



CLT INTERNATIONAL

CLT International Programmes



STEP Foundation Certificate and Diploma in
International Trust Management

Brochure & Syllabus



in association with

MANCHESTER
1824

Manchester Business School

An International Trust Companies Association Project

Foundation Certificate and Diploma in International Trust Management

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Programme Information

1. Introduction

The Society of Trust and Estate Practitioners (STEP) in association with the International Trust Companies Association (ITCA) and Central Law Training (CLT) launched the international programme in 1999 leading to the Foundation Certificate and Diploma in International Trust Management. The programme which defines standards, levels of expertise and codes of professionalism in the international trust arena has received acclaim as a highly relevant, well presented course with first class study materials and facilities.

From 2007/08 the STEP Foundation Certificate and Diploma in International Trust Management are also awarded in association with the University of Manchester Business School (MBS). The courses are subject to the rigorous quality assurance procedures of MBS, a school of the University of Manchester.

2. About the Parties

Society of Trust and Estate Practitioners

STEP is the professional body for the trust and estate profession and currently has in excess of 13,000 members worldwide. STEP has a substantial number of branches throughout the world. A full list of branches and contact details can be found at www.step.org/branches

STEP members come from the legal, accountancy, corporate trust, banking, insurance and related professions and are involved at all levels in the planning, creation and management of, and accounting for, trusts and estates, executorship, administration and related taxes. Members of STEP include the most experienced and senior practitioners in the fields of trusts and estates.

International Trust Companies Association

The ITCA was formed by major financial institutions with international trust businesses to pool expertise on issues effecting the international trust environment, such as trends in government legislation, proceeds of crime, money laundering and international tax fraud.

The primary focus of the ITCA is to maintain and enhance standards of professionalism in the form of best practice, to provide education and to add value to the industry through example and by using its collective voice in communication within the business and international community.

Central Law Training

Central Law Training is the UK's leading provider of post qualification legal training running over 4,000 events annually throughout the UK, Europe and the Far East. Operating using a bespoke quality control administrative system, it provides both public and in-house training for qualified lawyers, paralegals and support staff; cutting edge conferences; and legal publishing. Over 100,000 delegates attend CLT's training programmes worldwide annually.

University of Manchester Business School

Manchester Business School is the largest campus-based business and management school in the UK. It provides world-class business and management education to undergraduates, experienced practitioners, and those with serious academic and research ambitions. It is an international and progressive school, delivering cutting edge business thinking and teaching, informed by the contemporary commercial environment.

3. How is the programme structured?

The programme is divided into two separate parts: a Foundation Certificate, which is available to all those wishing to obtain a background in, and general knowledge of, the practice of trusts in the international context, and a Diploma, which consists of four separate areas of study.

To complete the Diploma, passes in the following four advanced papers must be achieved:

- Trust Creation: Law and Practice
- Company Law and Practice
- Trust Administration and Accounts
- Trustee Investment and Financial Appraisal

4. What are the aims of the programme?

The overall aims of the programme are:

- To provide professional standards of administration and management in the international trust profession through professional qualifications
- To raise the profile of trust administration and management as a key function of the international trust profession
- To provide an international programme that will enable Diploma holders to acquire membership of a recognised professional body
- To develop a sound knowledge of all aspects of the international trust profession, including the vehicles, structures and jurisdictions that underpin the profession
- To provide an overview of the law, practice and procedures needed by trust officers and administrators and to develop the analytical skills required.

5. What are the benefits of taking the programme?

- You will gain an academic and professional award recognised by the industry.
- On completion of the Diploma you can use the designation Dip(ITM). In addition, if you have worked for two years in the industry you are eligible to apply for full STEP membership and you can on admission use the professional designation TEP, indicating full professional status.
- The programme is relevant to the tasks that you are undertaking in the workplace. It focuses on practical training issues.
- The programme is international in content. It covers common international principles and practices, but relates them to your local jurisdiction and offers comparisons with other major jurisdictions.
- The programme is in a flexible format. It is an integrated programme combining distance learning and face-to-face tuition.
- The course materials are first class. They are student friendly, relevant and excellent training tools.
- The face-to-face courses are delivered by international presenters who are all experienced practitioners, academics and professional trainers.

- Past delegates' comments include:

'Excellent course. Should be taken by all persons working in the trust business.' Bahamas

*'I thoroughly enjoyed the course. It was extremely beneficial and I particularly liked the exercises via the 'net'. The face-to-face course was very well laid out and quoted laws relevant to our jurisdiction. I would and **will** recommend this course to others.'* Bermuda

'Another excellent course.' Jersey

'Excellent lecturer. Course very well presented and very interesting!' Geneva

6. What are the entry requirements?

The Foundation Certificate is an open entry programme. There are no formal educational entry requirements. However, applicants should have a good standard of basic literacy and be aware that all programmes and materials are in English.

Admission to the Diploma programme is normally dependent on having achieved the Foundation Certificate. Exemptions from the Foundation Certificate are possible, subject to the criteria set out below.

7. Are exemptions possible?

Applicants who hold a degree or degree level qualification or who can demonstrate significant and relevant knowledge and experience may be entitled to exemption from the Foundation Certificate. Where the degree or similar qualification is not cognate and no or limited experience of the profession has been gained, the individual concerned will be strongly advised to sit the Foundation Certificate. The Course Director at Central Law Training will be happy to discuss individual positions on an informal basis if any assistance is needed in deciding whether or not the Foundation Certificate is an appropriate place to begin studies.

Applications for exemption from the Diploma papers will be considered in cases where there is a very close correlation between a previously obtained qualification and the Diploma paper from which exemption is sought, both in content and in level. STEP may take into consideration a significant amount of relevant post-qualification experience, when coupled with a relevant professional qualification.

