

Hey Everyone,

I hope you're all well!

Given the potential future positions available to the dYdX Community to act as Trustees in one of the future dYdX SubDAOs, I thought it best to provide community members intending to apply for such a role with a bit of a primer in relation to its functions, fiduciary duties, and also some insight as to how to perform this role to an optimal level. This will serve as a good post to outline some considerations to think about before applying and, should you get the role, throughout your tenure as a Trustee

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Roles, Responsibilities, and Duties of Trustees in a Non-Charitable Special Purpose Guernsey Trust

In Guernsey, the formulation of a non-charitable special purpose trust (NCSPT) embodies a unique legal construct which necessitates the assignment of trustees to administer the trust's assets. The trustees of an NCSPT are burdened with some responsibilities, and their duties are enshrined in both statutory and fiduciary parameters established by Guernsey law, primarily the Trusts (Guernsey) Law, 2007.

Formation and Purpose of NCSPTs:

A Non-Charitable Special Purpose Trust is distinct due to its lack of beneficiaries and is often utilized for holding assets or managing specific transactions. Given the absence of beneficiaries, the conventional beneficiary principle is superseded, and the trust deed distinctly outlines the purposes of the trust.

1. Roles of Trustees:

a. Asset Management:

Trustees must manage the assets within the trust meticulously, ensuring that the purposes of the trust are met. They must strategically oversee assets, acting with the prudence, diligence, and acumen of a judicious individual managing their affairs. In this regard, all asset management and disbursement has to be made in accordance or in furtherance of the purposes of the trust as will be mentioned in (b).

b. Execution of Trust Purpose:

The trustees are pivotal in executing the specialized purposes of the NCSPT, ensuring that the transactions and activities align with the trust's objectives and the stipulations of the trust deed. Here, it is also a role of the Enforcer (ref: Enforcer primer), to see that this is actually being done and that disbursements lined up for a Multi-sig transaction will actually further or are in conformity with the purposes outlined in the deed.

1. Responsibilities of Trustees:

a. Regulatory Compliance:

Trustees must ensure unwavering adherence to the stringent legal and regulatory framework of Guernsey. Compliance with anti-money laundering (AML), counter-terrorism financing (CTF) provisions, and other pertinent regulations is paramount when carrying out tasks which would necessitate adherence to the aforementioned legislative instruments. Naturally, trusts can and should seek legal guidance from legal counsel so as to advise in relation to the above.

b. Record-keeping and Reporting:

Comprehensive and precise record-keeping is imperative. Trustees are required to maintain detailed accounts and documentation of the trust's financial transactions and administrative actions. Furthermore, periodic reporting, as specified in the trust deed or by statutory requirements, is essential. Since multi-sig transactions are completely on-chain, this is easily achieved. However, this does not apply to a bank account or payment account the trust could have so here, documentation has to be kept re. transactions effected.

1. Duties of Trustees:

Trustees are obligated to act in good faith, a duty entrenched in statutory law, highlighting the requirement to act with the utmost care and diligence in the administration of the trust (referred to as a 'bonus pater familias' by us boring lawyers).

a. Fiduciary Duties:

Trustees owe fiduciary duties to the trust. They are mandated to act in absolute good faith, with loyalty and utmost honesty, avoiding conflicts of interest and refraining from deriving unauthorized profits from their position. Trustees should always disclose any potential or actual conflicts of interests and are not allowed to sign off on any transaction where this conflict is

present. Other trustees naturally are able to if unconflicted.

b. Duty of Care:

Trustees must act with a high standard of care in managing trust assets and executing the trust's purposes, equivalent to that exercised by a prudent individual managing his assets. They should seek professional advice when necessary and make informed decisions concerning the trust's affairs.

c. Duty to Act within Powers:

Trustees are bound to act within the powers conferred upon them by the trust deed and the governing law (Guernsey Trusts Law of 2007). They must strictly adhere to the terms of the trust and avoid exceeding their conferred powers.

d. Duty to Avoid Conflict of Interest:

The trustees must constantly remain vigilant to potential conflicts of interest and act impartially, ensuring that the trust's purposes are not compromised by personal interests or external influences.

1. Limitation and Liability:

Trustees are usually provided with indemnity clauses within the trust deed to limit their liability, ensuring protection provided they act in good faith, within their powers, and in adherence to the trust deed and applicable laws. However, the trust deed can never indemnify or limit the liability of a trustee where such liability incurred relates to a breach of the trust deed.

a. Breach of Trust:

In instances of breach of trust due to negligence, dishonesty, or failure to comply with their duties, trustees can be held liable. They may be required to restore the trust's value or compensate for the losses incurred.

b. Reliance on Professional Advice:

When trustees act based on professional advice sought in the management of the trust's affairs, they may be absolved from liability arising from actions taken in reliance on such advice, provided it was sought in good faith.

1. Dispute Resolution and Court Directions:

Given the specialized nature of trusts (especially NCSPTs), disputes may arise pertaining to the interpretation of the trust deed or the execution of the trust's purposes. Trustees may seek the direction of the courts in resolving such disputes and ensuring that their actions align with legal mandates and the trust's objectives.

1. Trust Termination:

Upon the fulfillment of the trust's purposes or when the trust's continuation is deemed non-viable, trustees have the role of overseeing the orderly termination of the trust, ensuring the proper disposition of the trust assets in accordance with the trust deed and applicable laws.

1. Transparent Dealings:

Trustees are responsible for conducting the trust's dealings with transparency, ensuring that the trust's purposes and operations are executed fairly and in adherence to the governing law and the trust deed.

1. Appointment and Retirement:

Trustees must facilitate the orderly appointment of new trustees and their retirement, as per the provisions of the trust deed, ensuring continuity in the trust's administration and the fulfillment of its purposes.

Conclusion:

In summary, the trustees of a Non-Charitable Special Purpose Guernsey Trust play a critical role, characterized by a synthesis of diverse roles, responsibilities, and duties. Their actions and decisions are pivotal in ensuring the successful administration of the trust and the realization of its specialized purposes.

The interplay of fiduciary and statutory duties mandates trustees to act with integrity, diligence, transparency, and utmost good faith, navigating the nuances of the trust's objectives while adhering to the stringent legal and regulatory framework of Guernsey. The importance of their role in the sustenance and execution of Non-Charitable Special Purpose Trusts cannot be overstated, given the specialized and nuanced nature of these trusts within the legal landscape of Guernsey. The paramountcy of their role in fostering the integrity and efficacy of such trusts underscores the meticulous legal constructs that define the operations of Non-Charitable Special Purpose Trusts in Guernsey.

I look forward to the formation of future SubDAOs and am keen to see community members apply for future Trustee roles should they arise. Should any of you have any questions (now, or in the future), in relation to the role, please do feel free to reach out to me on the dYdX Discord - will be more than happy to explain or clarify any points!

Regards,

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