets during his lifetime' - the trust was dressed up to look like a trust but the settlor never intended it to take effect. The settlor's reserved powers are of evidential value to ascertain whether the required intention is present.

Rahman makes it clear that a trust will fail: (i) if, upon the creation of a trust, the settlor does not fully transfer the entire legal ownership interest in the trust property to the trustees, and the beneficial ownership interest to the beneficiaries; (ii) if the settlor tries to keep an element of dominion or control over the assets; (iii) if the settlor never intended to create a trust in the first place.

Accordingly, a court of law may set a trust aside if the judge reaches a view that the settlor wanted his cake but also ate it. In other words, the settlor purported to establish a trust on paper and duly transferred the legal interest in assets to the trustees, but then reserved powers over the trustees to control the management and disposal of the assets to such an extent that the only possible inference is that the settlor did not intend to create a trust in the first place, but merely an agency or nomineeship.

In these circumstances the trust is said to lack essential integrity. It will be set aside if challenged.

Trust practitioners analysing the Rahman case have described such a trust as a 'formal sham', the name being derived from the fact that the trust is established, on the face of the trust instrument, as a trust that lacks the essential elements (or the irreducible core) of a valid trust.

This is in contrast to a 'substantive' (or an administrative) sham, which is a trust that, on the face of the trust instrument, appears to be a valid trust, but which the settlor and the trustee have agreed will be administered according to a separate agreement, thus opening up the trust to a challenge on the grounds that it is a substantive sham.

Therefore we can conclude that that a trust must avoid any element of being a 'sham' in both form and substance.

Reserved powers legislation

Reserved powers legislation enacted in some offshore jurisdictions replaces the common law regarding the settlor-directed trust (see below) and the concept of formal sham.

The objective of this legislation is to thwart a challenge to the validity of the trust on the grounds that it lacks essential integrity on the basis that the settlor has reserved excessive powers to control the trustees by the express terms of the trust instrument (or confers such powers upon his right-hand man, the protector).

The legislation typically lists certain powers that may be reserved by a settlor (or conferred upon the protector) without invalidating the trust. In particular, the legislation expressly confirms that it is quite proper, and shall not cause the trust to be set aside as a sham, for the trust instrument to reserve on the settlor a negative power to veto the dispositive powers given to the trustees to distribute or to give the trustees binding directions to distribute (see below).

The Cayman Islands' legislature was the first jurisdiction to adopt this approach as set out in the Trusts (Immediate Effect and Reserved Powers) Law 1987, as amended 1998 (now section 14 Trusts Law 2011 Revision). This provides that the reservation or grant by a settlor of a trust of:

(a) any power to revoke, vary or amend the trust instrument...
(b) a general or special power to appoint [i.e. distribute] either income or capital...
(c) any limited interest in the trust property
(d) a power to act as director or officer of a company wholly or partly owned by the trust
(e) a power to give binding directions to the trustee in connection with the purchase, holding or sale of trust property
(f) a power to appoint, add or remove any trustee, protector or beneficiary
(g) a power to change the governing law...
(h) a power to restrict the exercise of any powers... of the trustee by requiring that they shall only be exercisable with the consent of the settlor or [protector] shall not invalidate the trust.

Similar legislation has been passed in other offshore jurisdictions (see below).

The conflict of laws legislation enacted by a few jurisdictions (based upon the Hague Convention) is somewhat extraordinary in so far as it does not really shed much light upon the matter of to what extent reserved powers of legislation may in fact undermine very existence or validity of those trusts.

As you already have surmised, the scope of reserved power legislation differs among the jurisdictions that have adopted it.

For example, section 2(3) Trusts (Special Provisions) Act 1989 of Bermuda (with identical provisions found in other legislation) provides:

'The reservation by the settlor of certain rights and powers, and the fact that the trustee may have rights as beneficiary, are not necessarily inconsistent with the existence of a trust.'

Quite what the 'certain' powers are (that are not 'necessarily' inconsistent with the existence of a trust) and that the settlor may reserve is anyone's guess!

The 'reserved powers' legislation of other jurisdictions, such as Hong Kong and Singapore, on the other hand permit a settlor to reserve powers to give the trustees instructions that relate to the investment of the trust fund and management of the trust assets, but not relating to distributions.

In jurisdictions that have enacted modern reserved powers legislation, it is usual to find the bulk of trusts established by certain institutions over the last decade reserve extensive powers to the settlor (or confer them on the protector).

