In recent years there has been an increase in trust corporations established by law firms taking on independent fiduciary roles. Traditionally, trust corporations were created by banks and private client law firms. With probate disputes and contentious deputyship cases on the rise and alternative business structures (ABS) entering the legal market, firms are reviewing their practices to consider how best to respond to consumer demand for specialist legal advice.

Origins and definitions
The origins of a trust corporation can be found in section 68(18) of the Trustee Act 1925. This section defines a trust corporation as ‘the public trustee or a corporation either appointed by the court in any particular case to be a trustee, or entitled by rules made under subsection (3) of section 4 of the Public Trustee Act 1906, to act as custodian trustee’.

For a corporation to qualify as a trust corporation under rule 30 of the Public Trustee Rules 1912 (as amended) it must:
- Be constituted under UK or European Community law;
- Be empowered by its constitution to undertake trust business in England and Wales;
- Have one or more places of business in the UK; and
- Be a company registered in the UK (or in the European Community) and have issued a share capital of at least £250,000 of which not less than £100,000 has been paid up in cash.

Essentially, a trust corporation operates as a separate legal entity which can hold assets in England and Wales as well as abroad.

Use of trust corporations
Trust corporations are used to fulfil a variety of fiduciary roles, which were historically undertaken by individual partners of a law firm:
- **Executors and trustees**: A trust corporation may act as an executor or administrator of an estate either solely or jointly with another person. Increasingly, trust corporations are appointed to act as independent administrators in complex or contentious estates where the existing appointment of an executor has been challenged. The appointment of an executor or administrator can be made by order of the court (in a contentious probate matter an order can be obtained with the consent of all beneficiaries); by a testator under their will; by a settlor or other creator of any trust; or by a person having power to appoint new trustees under section 4(1) of the Public Trustee Act 1906 (as amended);
- **Attorney**: A trust corporation may be
trust corporation: with ABSs and banks

A firm-owned trust corporation is used and disadvantages of creating one

appointed as an attorney (either on its own or jointly) under a general power of attorney; a trustee power of attorney (provided the trust corporation’s constitution authorises this); or a property and financial affairs lasting power of attorney (section 10(1)(b) of the Mental Capacity Act 2005 (MCA)), provided no one at the law firm has acted as a certificate provider. It cannot be an attorney under a health and welfare lasting power of attorney;

Deputy: With the introduction of the MCA, a trust corporation may be appointed as a property and affairs deputy (but not a health and welfare deputy) for those mentally incapable of dealing with their finances. Such an appointment can be a sole appointment, jointly, or jointly and severally with another. Prior to the MCA, trust corporations were not authorised to act as receivers. Since the implementation of the new legislation in 2007, the Court of Protection has appointed a number of trust corporations (mostly those created by law firms) to act as deputy. For many private client practitioners this has been a growth area of work;

Litigation friend: It is also possible to appoint a trust corporation to act as a litigation friend in proceedings where a person lacks mental capacity to conduct litigation.

Client benefits

There are a number of practical benefits and disadvantages of appointing a trust corporation as opposed to an individual partner of a law firm.

Unlike an individually named partner, a trust corporation never dies, goes on leave, gets ill, or retires. As all the directors of a trust corporation have equal access to client information, the trust corporation can offer a seamless and continuous service to the clients. This in turn can create substantial savings in professional costs where, for example, a deed needs to be created to appoint or retire individual trustees.

Under the Trustee Act 2000, a law firm-owned trust corporation owes a higher duty of care – with no extra cost on the professional indemnity insurance (PII) issued to the limited liability partnership (LLP) – to their clients than a lay trustee. This results in clients benefitting from a greater degree of professional and specialist legal advice.

Further, the provisions imposed on law firm-
owned trust corporations to keep a central and transparent record of all transactions and decisions encourages a streamlined and flexible service in the day-to-day management of clients’ affairs.

However, the creation of a new trust corporation can be expensive and time consuming. In addition, the requirement to register the new trust corporation with the Solicitors Regulation Authority (SRA) and possibly HMRC to comply with money-laundering obligations may also increase costs. Some banks and other financial institutions do not always understand what a trust corporation is and what information will be acceptable to comply with money-laundering obligations. This inevitably causes delay in setting up accounts and requesting third-party assistance.

Some clients, the perceived ‘impersonal’ nature of a trust corporation may not appeal and they may be reluctant to have a trust corporation act for them. Clearly, the initial financial costs of establishing a trust corporation may be off-putting for some firms. However, firms may conclude that given the above-mentioned benefits, the costs are worth it.

Bank or firm-owned trust?
There are a number of differences between how a bank sets up trust corporations, as opposed to those created by a firm of solicitors, and how they are run in practice. Bank trust corporations are usually part of a group structure and are generally trading. They normally charge for their services and have their own separate terms of business setting out the trust corporation’s charges to carry out the work. The directors of bank-owned trust corporations will invariably consist of employees of the bank itself and the trust corporation.

A trust corporation owned by a law firm can be a wholly owned subsidiary of the partnership, an LLP, or ABS. Historically, the directors of a law firm-owned trust corporation have been private client partners, who must be UK solicitors or registered foreign lawyers. However, some firm-owned trust corporations also appoint partners from other practice areas, the firm’s compliance officer for legal practice (COLP), and compliance officer for financial affairs (COFA) as directors, although this is not mandatory.

In addition, the law firm-owned trust corporation is usually ‘non-trading’ and would not normally charge for the work carried out by the corporate entity. In practice, the corporation does not usually have employees and engages its parent firm to carry out the legal work. The firm will charge the trust corporation for the services and advice provided to the corporation. In this way the firm-owned trust corporation can maintain an independent and impartial decision-making process and avoid conflicts of interests arising.

A fundamental difference between ABSs and law firm-owned trust corporations is the regulatory requirements. Where the ABS owns a trust corporation, the ABS must check the terms of its licence with care. An ABS must also disclose the trust to the SRA and ensure that the services provided by the corporation and the ABS are kept separate.

Law firm-owned trust corporations must be registered with the SRA and must have their own designated COLP and COFA, thereby providing better protection for the client and a key advantage over other types of trust corporations.

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With the legal landscape ever changing, combined with a society where complex family dynamics require domestic and cross-border succession, capacity, and sophisticated estate tax planning specialisms, it is perhaps unsurprising that private client law firm-owned trust corporations have seen an increase in demand for their services. Taking into account their advantages, including access to a wide range of legal expertise, stricter regulatory requirements, flexibility, and commercial acumen, law firm-owned trust corporations are best placed to take on the diverse fiduciary roles than their competitors. SJ

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