

# Kingsley Napley Trust Corporation Limited (“KNTC”)

## What is KNTC?

In the UK it is possible to create a company known as a “trust corporation” (different to a “trust company”) which is authorised by UK law (section 68(18) Trustee Act 1925) and by the company’s articles of association to undertake trust business in England and Wales.

KNTC is registered at Companies House (registered company number 16011220) as a private limited company.

## Directors

Private Client and Contentious Trusts & Probate Partners.

## How does it work?

KNTC is non-trading and will not have employees. KNTC will not itself charge clients and will engage KN LLP to carry out legal work. KNTC has separate terms of business from KN LLP (available on demand) which effectively confirm that KN LLP would be engaged for legal work where appropriate. KN LLP will charge KNTC for the services and advice provided to KNTC. KNTC can thereby maintain an independent and impartial decision-making process helping avoid potential conflicts of interests.

KNTC will need to prepare annual accounts and comply with Companies House reporting in the usual way. Decisions will be by board meetings and resolutions in accordance with the Articles and statutory requirements.

## Advantages

### 1. Firmwide use

#### Private Client

- *Executor:* under a client’s Will.
- *Independent administrator:* to administer a client’s estate. There is a growth of independent administrator and independent deputy appointments in the context of litigation. This is because Wills appointing someone as executor/trustee are often the subject of a dispute and/or appointed executors/trustees are often also beneficiaries and so are conflicted.
- *Trustee:* there are rules relating to the ability of trustees to give good receipt, e.g. on the sale of land or where a trust has minor beneficiaries, two trustees are required. However, a trust corporation is exempted from these rules and may act as a sole trustee.
- *Attorney:* under a general power of attorney, a trustee power of attorney (provided KNTC’s constitution authorises this), or a property and financial affairs lasting power of attorney provided no one at KN LLP has acted as a certificate provider.
- *Deputy:* property and affairs deputy for those mentally incapable of dealing with their finances.

#### Real Estate

- *Nominee:* either temporarily or for a fixed period for individual or commercial clients for a variety of reasons, e.g. to hold UK real estate.

#### Litigation

- *Litigation friend:* in proceedings where a person lacks mental capacity to conduct litigation.

#### Corporate

- *Director:* KNTC can act as a director of a Family Investment Company with at least one director who is a natural person.

## 2. Continuity of service

Any director(s) could sign on behalf of KNTC providing continuity of service to clients when otherwise, decisions may have to be delayed when the Partner acting as trustee/attorney/deputy is absent. A trust corporation never dies, loses capacity, is absent or retires. The appointment and retirement of directors will not affect the assets within particular trusts. Should a Partner leave KN LLP, if they are appointed individually (restrictive covenants aside), it is easier for clients to leave with them.

## 3. Restriction of liability

If KNTC is appointed e.g. as a trustee, the liabilities will remain the liabilities of KNTC, rather than that of the directors from time to time. Deeds of indemnity on any change of individual are therefore not needed. However, protection is still available to the beneficiaries as directors will be liable for losses to the company in the event of their having acted negligently, fraudulently or in breach of their fundamental duties. The liability of shareholders is limited to the amount of their issued share capital from time to time. Liabilities incurred by a trustee whilst acting in that capacity are personal to them, with a trustee having a right to call for the trust assets to satisfy those liabilities. However, if those liabilities exceed the value of the trust assets or only arise once the trustee has resigned, they may become personally exposed. This may be a particular concern when taking on a new client that is unknown to the Partner involved.

## 4. Professionalism and security for clients

KNTC directors could be the Partners of the Private Client department who deal with trusts and estates every day. KNTC would owe a higher duty of care to clients than a lay trustee under the Trustee Act 2000. This results in clients benefitting from a greater degree of professional and specialist legal advice. The requirement for law firm owned trust corporations to keep a central and transparent record of all transactions and decisions should encourage a streamlined and flexible service in the daily management of clients' matters. As all the directors of KNTC would have equal access to client information, this should help in providing clients with a seamless service.

## 5. Competitive edge

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 and for many Private Client practitioners this has been a growth area of work. Many competitor London law firms already have and use their own trust corporations.

## Disadvantages

### Perceived impersonal nature of a trust corporation

This may not appeal to some clients who want to appoint an individual Partner as executor/trustee/attorney etc.

However, clients are reminded that it is still the relevant Partner acting albeit as a director of KNTC with all the advantages of succession and continuity of service mentioned above.

## For further information

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