See the following legislation for more details on various jurisdictions' reserved powers laws:

- Bahamas – s.3 Trustee Act 1998 amended 2004 and 2011;
- BVI s.86 Trustee Ordinance (Cap 303) amended 2003;
- Guernsey – s.15 Trusts (Guernsey) Law 2007;
- Jersey – Art 9A Trusts (Jersey) Law Revised 2014;
- The Trusts (Recognition) Act 1989 of Gibraltar;
- the Recognition of Trusts Ordinance (Cap 76) Art.2 Schedule of Hong Kong;
- the Recognition of Trusts Act 1988 of the Isle of Man;
- Hong Kong – Part IVD, s.41X Trustee Ordinance (Cap 29) as amended 2013;
- Singapore – s.90(5) Trustees Act (Cap 337) as amended.

Understood, sham trusts are self-defeating. What is required to avoid reserved power trusts being deemed as shams?

So which powers may be reserved by the settlor (or conferred upon the protector) without the trust being set aside as a sham?

There is no easy answer. It depends upon where the challenge takes place, or rather, which laws are applied to determine the issue.

Some jurisdictions are more likely to set a trust aside as a sham than others. This is because some jurisdictions are governed by the common law, whereas others have enacted modern reserved powers legislation.

The common law case of Rahman v Chase Bank Trust Co. (CI) Ltd has been extensively analysed because of its impact upon the validity of a number of offshore trust structures.

The Royal Court of Jersey confirmed that a trust should be struck down and set aside, if challenged, in circumstances when it is established that the trust is not a trust at all, but is a sham (sometimes referred to a formal sham). The US Courts will also strike a trust down as void when it is a sham and 'lacks the proper substance' of a trust – Lund v Commissioner of Internal Revenue USCA 9th, San Francisco, 27 June 2002.

Such a trust is often described as lacking essential certainty. In other words, the express provisions of the trust instrument reserve for the settlor (or confer upon a third party such as the protector) so much control over the trust assets (as to investment, management and/or disposition) that the trustee acts as no more than a mere puppet or nominee of the settlor.

In these circumstances, the court is likely to infer that the settlor did not intend to create a trust at all, but instead intended a nominee arrangement. The Royal Court of Jersey set aside the Rahman trust under the laws of Jersey, applying traditional equitable and common law principles, as it found that the settlor had 'retained dominion and control over the trust assets during his lifetime'.

The trust was declared to be void ab initio (from inception) so that ownership in the trust assets had to be unravelled as they returned to the settlor (or, as he had died, to the settlor's estate).

The traditional position

This distinction between form and substance is key to 'sham trusts'.

As Diplock LJ said in his classic definition of a sham in Snook v London and West Riding Investments Ltd, a sham:

'*…means acts done or documents executed by the parties to the "sham" which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create*.'

A trust will be a sham where there is an intention to have an expressed trust in appearance only. As was said in A v A: '*The court must find that the settlor and the [trustee(s)] had the intention that the true position should be otherwise than as is set out in the trust deed which they both executed*.'

An insight from New Zealand

New Zealand has many trusts relative to its population, around 300,000 are believed to exist currently. This has resulted, along with the popularity of the jurisdiction for non-resident or 'foreign' trusts, in many persuasive

cases. While New Zealand's trust law and flexibility harks back to the 1800s and is by no means artificial, many settlor reserve powers are permitted by the 1956 Act as well as its 2019 successor.

The relatively recent case of Clayton v Clayton in New Zealand (2013) distinguished between 'illusory' and 'sham' trusts. In this case, Hansen J followed the words of Winkelmann J in Financial Markets Authority v Hotchin (No 2), which considered whether a settlor exercised sufficient control over a trust to deem it not to exist and thus be 'illusory'.

The focus in Clayton was on whether the settlor retained sufficient rights to be considered tantamount to ownership. In this case, Hansen J reasoned that if the settlor could revoke the trust, it was an indication the trust was illusory. The Privy Council decision in Tasarruf Mevduati Sigorta Fonu v Merrill Lynch, which examined the ability to revoke trusts, reiterated this point on revocability of trusts.

Hansen J followed Winkelmann J's logic in Hotchin where the settlor had the ability to appoint himself as sole trustee and beneficiary but was not allowed to benefit himself if he was a beneficiary. This contrasted with Clayton where: 'through his delegates, Mr Clayton exercised (sic), in a practical sense, the powers of ownership' and the trust was unwound. This in effect means that anyone with a fiduciary power, be it as a trustee, protector or settlor with reserved powers, should be careful in fully considering whether they are to benefit from the same trust.