There will be a maximum of two possible exemptions from the four Diploma papers.

There will be a greater onus on applicants to demonstrate similarity and relevance where the qualification was obtained more than three years prior to the application.

Each application will be considered on a case-by-case basis.

8. How long will the programme take?

This very much depends on you, the amount of study time you have available, your aptitude for the subject, the timing of examinations in your jurisdiction and so on.

The average student who spends six hours a week studying the programme should be able to successfully complete the programme in approximately two years.

Foundation Certificate		4–6 months
Diploma	Trust Creation: Law & Practice	4 months
	Company Law & Practice	4 months
	Trust Administration & Accounts	4 months
	Trustee Investment & Financial Appraisal	4 months

It is recommended that you study and complete papers individually rather than studying a number of papers simultaneously.

Diploma papers can be studied in any order. They are not sequential. Delegates can select courses according to availability of dates in any given jurisdiction.

9. How is the programme taught?

The programme is delivered through an integrated tuition system. This includes:

- a distance learning course
- a face-to-face course
- web site and helpline facilities

10. What can I expect from my distance learning course?

When you enrol you will receive a course pack that includes a delegate handbook, course manual (including main text, self assessment questions and practical tasks), specimen examination papers and solutions and a web site access code.

This pack will enable you to commence your study and provides you with a structured programme leading to the examination.

At the commencement of each Foundation Certificate course an **Induction Day** will be held for the delegates in that jurisdiction. The Induction Day will focus on:

- an outline of the course and examinations
- introductory lectures
- examination guidance and technique.

The distance learning programme is structured around modules which should be completed prior to entering the examination.

The course provides a number of assignments that can be completed online through the web site with online feedback.

11. What other facilities are available?

Study support is available throughout the course via the helpline facility. This online support includes:

- frequently asked questions section
- e-mail to course tutors
- assignment submission
- examination results.

At the end of the distance learning programme you will attend a four day face-to-face course which culminates in the final examination on day five.

On the first four days of the course the tutor will review the content of the course. Emphasis will be placed on revising the main topics.

On the fifth day you will take the formal examination.

12. How will I be examined?

Foundation Certificate

The Foundation Certificate is awarded on passing a three hour closed book examination that comprises multiple choice and essay/problem questions. Specimen examination papers are enclosed with the study pack.

Diploma

You must successfully complete a three hour closed book examination in each of the four papers that comprise the Diploma examinations.

The format of these examination papers is the same as the Foundation Certificate, that is, a combination of multiple choice questions and essay/problem questions.

Examinations will normally take place to coincide with the final day of the face-to-face course at each venue (see list of venues and examination dates at www.clt-stepint.co.uk).

13. What is the standard of the examinations?

The Foundation Certificate course and examination is introductory in nature and is designed as a basic overview of the international trust industry.

The Diploma advanced courses and examinations are set at degree/professional level.

14. What qualifications will I receive at the end of the programme?

On successful completion of the Foundation Certificate examination you will be awarded the Foundation Certificate in International Trust Management.

If you progress to the Diploma course and successfully complete one or more of the advanced papers you will be awarded the appropriate Advanced Certificate for that paper. They are:

- Advanced Certificate in Trust Creation: Law and Practice
- Advanced Certificate in Company Law and Practice
- Advanced Certificate in Trust Administration and Accounts
- Advanced Certificate in Trustee Investment and Financial Appraisal

On successful completion of all four advanced papers you will be awarded the Diploma in International Trust Management and you can use the designation Dip(ITM).

15. How do I acquire STEP membership?

When you enrol on the Foundation Certificate or Diploma course you will be eligible for membership of STEP. Once your membership application has been accepted you will be granted student membership. All STEP student membership fees will be covered by your course fee during your studies.

Full STEP membership will be granted to you when you complete the Diploma and show that you have two years relevant experience.

Associate membership will be granted to you if you have completed the Diploma but not acquired sufficient experience. Full membership will be granted to associate members when sufficient experience has been gained.

Students who complete the Foundation Certificate and wish to end their studies there can apply to become an affiliate of STEP. Affiliates receive all the benefits associated with STEP membership, but are not full members and cannot use the designation TEP, vote at general or branch meetings or stand for election to Council.

16. How much will the programme cost?

Please refer to the Course Enrolment form for current fees. In exceptional circumstances a delegate may attend an examination without taking a face-to-face course. A special application must be made to the Course Director (fee level available on request).

17. When should I apply?

You may enrol on the distance learning course at any time throughout the year and work at your own pace through the materials provided that you can meet the course closing date for each paper. The Foundation certificate is normally of about six month's duration, each Diploma paper will take approximately four months to complete.

