STEP JOURNAL

Israel’s foundation

Benjamin Grunberg looks at the hekdesh, Israel’s take on foundations.

Trusts have been recognised in Israel since the 1920s. The *Charitable Trusts Ordinance* of 1923 set out the rules applicable to public trusts. In 1979, the Israeli *Trust Law* was enacted, which provided for the formation of private trusts.

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Section 2 *Trust Law* provides that a private trust may be created by a deed of *hekdesh*. The word '*hekdesh*' in Hebrew has a very similar meaning to the word 'trust' in English, and a *hekdesh* is formed and operates on similar principles to that of a European foundation. The *hekdesh* is a legal entity and arises out of the relationship between a settlor, trustees and beneficiaries. Chapter 1, s1 *Trust Law* provides that a trust exists where a trustee holds and deals with the assets of the *hekdesh* for the benefit of the beneficiaries. Protectors are also recognised by Israeli law under s75(c) of the Israeli *Tax Ordinance*.

Uses

According to s26 *Trust Law*, only a public *hekdesh* needs to be registered; a private *hekdesh* does not require registration. This lends a great degree of confidentiality to the entire structure within which a *hekdesh* is used and, as such, like a trust or a foundation, the *hekdesh* serves as an effective asset-protection vehicle for physical and cash assets.

Moreover, under s75(i) *Tax Ordinance*, as long as neither the settlor nor the beneficiaries are resident in Israel for tax purposes, the *hekdesh* is an excellent vehicle for tax and estate planning, given that its assets and those of its underlying companies are tax-free in Israel. The only exception to this is in the case of Israeli-sourced income that is ordinarily taxable in Israel in any event.

The *hekdesh* may be used for everyday commercial activities by using an underlying company that is owned by the *hekdesh*. Section 75(p) *Tax Ordinance* considers the underlying company to be a 'pass-through' entity for Israeli tax purposes and, as such, the activities of these underlying companies remain tax-free. Furthermore, these companies are exempt from filing any tax returns under s131 *Tax Ordinance*. The underlying company of a *hekdesh* can be located in a jurisdiction other than Israel but Israeli companies work well for this purpose too.

Section 17(b) *Trust Law* provides that there are no minimum capital requirements to settle a *hekdesh*, and the relationship of *hekdesh* only commences once an asset has been transferred to the trustee. Assets can be added to or distributed from the *hekdesh* at any time.

Having regard to the fact that a *hekdesh* under s18(b) *Trust Law* is an irrevocable relationship of trust, and because the trustees of the *hekdesh* have complete and absolute discretion in relation to the trust assets, the *hekdesh* is considered by banks and financial institutions as a compliant entity through which to hold bank accounts and financial instruments.

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