Although New Zealand has just updated its Trusts Act from 1956 and is coming into effect in January 2021, it is surprising and perhaps disappointing no statutory definition is given for 'sham' or indeed 'illusory' trusts. Certainly the global offshore trust industry, as well as New Zealand domestic trusts, will therefore continue to be challenged in court proceedings on these concepts which in turn will still need to be defined on judgment and precedent in the courts.

'True effect' of trusts and an encroachment on reserved powers

In JSC Mezhdunarodny Promyshlennniy Bank v Pugachev (2017) a seminal case was heard in English courts which concerned five trusts a Russian oligarch had in fact settled in New Zealand under New Zealand law. As English case law is the jurisprudence of most 'offshore' trusts, the court felt entitled to settle the matter and the parties agreed. The main trust of interest involved the London Resident Trust. The claimants asserted that the trusts were a sham, 'illusory', and were not settled as they appeared to be, namely for the defendant's partner and children. It was argued that the trusts were ultimately a resource of the defendant's and under his control. The defendant's partner appeared alone before the court as she was living at the trust's main asset, a home in London which Mr Pugachev could also live in under the terms of the trust.

Birss J deemed that 'the personal powers conferred to give the Protector (the defendant) the ability to act in his own interests' meant that the 'true effect' of the trust was that it should be unwound. Again, we see a judge unwinding a trust because it does not in their view exist, not because it is a 'sham', and the judge made concerted efforts to avoid any debate on the concept 'sham' to enable a clear decision to be reached.

This judgment is seen by some as being unfair. The trust deed was well drafted, and none of the powers on its own conferred on the protector ownership of the property. Under the terms of the trust deed, yes, Mr Pugachev could have booted out his partner and children out of the home. Yes, he could direct renovations to the property. Yes, he was able to direct the property being let on his terms if he left.

However, the protector reserved a general power or appointment nor of revocation. Of course, had he done so, then Mr Pugachev certainly would have held 'ownership' of the trust's assets.

It must be noted that the ultimate resource in the property, not the right to use it, was its financial value. Under no circumstance could Mr Pugachev have benefited from the proceeds of the sale. Under the trust deed, any monies for a sale or rent would have vested in the trustee alone without the power of Mr Pugachev to direct the funds, for example, to satisfy creditors. It was after all fair enough that settlor be permitted to settle a trust to live in a property it owned while he wanted or was able, even if the usage of the home during Mr Pugachev's lifetime and ability was directed by him. How does this vary from, say, a trust holding solely securities and financial instruments where a settlor is appointed as the investment adviser?

Settlor directed trusts

Trusts where settlors reserve certain powers to themselves are commonly referred to as settlor-directed trusts (or grantor-directed trusts). They are popular with settlors from non-common law jurisdictions, who find the trust an alien concept and are more reluctant than a high-net-worth individual from a common law jurisdiction to transfer all ownership rights to, and control of, the trust property to foreign offshore trustees.

In practice, they tend not to be used for tax avoidance because typical sophisticated anti avoidance legislation, such as that in the US, simply treats the trust as pass-through and imposes tax upon the settlor on all income and gains as if he still owns the trust assets.

Disclosure of trust information and litigation

Litigation in a number of offshore jurisdictions has revealed a trend for individuals to use their position as beneficiaries to obtain trust accounts and other information from the trustees with the ulterior motive of using that information as evidence in a subsequent lawsuit to challenge the validity of the trust.

For instance, a person who is a nominal discretionary beneficiary or object of a dispositive power under a trust, but who would receive a substantial share of the settlor's estate under forced heirship rules, may use his position as a beneficiary to obtain evidence to use in an action to challenge the trust on the grounds of invalidity or sham.

A provision whereby a protector is given power to veto the exercise by a beneficiary of any of his rights in that capacity would enable the protector to prevent this from succeeding.

However, over recent years there has been academic debate as to whether this is lawful. Part of the 'irreducible core' of the trust is the right of a beneficiary to an accounting - take away that right and there is no trust.

In re Rabaiotti's Settlement (Re Rabaiotti's Settlement [2000] WTLR 953) the Royal Court of Jersey held as a general principle that a beneficiary is entitled to inspect trust documents that show the nature and value of the trust property and how the trustees have been investing and distributing it, although the court has a discretion to refuse disclosure if this is in the best interest of the beneficiaries as a whole, a view confirmed by the Privy Council in Schmidt v Rosewood Trust Ltd [2003] 3 All ER 76.

It therefore appears that if a settlor purports to deny the beneficiaries what is considered, in equity, to be one of their core rights, the clause may be struck down as unlawful.

Note that in Re Dartnall [1895] 1 Ch 474 it was held that a trustee must give a beneficiary all reasonable information in respect of investments and distributions and, in the absence of special circumstances, allow inspection of trust documents.