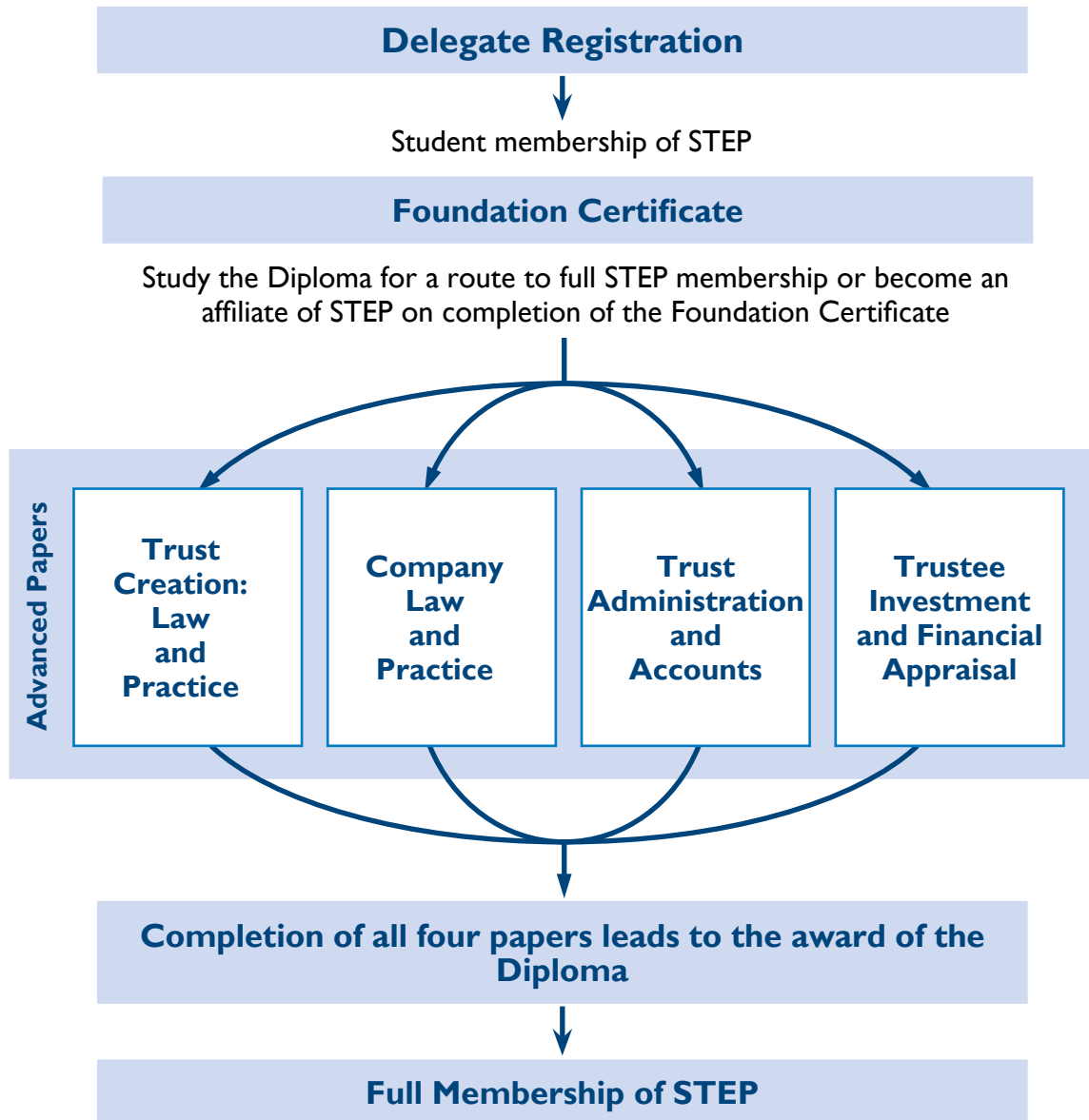
The face-to-face courses and examinations will be held at a number of venues throughout the world at various times of the year.

You may attend the course at any centre throughout the world.

18. How do I apply?

Complete the enclosed application form and post it to us at the address on the back page of the brochure, or fax it to us. Alternatively, you can download an application form from the CLT International web site at www.clt-stepint.co.uk

STEP Foundation Certificate and Diploma in International Trust Management Course Structure



Details of distance learning courses, face-to-face tuition and examinations can be obtained from:

CLT International/STEP Registrar
 CLT International Ltd
 Wrens Court
 52-54 Victoria Road
 Sutton Coldfield
 Birmingham B72 1SX

UNITED KINGDOM

Tel: +44 (0)121 355 0900

Fax: +44 (0)121 362 7510

Email: cltstep_registrar@centlaw.com

Website: www.clt-stepint.co.uk

Details of STEP membership can be obtained from:

Membership Department
 STEP Worldwide
 Artillery House (South)
 11 - 19 Artillery Row
 London
 SW1P 1RT

UNITED KINGDOM

Tel: 020 7340 0500

Fax: 020 7340 0501

Email: step@step.org

Website: www.step.org

Society of Trust
and Estate Practitioners

Foundation Certificate in International Trust Management

Syllabus

Module 1: Introduction to the Offshore Financial Industry

This module covers:

- definitions of terms
- global overview of offshore financial centres
- reasons for going offshore
- factors that may influence the choice of jurisdiction
- introduction to financial services offered offshore.

By the end of this module you should

- have a broad overview of the main features of the offshore financial industry
- be able to describe some of the services provided offshore
- be able to use this general knowledge as a foundation upon which to build a more detailed understanding of financial services provided offshore, as the course progresses.

Module 2: Evolution of Equity and the Law of Trusts

This module covers:

- how common law and equitable principles developed
- common law and civil law (continental) jurisdictions and the distinction between how the two systems of law developed
- the relationship of the parties to a trust
- the general principles applicable to the exercise of a trustee's decision-making powers
- how trustees should comply with their fiduciary obligations and meet appropriate standards of care.

By the end of this module you should

- understand the relationship between common law and equity, and be able to distinguish between legal and equitable rights
- appreciate how the trust concept has been allowed to develop
- be able to distinguish between common law (trust) and civil law (non-trust) jurisdictions
- be able to define the relationship between the parties to a trust
- be able to explain what is meant by a fiduciary relationship
- know how to comply with a trustee's fiduciary duties.

