Article by **Robert Brodrick, Private Client Partner at Payne Hicks Beach**, first published online in Campden FB on 14 March 2017 and is reproduced with kind permission
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ESTATE OF PLAY: DO TRUSTS HAVE A ROLE IN INTERNATIONAL ESTATE PLANNING?

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Most people, when they think about trusts, immediately associate them with tax planning. Although controlling exposure to tax may be one reason why people use trusts, they have many other uses, as Robert Brodrick, trusted adviser and partner at Payne Hicks Beach, explains.

Without careful planning, you can very easily lose control of a family business as the shares pass from first, second to third generation. In many countries, forced heirship rules require assets to be split equally (or unequally) between sons and daughters on a parent's death so by the time you reach the third generation, shares ownership will be diluted between cousins.

Using a trust can prevent fragmentation of share ownership by keeping the ownership and control of the shares in the hands of the trustees. The financial benefits can continue to be spread between a wider class of family members, but without losing control. Trusts can therefore help to preserve continuity of ownership of family businesses, as part of a wider family governance structure.

Avoid probate formalities

International families tend to hold property in multiple jurisdictions and, in the case of US individuals, in multiple states each of which have different probate formalities. Dealing with the administration of the estate of such an individual on death can take years. There may also be a conflict between the succession law of the country where the individual is domiciled and the law of the country in which the asset is situated which can cause further complications. This is potentially damaging where important decisions need to be taken but the assets are frozen. Trusts can be a very effective way of by-passing probate formalities because the trustees are a continuing body and will usually be unaffected by the death of a beneficiary. A trust also enables the trustees to manage the devolution of wealth to the next generation and can help to maintain privacy.

Family Governance

Trusts are an important part of any family governance structure. They can help to maintain a developed sense of family obligation where the trustees are able to control the level of income available to the beneficiaries and ensure that income is not all distributed at the expense of reinvestment. Trusts can also be used to encourage philanthropic behaviour and to educate beneficiaries in the responsibility of wealth.

Risk Management

Trusts can help to protect a family's assets from a variety of risks. Trusts work by splitting the "legal" ownership of assets from the "beneficial" ownership. This is particularly helpful when family members live in areas of geo-political risk because it enables assets to be registered in the trustees' name in a jurisdiction that is hopefully more stable.

Taxation is another such risk but an even greater risk is often divorce where the starting point for division of assets in the UK is a 50:50 split. Trusts can help to ring fence assets from claims on divorce, and the trust instrument can also require a beneficiary to enter into a prenuptial agreement which may add further protection.

Trusts can also be structured so as to insulate the family business from claims with each branch of the family having separate 'satellite' trusts that provide them with benefits. However, for a trust to be effective it must be run professionally and the family must respect the structure; otherwise it may be unable to withstand a challenge.