Divorce order to have the trust set aside

A strong alternative line of attack on trusts on divorce arises not by applying divorce laws as in the above, but by applying trust law.

Any grounds that establish that the trust is invalid (or that the transfer of assets upon trust is invalid) has the effect of restoring the assets to the settlor. If the trust (or the transfer into trust) can be set aside, it swells the assets available for division upon divorce.

Relevant grounds to impeach the integrity of the trust (or the transfer into trust) include the following:

(i) that the trust lacks the 'three certainties', in particular the settlor's intention to create a trust
(ii) that the settlor did not have appropriate capacity
(iii) that the trust was created by undue influence or mistake
(iv) that the trust is a 'sham', i.e. rather than, or in addition to, applying for the trust to be varied or for the trust assets to be taken into account as a resource, a spouse of a settlor may seek to challenge the validity of the trust on the grounds that it is a sham.

It is perhaps a paradox that the law which originated from the courts in London is applied so variedly. London is well known as being the vanguard of divorce proceedings where outcomes favour the financially weaker party far more than any other jurisdiction. On the other hand, however, it is common law 'offshore centres' such as the Channel Islands and Caribbean Overseas Territories of the UK - which use English based law also - which establish perhaps the most opaque and strong trust regimes that most strongly favour financially stronger parties in divorce proceedings.

Recent cases reviewed by the author have revealed how family courts in London at least take a dim view of the notion that trustees really are vehicles for the future and are a protection mechanism with hundreds of years of common law and practice which must be respected. Family courts often treat all trust assets as effectively being the settlors or beneficiaries even when it is explicit that those assets may not be devolved to those parties under

any circumstances. Pre-nuptial (or post-nuptial) agreements are necessary where marriage occurs and trusts are involved!

Foundations as an alternative to trusts

1. Foundations as a solution? What is a foundation?

First, we should consider what a foundation is.

Foundations were introduced approximately 100 years ago in Western Europe. Their use for estate and asset planning started in Liechtenstein in the early part of the 20th Century. Foundations have since become extremely popular across the globe, especially in civil law jurisdictions where the concept of 'Anglo Saxon Trusts' is less well known.

A foundation is a separate legal entity, without members or shareholders, and is generally established to reflect the wishes of the founder, who may be an individual or a corporate entity. These wishes are contained within the Foundation's Charter and Regulations. Foundations can be established for a fixed or indefinite period of time and can be used for charitable, commercial or for family purposes.

2. Foundation's uses

Foundations are like trusts a very important component when structuring the ownership of family and corporate assets and are particularly important where trusts are not generally recognised. They are in many respects like corporate entities but afford the protection and continuity derived from the use of trusts.

Practical uses of foundations are very similar to trusts and include confidentiality, wealth and estate planning, inheritance tax planning, avoidance of forced heirship rules and avoiding forced heirship rules.

Foundations can be established in many countries including Panama, The Netherlands Antilles, the Bahamas and the Isle of Man – which introduced foundation legislation in 2004 and 2011 respectively - to make them the leading common law jurisdictions for the domicile of foundations.

By treating trust assets as a resource of a mere object of a discretionary dispositive power, or varying a trust in favour of a non-beneficiary spouse, or otherwise setting a trust aside, the divorce court in England show a willingness to disregard established equitable principles.

Surely you may ask, the trust assets belong to the trustees to hold upon trust for the beneficiaries according to their equitable rights set out as the express terms of the trust?

Not surprisingly, the offshore financial centres that specialise in trust services often rely upon established equitable principles and conflict of laws rules to protect the interests of the beneficiaries at the expense of the rights of a divorcing spouse.

3. Do foundations have the edge over trusts as they are less likely to be held to be a 'sham'?

As you are probably aware, it is all well and good for the English (or, indeed, any foreign) court to assume jurisdiction over parties to a marriage and make an order upon divorce affecting an offshore trust.

But the interesting question is whether that foreign court order is enforceable against the offshore trustees and the trust assets that are held offshore: see Browne v Browne [1989] 1 FLR 291; A v A and St George Trustees Ltd [2007] EWHC 99 (Fam); and Minwalla v Minwalla [2005] 1 FLR 771

What is clear is that the reservation of rights by the founder in this way does not cause the foundation to be a 'sham' as it does under common law equitable principles and this is key.

The precise nature of the powers conferred upon the founder depends upon the specific provisions of the charter, or regulations (articles or rules) made under the charter, of the foundation under scrutiny.