Module 3: The Fundamentals of a Valid Trust

This module covers:

- a consideration of what is required to create a valid trust – ‘the three certainties’
- an explanation as to how a trust must be properly constituted and a description of the formal requirements to transfer the property into a trust
- an introduction as to how trusts are liable to be set aside if created as a *sham*
- the settlors personal and proprietary capacity to create a trust
- the common law rules against perpetuities and how the common law rules have been modified by statutory offshore provision.

By the end of this module you should

- know how to create a valid trust by applying the three certainties
- understand how to transfer trust assets to trustees properly
- know how to ensure that the trust is established with essential certainty and that it is not liable to be set aside as a formal sham
- be able to ensure that the settlor has capacity to create the trust under its governing law
- be familiar with the general concept of perpetuities.

Module 4: Types of Trust

This module covers:

- an examination of the basic anatomy of a typical trust instrument
- a detailed review, of certain types of express trusts
 - life interest trusts
 - contingent gifts
 - discretionary trusts
 - protective trusts
- the effect of a letter of wishes
- the role of the protector.

By the end of this module you should

- be able to navigate your way round a standard trust instrument
- understand and be able to explain to a third party the features of
 - fixed interest trusts such as
 - ▶ a life interest trust, and
 - ▶ a contingent interest trust
 - discretionary trusts
 - protective trusts.

Module 5: Modern uses of Offshore Trusts

This module covers an exploration of the main advantage of offshore trusts, namely in the fields of

- tax planning
- risk management and asset protection
- estate planning.

By the end of this module you should

- understand how tax is levied on individuals and companies that are domiciled or deemed resident for tax purposes in an onshore jurisdiction
- be able to explain how income and capital taxes are levied upon trusts, and how tax advantages accrue to trusts whose trustees reside and carry business offshore
- appreciate how and in what circumstances a trust structure can offer protection to assets against
 - claims made by creditors of a beneficiary
 - claims made by creditors of the settlor
- understand how an *inter vivos* trust can be used to plan who gets what upon an individual’s death
- appreciate that certain countries and states impose ‘forced heirship rules’, and you should start to understand how this could affect a trust created by a person resident in such a state.

Module 6: Basic Trust Administration

This module covers:

- the information that a service provider should request from a prospective trust client
- a description of the files that trust companies usually maintain
- the need for a trust to be administered with integrity to avoid it being set aside as an administrative (or substantive) sham
- a review of the decision-making process of trustees, in particular in relation to the exercise of their
 - powers of investment, and
 - dispositive powers
- how trustees of a discretionary trust should make and record their decisions.

By the end of the module you should

- know how to comply with ‘know your client’ due diligence obligations
 - upon accepting new trust business, and
 - upon taking on existing business, and
 - throughout the business relationship
- appreciate the need for, and be able to create and maintain, trust files to record and retain

information in a logical, clear and efficient manner

- understand how a trust may become at risk of being set aside as a sham and be able to avoid that situation occurring
- be able to act properly and comply with a trustee's fiduciary duties in the light of a letter of wishes generally and when such letter
 - is inconsistent with the trust instrument, and/or
 - is unreasonable
- be able to act properly and comply with a trustee's fiduciary duties in the light of the trust instrument appointing a protector, both generally and when the protector withholds his consent to a proposed course of action
- know what is expected of a trustee when exercising his powers and what is involved in the decision-making process, in particular in relation
 - to investment decisions, and reviews, and
 - to distributions of trust income and/or capital.

Module 7: The Role and Status of the Offshore Asset Holding Company

This module covers:

- an introduction to the concept of the privately owned limited liability company
- an exploration of the features of a private limited company
- how incorporation of a company in an offshore jurisdiction may carry certain advantages to a private client
- the formation, constitution and dissolution of a company.

By the end of this module you should

- understand the features of a limited liability company and be able to put the limited company in context by comparing it with other business media
- appreciate how and why ownership of a company is distinct from its control
- be able to describe the advantages of offshore incorporation and management in terms of
 - tax avoidance
 - confidentiality
 - regulation
 - asset protection
- know how to incorporate a company
- be able to advise upon funding or capitalising a company

- be able to find your way around the constitution of a company and know how to determine any particular point concerning internal procedures
- know how and in what circumstances a company may be dissolved.

Module 8: Company Shareholders, Directors and Other Officers

This module covers:

- how the theories and principles that have governed the development of traditional company structures onshore have been exported to offshore financial centres, and there modified
- the separation of power between shareholders and directors
- a working knowledge of
 - the rights and powers of shareholders
 - the powers and duties of directors
- some of the administration issues that may confront an offshore corporate administrator in practice.

By the end of the module you should

- understand how and why basic company law principles developed in the onshore developed economies, particularly
 - the separation of power between shareholder and director
 - the capital maintenance doctrine
- appreciate the features and rights of shareholders, including
 - how they join the company
 - different types of shareholdings
 - the broad rights of shareholders
 - how they exercise their voting rights
- appreciate the rights and duties of directors, including
 - how they are appointed, and may be removed
 - their powers
 - their duties to the company.

Module 9: Offshore Corporate Services

This module covers:

- a review of some of the services offered by corporate service providers in offshore financial centres
- an explanation of some of the features of company management and practical issues faced by corporate service providers in the offshore environment
- the risks involved in providing directors for offshore companies and some suggested solutions
- company management agreements.

By the end of this module you should

- be able to give an overview of the corporate services offered in offshore financial centres, including
 - incorporation and registration
 - provision of registered office and registered agent
 - maintenance of corporate records and provision of company secretary
 - provision of nominee shareholders
 - provision of nominee directors
- appreciate why it is important to ‘know your client’ in order to avoid constructive trustee liability and possible criminal liability as in *Agip (Africa) Ltd v Jackson* (1992)
- understand the role of a nominee shareholder, his duties as (generally) a mere agent of the beneficial owner, governed by the same terms of the Nominee Declaration
- understand the role of a nominee director and that the nomenclature is misleading insofar as a nominee director owes the same duties to the company as an executive director
- be aware of the risks involved in providing nominee directors, and of the problems that can be created by excessive beneficial owner control and appreciate the ways in which to handle the problem and reduce risk
- be familiar with a standard company management agreement.

