

Directed Trusts

Uses and abuses – whose power is it anyway?



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Mr X is a wealthy entrepreneur resident in Brazil

He would like to set up a trust to fund his lifestyle and that of his family.

He is strong willed and made a lot of money taking his own decisions. When discussing the powers to give to the trustees, Mr X said:

“Why would I want to hand over control of my money to those trustee guys – I am the one who made this money – my investment team and I understand speculation so why change this approach?”

Mr X would like his long term adviser (Mr Y) to have the power to invest, appoint beneficiaries, to hire and fire trustees and the power to revoke the trust.

UK tax update – important points

- Inheritance tax
- Capital gains tax
- Stamp duty land tax
- Compliance

Why are directed trusts now used?

- Unfamiliarity with the trust concept
- High risk investment profile
- To enable the management of the trustees' responsibilities
- To formalise and clarify an intended control mechanism

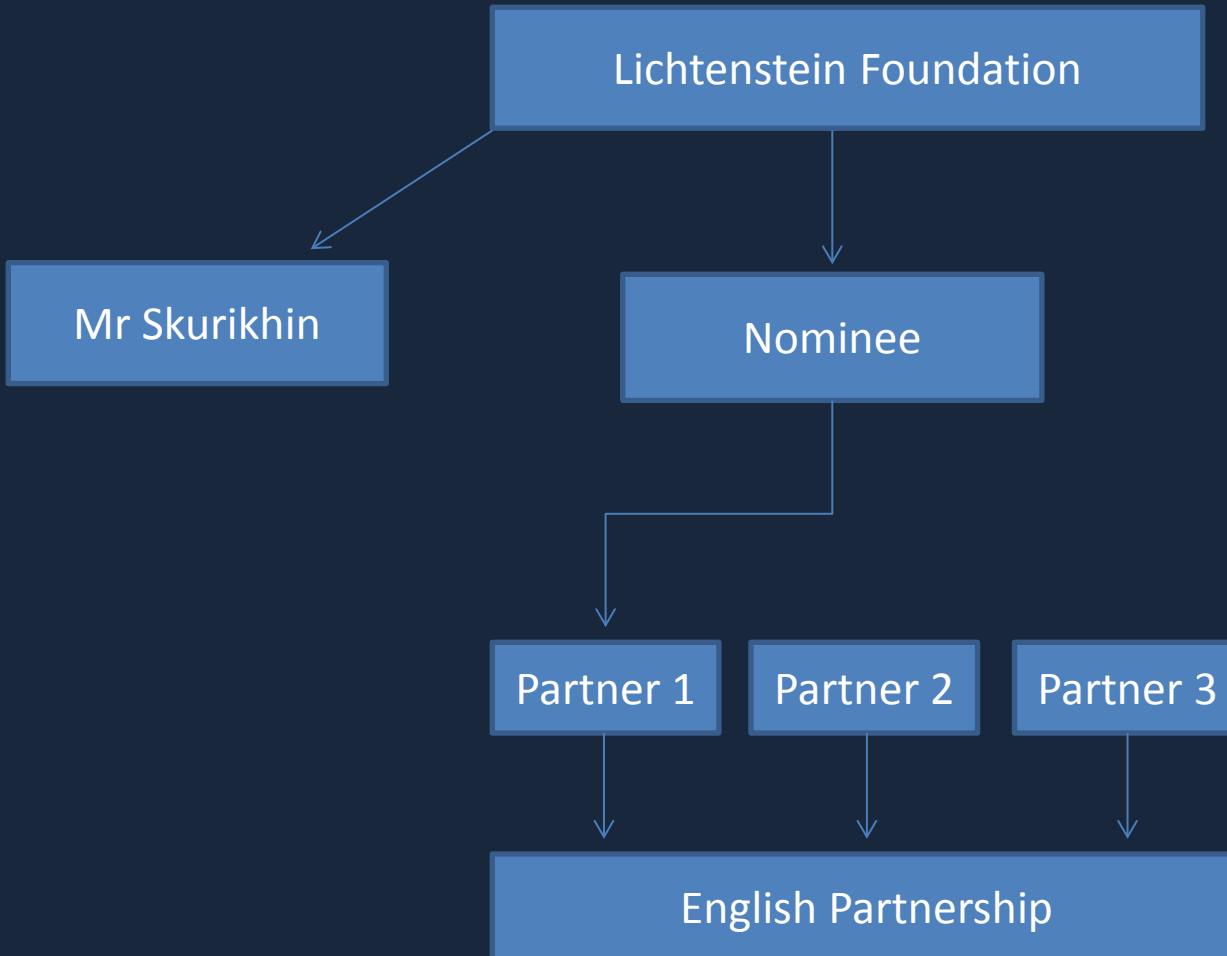
What should the trustee consider when agreeing to the trusteeship?

- The “irreducible core” of obligations
- Management and control
- Identify the retained powers
- Are the reserved powers fiduciary - how can you tell and why does it matter?

Misuses of directed trusts

- *North Shore Ventures Ltd v Anstead Holdings Inc [2012]*
- *TMSF v Merrill Lynch Bank & Trust Company (Cayman) Limited [2012]*
- *JSC VTB Bank v Skurikhin [2015]*

Misuses of directed trusts



....consequences for trustees

Misuses of directed trusts

- To what extent should the trustee become involved in the exercise of a retained power?
 - a fiduciary power?
 - a practical guide for trustees
- When can a protector be removed?
 - *Re A and B Trusts* [2012]
 - *In the matter of the K Trust* [2015]

Conclusion

- If a settlor would like to retain control then formalise the retention of these powers.
- Do not blindly follow directions of a power holder; document your decision process.
- Be mindful of informal reliance on a settlor's guidance.
- Keep in mind how retained powers can call into question the robustness of a structure.
- Watch for future developments.....

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