For example, Article 18 of the Foundations (Jersey) Law Revised Edition 2014 states:

(1) A founder of a foundation has such rights (if any) in respect of the foundation and its assets as are provided for in its charter and regulations.
(2) Any rights a founder of a foundation may have in respect of the foundation and its assets may be assigned to some other person if the charter or regulations of the foundation so provide.
(3) Where a founder has rights in respect of the foundation or its assets...and the founder dies...those rights vest in the guardian unless its charter or regulations provide otherwise.

The Bahamian foundation legislation contains similar provisions in so far as section 6(2) Foundations Act 2004 states that the charter may include provisions 'for the reservation of rights or powers to the founder'.

In respect of Liechtenstein foundations, section 11 of the PGR permits the founder to be appointed as the 'controlling body', with powers to control the way in which the council manages and distributes foundation assets.

Similar provisions exist in Panama, where the legislation expressly confirms that a founder may reserve certain rights and powers, such as the power to revoke the foundation, remove council members and appoint replacements, etc. as well as for the founder to be appointed as a council member, a protector and/or member of a supervisory body.

In the Isle of Man, Section 29(1) Foundations Act 2011 states that a founder of a Manx foundation has 'such rights (if any) in respect of the foundation and its assets as are provided for in the foundation rules'.

According to s.11 Foundations (Guernsey) Law 2012 a founder may reserve rights to amend, revoke, vary or terminate the foundation, which powers are restricted to the duration of his life or 50 years.

The founder's rights and powers, if any, are typically assignable, i.e. the founder may assign or transfer his rights to a third party of his choosing.

For example, section 9(2) Foundations Act 2004 of the Bahamas states that:

The founder may, in the foundation charter or by instrument in writing, assign or transfer any or all of his rights, powers and obligations under the Act, the charter and the articles to such person as the founder in his absolute discretion shall determine.

The ability of the founder to assign or transfer his rights and powers is invaluable in circumstances where the founder, for the purpose of establishing a foundation, is a service provider acting as nominee of the true founder or client, in which case such powers that are reserved or conferred upon the nominee founder can be assigned to the client or person providing the endowment.

These reserved powers allow the founder considerably more authority over the management of a foundation than a settlor of a trust may have over the management of a trust.

Nonetheless, the exercise of these reserved powers must generally be implemented through resolutions of the foundation council and not directly.

This is because the assets do not actually belong to the founder, but belong to the foundation and so the founder must give an instruction to the council or officers for them to implement in the manner stated in the charter or regulations.

We do not have enough evidence to suggest that in proof, foundations are more robust than trusts and even if we look at the evidence which exists, there are so many extenuating circumstances and factors which may blur a definite conclusion. That said, depending on the particular circumstances of the settlor (e.g. where he lives, his family or former family lives, where his assets are based, his tax residence, his tax domicile and so on) it would be erroneous not to consider setting up a foundation if the 'settlor' needed to keep some form of official control on the foundation's assets. On this point one could also consider using a Private Trust Company, or in the author's view better still, set up a BVI VISTA trust which indemnifies trustees at statute if settlors and beneficiaries want to manage underlying companies at their own risk. Note here the infamous Barclays Bank v Bartlett case where trustees were found liable for not knowing the affairs of all a trust's companies and assets however divorced the trustees were from the management of those affairs.

Still today trustees try and rely on so-called, long and well-drafted 'anti-Bartlett' clauses to exculpate themselves from the activities of underlying companies - and in a recent Hong Kong case, such reliance was dismissed!

Conclusion

In a world where a settlor may live exclusively in a particular 'offshore jurisdiction' with reserved-settlor powers, say, the Bahamas, Jersey or Singapore, and in a world where that same settlor has no assets or connections offshore that jurisdiction, a settlor and protector construction may work well – provided said settlor is not a beneficiary.

However, it is uncommon for settlors to live in 'offshore' jurisdictions, the reality for a settlor or such a protector is stark, and such 'offshore' jurisdictions simply cannot function in isolation without help from the settlor and next generations.

She or he will likely have real estate, family, children or grand-children, businesses, boats, jewellery, cars, fine wine and so on in a jurisdiction which may not look so favourably upon the construction and help third party creditors look deeper into the trust precisely because the settlor still retains some additional 'control' on the trust and therefore its assets.

Certainly, the deeming of protectors as 'account holders' for the huge multi-national tax driven project of the CRS confirms this stance.

It would be a brave and unnecessary risk in this article's view to chance a settlor holding both roles of settlor and protector in a trust of any value to the settlor, although of course during her or his lifetime, being a beneficiary of a trust is not excluded.

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