Society of Trust
and Estate Practitioners

Diploma in International Trust Management

Trust Creation:
Law and Practice

Syllabus



Module 1: Review of the Trust Concept

This module covers:

- a definition of a trust
- an exploration of the identities of and roles played by the main actors in the drama
- a review of the essential characteristics of a trust
- the distinction between legal and equitable interests
- the fiduciary relationship that exists between trustee and beneficiary
- a comparison of the trust with other legal concepts such as
 - a company
 - a contract
 - a testamentary instrument
 - a civil law foundation (Stiftung).

By the end of this module you should

- be reacquainted with some basic trust concepts
- have undertaken an academic review of the essential characteristics of a trust and be familiar with the definition provided by the Hague Trusts Convention in 1987
- appreciate the nature of legal and equitable interests
- understand the general duties of a fiduciary and be able to summarise the main fiduciary duties of a trustee
- be able to distinguish a trust from other legal concepts, in particular
 - a company
 - a contract
 - a will
 - a foundation.

Module 2: Marketing Trust Services and Accepting New Business

This module covers:

- marketing trust services including
 - selling the jurisdiction
 - selling your institution
 - selling the trust concept
- the pitfalls of over-selling the service or making unjustifiable claims
- the theoretical rules relating to trustees' remuneration
- the ways in which trust services are rewarded and practical marketing strategies employed by those involved in the fee bargaining process
- a review of the recommended best practice procedures prior to and upon acceptance of new business, both in terms of accepting a new trust and upon taking on an existing trust, including

- ‘know your client’
- the practice and procedures involved in the removal of an outgoing trustee
- the appointment of an incoming trustee and vesting of trust property
- the trustee’s duty upon accepting a trust.

By the end of this module you should

- appreciate how a trust company can market the provision of its trust services in a competitive environment
- be able to explain to a third party the virtues of the offshore jurisdiction from which you carry on business
- be in a position to market the trust concept in a responsible manner and avoid the pitfalls of over-selling or making misrepresentations in relation to the trust product
- understand some of the marketing strategies adopted in negotiations with prospective settlors or protectors concerning fees
- appreciate the aspects of a trustee’s fiduciary duty that apply to the charging of fees – the so-called remuneration rule – and be able to draft or construe a charging clause
- know the proper procedures to follow prior to accepting the office of trustee – ‘know your client’ and other preliminary duties
- be in a position to comply with the appointment process, both
 - in relation to new trusts, and
 - in relation to taking on existing trusts.

Module 3: Money Laundering – Proceeds of Crime

This module covers:

- the concept of money laundering from a global perspective so that ‘know your client’ provisions can be seen in context
- the theoretical laundering process, namely, the three stages of placement, layering and integration
- a review of the international initiatives to control money laundering
- an examination of some of the common themes running through the international initiatives
- a review of your statutory duty in relation to suspicious transaction reporting
- the anti money laundering provisions enacted in the jurisdiction where you work and a comparison with international standards

By the end of this module you should

- understand the problems caused by money laundering from a global perspective

- be able to identify the three theoretical stages of the money laundering process, namely
 - placement
 - layering
 - integration
- have reviewed a number of international initiatives to control money laundering
- be aware of common themes running through anti money laundering initiatives in relation to
 - detection
 - investigation
 - prosecution of offenders
- be able to fulfil our statutory duty in relation to suspicious transaction reporting
- be able to compare anti money laundering provisions in force in the jurisdiction where you work, or have some connection, with internationally accepted standards.

Module 4: Money Laundering – Tax Evasion and Civil Liability

This module covers:

- the importance of getting to know your client, his business and the source of his funds, in order to avoid the risk of incurring both criminal and civil liability
- a continuing analysis of money laundering, with emphasis upon the thorny issue of laundering the profits derived from tax evasion
- anti money laundering provisions enacted in the jurisdiction where you work or have some connection, to compare offshore legislation against international standards
- a review of a third party’s civil liability for assisting another in laundering the proceeds of a breach of fiduciary duty, in particular a review of the principles of
 - dishonest assistance of a breach of fiduciary duty
 - knowing receipt of assets obtained in breach of fiduciary duty.

By the end of this module you should

- understand the importance of getting to know your client, his business and the source of his funds in order to avoid the risk of incurring both
 - criminal, and
 - civil liability
- appreciate that, in certain contexts, money laundering not only includes the laundering of the proceeds of crime, but also the profits that derive from domestic tax evasion

- be able to comply with your statutory duties in relation to disclosures when the predicate crime is tax related
- be capable of comparing the anti money laundering legislation in the jurisdiction where you work or have some connection against international standards
- be able to evaluate the liability incurred by service providers who assist third parties in laundering the proceeds of a breach of fiduciary duty, and be able to explain the principles of
 - ‘dishonest assistance’ and
 - ‘knowing receipt’ of assets obtained by parties in breach of fiduciary duty.
- be able to construe some of the standard dispositive provisions found in a typical offshore
 - discretionary trust
 - settlor-directed trust
 - life interest trust
- be able to illustrate the use and purpose of typical administrative provisions in order that you may
 - decide whether a particular provision should be included in a draft trust instrument
 - explain the meaning of particular provisions to the prospective settlor or third party
 - construe the typical provisions and some of the powers that you may wish to exercise during the administration of a trust.

