

THE INTERNATIONAL IMMIGRATION TRUST

*By Richard W. DeVries
Barrister and Solicitor, B.Comm., LL.B.*

The subject of this paper is the utilization, under the law in Canada as it currently exists, of an international, or offshore, trust for Canadian immigration planning. International planning is not a new subject; many wealthy and prominent Canadian residents have utilized international trusts and corporations to save a very substantial amount of tax. An international immigration trust can be used effectively by anyone who has recently immigrated, or who wishes to immigrate, to Canada.

I. WHAT IS A TRUST?

(a) Definition

Trusts are one of the oldest means of preserving both income and capital. The modern use of trusts dates back to their use by the Knights prior to embarking on Crusades and remains a viable method of tax planning today.

A trust is a fiduciary (good faith) relationship established by law. A trust is not recognized as a “person” at law. However, it is deemed to be a “person” for Canadian taxation purposes.

A trust is created (the settlement) when a person (the settlor) gives (settles) an asset (the trust assets) to another person or persons (the trustee) for the benefit of a third person or group of third persons (the Beneficiaries). The settlement (creation of the trust) entails transferring title to the trust assets into the name of the Trustee. Pursuant to the terms of the trust settlement deed, the Trustee has certain general powers and duties, for which he is accountable to the Beneficiaries, to manage, invest and dispose of the trust assets according to the terms of the settlement deed (Trust Deed) and any legal duties imposed on him or her by law. Once the trust has been created, the trust assets can be increased by further contributions, loans or simply by the gains made as a result of the trust’s business activities.