Modules 5 and 6: The Trust Instrument

These modules cover:

- the process of obtaining instructions from an international client to establish an offshore trust and to emphasise the importance of obtaining specialist onshore legal and tax advice
- the use of precedents in the drafting process and analysis of the pros and cons of using an off-the-shelf long form or short form trust instrument, or creating a tailor-made trust instrument from the outset
- the framework of a typical trust instrument
- a review of some of the standard dispositive provisions found in
 - an offshore discretionary trust
 - a settlor-directed trust
 - a life interest trust
- the use of typical administrative provisions in order that you may
 - decide whether a particular provision should be included in a draft trust instrument
 - explain the meaning thereof to the settlor or a third party
 - construe some of the standard provisions and powers that you may wish to exercise during the administration of a trust.

By the end of Modules 5 and 6 you should

- appreciate some of the issues involved in obtaining instructions to establish an offshore trust for an onshore settlor (in particular, the importance of obtaining specialist onshore legal and tax advice)
- be familiar with some drafting techniques and the use of precedents in the drafting process
- be able to consider the pros and cons of
 - long form and short form precedent trust instruments
 - drafting a tailor-made trust instrument from scratch

Module 7: The Role and Status of the Trust Protector

This module covers:

- an introduction to the role of the trust protector
- who may be appointed as protector
- the typical powers conferred upon the protector by the settlor in the trust instrument
- the duties of the protector including
 - express restrictions on the exercise of the protector’s powers
 - implied restrictions which attach to the powers of a protector so that they may only be exercised for a proper purpose
 - implied obligations, in particular, obligations of a fiduciary nature whereby the protector must exercise his powers to safeguard the interests of the trust, its assets and the beneficiaries
- a review of some of the typical rights conferred upon the protector in offshore trust instruments
- an analysis of the position of a trustee who is obliged to administer the trust alongside a protector
- a summary of the position of the beneficiaries in relation to the protector.

By the end of this module you should

- appreciate why a settlor may wish to appoint a protector
- be able to identify the various types of protector and be able to advise upon which type is most suitable in given circumstances
- be familiar with the typical powers given to a protector
 - dispositive and administrative
 - positive and negative powers
- be aware of the duties owed by a protector in relation to both
 - express, and
 - implied powers
- know how to manage a trust which confers extensive dispositive and/or administrative powers upon a protector
- be able to summarise the broad rights and remedies of the beneficiaries against the trust protector.

Module 8: Choice of Law to Govern the Trust

This module covers:

- an introduction to the concept of conflict of laws
- common law conflict of laws principles
- an explanation of the significance of conflict of laws rules in relation to multi-jurisdictional offshore trust issues whereby a trust is governed by its proper law, namely
 - the law which the settlor intends to govern, or
 - the law with which the trust has its closest and most real connection
- how complex and uncertain the common law conflict of laws rules are by identifying
 - the factors used to establish the proper law
 - exactly which elements of a trust are governed by the proper law
 - whether the proper law may be changed
- typical modern statutory conflict of laws rules enacted in offshore jurisdictions whereby issues in relation to a trust are governed by its governing law to the exclusion of any foreign law
- the circumstances when and to what extent the governing law of a trust may be changed to a new law
- the terms of a typical trust instrument that
 - makes an express choice of law and forum selection
 - contains a flee clause.

By the end of this module you should

- have grasped some of the basic common law conflict of laws principles in order to be able to determine which system of law to apply to a multi-jurisdictional transaction, including broad knowledge of the meaning of
 - forum
 - characterisation
 - conflict of laws, and
 - *renvoi*
- understand the significance of conflict of laws rules in relation to issues affecting a multi-jurisdictional trust
- appreciate that, at common law, a trust is governed by its proper law and be able to establish the proper law of a trust
- be in a position to identify those areas of the common law that are uncertain and unsatisfactory
- be able to construe modern offshore statutory provision whereby the validity of a trust, its interpretation and administration, etc. are determined by the governing law
- be able to analyse simple conflict of laws problems affecting an offshore trust, to identify its governing law and appreciate the broad exceptions to the general rule whereby the governing law will not apply to certain issues and controversies
- understand whether and in what circumstances the governing law of a trust may be changed to a new law
- be familiar with the terms of a typical trust instrument that makes an express choice of law and forum selection, and contains a flee clause.

Module 9: Estate Planning and Forced Heirship Issues

This module covers:

- the basics of estate planning
- an explanation of the meaning of forced heirship in contradistinction to testamentary freedom
- an illustration as to how forced heirship provisions affect
 - testamentary gifts on death
 - *inter vivos* transfers
- domestic laws of succession and international conflict of laws principles that determine which country's law of succession should apply
- the interrelationship between forced heirship provisions of a foreign state and the validity of a trust created offshore by a settlor who is domiciled in, and a national of, that foreign state, reviewing in particular

- the type of attack upon the trust and its assets that the trustees may encounter in the forum of the foreign state
- the type of attack upon the trust and its assets that the trustees may encounter in the forum of the offshore jurisdiction
- the provisions of a number of offshore statutes that clarify the conflict of laws position at common law to help preserve the trust and prevent a successful attack upon it in the offshore jurisdiction.

By the end of this module you should

- understand basic estate planning methods
- understand basic forced heirship provisions and be able to distinguish the concept from freedom of testamentary disposition
- appreciate the opportunity to market *inter vivos* offshore trusts to persons from civil law jurisdictions who wish to take advantage of estate planning
- be able to illustrate not only how forced heirship provisions affect testamentary gifts on death, but also how claw back provisions have an impact upon the recipients of certain gifts made during the lifetime of the deceased (including the creation of an *inter vivos* trust)
- understand the interrelationships between forced heirship provisions of a foreign state and the validity of a trust created offshore by a settlor domiciled in and a national of that foreign state. In particular, you should be able to advise upon:
 - the type of claim that the trustees may face in the forum of the foreign state
 - the type of claim that the trustees may face in the forum of the offshore jurisdiction
 - the terms of typical offshore statutory provision that clarify the conflict of laws rules in order to confirm that all questions concerning the validity of the offshore trust and disposition of property thereto should be governed by the laws of the offshore jurisdiction.

Module 10: Asset Protection Trusts

This module covers:

- an introduction to the concept of asset protection planning
- the common law principle that an individual's assets should *prima facie* be available to meet his debts
- the protection afforded to creditors of the settlor by the Statute of Elizabeth, and the factual scenarios in which the powers of the court are exercised

- how an English statute such as the Statute of Elizabeth came to apply in the common law offshore jurisdictions in the first instance
- the nature and extent of modern asset protection legislation enacted in a number of offshore jurisdictions
- an analysis as to which type of trust structure is the most effective in terms of offering the maximum protection to the trust assets against claims made by third parties
- a review of settlor bankruptcy
- how an earlier trust being set aside by a court-appointed trustee in bankruptcy.

By the end of this module you should

- appreciate the ethical tension between the common law principle that an individual's assets ought to be available to meet his unpaid debts, and the asset protection objective to safeguard and preserve assets transferred into trust
- understand how a trust may safeguard assets from claims brought against the settlor by third parties
- be able to explain how the Statute of Elizabeth sought to protect the interests of honest creditors
- be in a position to advise upon how fraudulent transfer legislation enacted offshore has repealed the Statute of Elizabeth in key areas
- know how to structure an asset protection trust
- understand the provisions of the bankruptcy legislation in selected jurisdictions and appreciate how a trustee in bankruptcy may set aside transfers (including trusts) made by a bankrupt within [x] years prior to being declared bankrupt.

Module 11: Purpose Trusts

This module covers:

- the reasons why trusts established for the benefit of a purpose rather than persons are invalid under Anglo-Saxon common law principles
- the common law exceptions to the invalidity of purpose trusts
 - an anomalous group of private trusts of imperfect obligation
 - trusts in favour of incorporated associations
 - charitable trusts
- an examination of the first and second generation of legislation in a number of offshore jurisdictions permitting trusts to be created in favour of a purpose
- the practical uses of purpose trusts, including their use for commercial purposes.

By the end of this module you should

- appreciate the reasons why trusts that have purportedly been established for the benefit of purposes rather than persons are invalid under common law principles, and be able to explain
 - the beneficiary principle
 - the rule requiring certainty of objects
 - the rule against perpetuities
- be able to identify the common law exceptions to the general rule prohibiting purpose trusts, namely, those trusts
 - of imperfect obligation
 - in favour of unincorporated associations
 - that are wholly and exclusively charitable in nature
- understand the basic terms of the first generation of purpose trust legislation, and be able to explain the model form found in The Trusts (Special Provisions) Act 1989 of Bermuda
- understand the basic terms of the second generation of purpose trust legislation, and be able to compare and contrast the approaches taken by
 - the Trusts (Special Provisions) Amendment Act 1998 of Bermuda, and
 - the Special Trusts (Alternative Regime) Law 1997 of the Cayman Islands
- appreciate some of the practical uses of purpose trusts, including their use in commercial transactions.

Society of Trust
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Diploma in International Trust Management

Company Law and Practice

Syllabus



Module 1: Introduction to Company Law

This module covers:

- an introduction to company law
- the practice of private company management
- a review of the position of the offshore company in context, i.e. as part of a structure used by trustees, private banking institutions and other firms to hold and manage clients' assets
- a brief overview of the study of company law.

By the end of this module you should

- appreciate the use made by trustees, private bankers and other service providers of a trust and company *combo*.

Module 2: Characteristics of a company

This module covers:

- the traditional definition of a company
- an analysis as to whether that definition translates into the language of the offshore world
- an outline of the development and evolution of company law in England and its effect on company law in other common law jurisdictions
- a consideration of some of the fundamental features of a company and distinguishes them from other forms of undertaking
- introduces you to the companies legislation applicable to the jurisdiction where you work or with which you have a substantial connection
- the common features of, and advantages that accrue to, a company incorporated either onshore or offshore
- an analysis of the arguments for and against the integrity of 'one-man' companies and the limited liability of shareholders
- an exploration of the typical use made of companies incorporated in an offshore jurisdiction.

By the end of this module you should

- understand the broad features of a private limited company
- appreciate the fundamental economic principles behind much company legislation
- be able to put the private limited company into context by comparing it with other business media, in particular a partnership structure
- appreciate that the company legislation in the common law offshore jurisdictions derives from English statutory provisions, tweaked here and there to take into account local conditions, practices and procedures, and fulfils specific objectives identified by local lawmakers.

- be in a position to identify and describe the common features of an incorporated company
- understand the implications that flow from a company having a separate legal personality
- be able to explain the significance of the ‘veil of incorporation’ and how it can be pierced
- appreciate the typical uses made of companies incorporated offshore.

Module 3: Company Formation and Related Issues

This module covers:

- promoters – their duties to the company upon incorporation and their right, if any, to be reimbursed expenses
- issues, at common law, affecting the enforceability of pre-incorporation contracts
- an exploration as to how problems are solved by modern offshore companies legislation
- theoretical and practical aspects of incorporation of a private limited company in a hypothetical offshore jurisdiction
- an understanding of the statutory procedures required to incorporate a company in the jurisdiction where you work or have a substantial connection
- drafting certain key documents
- issues in relation to the migration of companies
- the main features and characteristics of a variety of offshore vehicles.

By the end of this module you should

- appreciate the role, duties and rights of a promoter
- understand the issues, at common law, affecting enforceability of pre-incorporation contracts and be able to indicate how problems are solved by modern offshore legislation
- be able to analyse the theoretical and practical aspects of incorporation of a private limited company in a hypothetical offshore jurisdiction
- understand the statutory procedures required to incorporate a company in the jurisdiction where you work or have some other substantial connection
- be able to draft certain key documents
- be able to identify some of the preliminary issues in relation to the migration (or re-domiciliation) of companies
- be in a position to distinguish between features of a number of different type of company.

Module 4: The Company’s Constitution

This module covers:

- the constitution of a company
- the memorandum of association
- *ultra vires*
- alteration of the memorandum
- alteration of the articles.

By the end of this module you should

- appreciate the historical development and current theories relating to the constitution of a company and that the constitution of a traditional corporate structure comprises
 - the memorandum, and
 - the articles of association
- understand the typical content of the memorandum of association, and to determine how it can be moulded, within the legislative framework, to meet the requirements of the client
- be able to analyse the capacity of a company to transact business under modern companies legislation that repeals the *ultra vires* doctrine
- be able to determine how the memorandum may be altered
- know how to determine the rights of, powers and procedures affecting the shareholders, directors and officers of a company
- understand the functions and typical content of the articles of a company, and to determine how they can be moulded, within the legislative framework, to meet the requirements of the client
- be able to determine how, and in what circumstances, the articles may be altered.

Module 5: Capital

This module covers:

- an introduction to capital
- raising capital: an onshore perspective
- raising capital: an offshore perspective
- the capital maintenance doctrine influencing the payment of dividends to shareholders.

By the end of this module you should

- appreciate what is meant by the term ‘capital’ and understand the principles behind the capital maintenance doctrine
- understand how a company is typically capitalised or funded in the onshore business environment by
 - members (share capital/equity)
 - creditors (loan capital/debt)
- distinguish some of the features of
 - the ordinary share
 - the preference share

- loan documentation
- be able to apply the capital maintenance principles to the start-up funding of a company, in particular in relation to the issue of
 - discount or watered stock
 - shares offered at a premium
- be able to compare onshore regulations with the simplified practices that are followed in relation to a company incorporated offshore, by both
 - share capital and
 - loan capital
- appreciate why flexible distribution provisions are desirable and understand how this is achieved
 - under the IBC (International Business Company) and similar legislation (which permit a company to distribute capital surplus and/or share premium account)
 - in respect of companies incorporated in jurisdictions with less flexible share premium provisions, by funding the company by way of shareholder loan, which can simply be called in.

Module 6: Directors Part I – Role, Appointment and Removal of Directors

This module covers:

- the traditional corporate model and corporate governance
- the corporate model in the context of international hubs
- the division of power between directors and shareholders
- appointment of director
- vacating office, removal and disqualification of directors
- types of director.

By the end of this module you should

- understand what is meant by the ‘traditional corporate model’ and ‘corporate governance’
- be familiar with modern academic criticism of the traditional corporate model and theory of corporate governance
- appreciate that the traditional corporate model has been used
 - by legislature in offshore jurisdictions in drafting companies legislation
 - by professional corporate service providers when drafting standard articles
- be able to construe standard articles conferring powers of management upon the directors, namely
 - Art. 80, Table A, Companies Act 1948
 - Art. 70, Table A, Companies Act 1985
- understand the different methods adopted offshore to appoint the initial directors upon incorporation

- be familiar with typical articles dealing with the removal of directors by shareholders and the disqualification of persons by the regulator or automatically.

Module 7: Directors Part II – Directors’ Powers and Duties

This module covers:

- the powers of directors
- duties of directors
- the effects of a director going beyond his conferred powers
- remedies for breach of duties
- provisions to protect directors from liability

By the end of this module you should

- be able to recite the usual powers conferred upon the directors by model articles of association
- understand the basic procedures involved in the directors’ decision-making process
- be able to advise upon the legal effect of a transaction entered into by the directors outside their powers
- appreciate the constituent parts of a director’s fiduciary duty to the company, and be able to apply the relevant principles to typical factual scenarios encountered in offshore corporate practice
- understand the directors’ duty to use appropriate care and skill in the management of the company, both at common law and under modern companies legislation, and be able to apply the relevant principles to typical factual scenarios encountered offshore
- appreciate the methods whereby a director may avoid or protect himself from liability (to the company or to third parties) for potential breach of duty.

Module 8: Other Officers of a Company: Secretary and Registered Agent

This module covers:

- the position of company officers within the corporate body
- the procedures for the appointment, removal and retirement of company secretaries
- the usual duties and functions of a company secretary
- the potential liability of the company secretary
- the role, powers and duties of a registered agent under specific statutory provisions.

By the end of this module you should

- be able to describe the procedures for the appointment, removal and retirement of company secretaries of companies under the management of your organisation
- be able to list the usual duties of a company secretary
- understand the functions and practice of the company secretary
- be able to advise upon the potential liability of the company secretary
- appreciate the role, powers and duties of a registered agent under specific statutory provisions.

Module 9: Company Decision-making Procedures

This module covers:

- the division of the powers of the directors and those of shareholders of a company
- general meetings
- directors' meetings
- the decision-making procedures
- drafting notices, resolutions and minutes of meetings.

By the end of this module you should

- be able to differentiate between the powers of the directors and the powers of the shareholders
- be able to convene, hold and conduct general meetings of the shareholders of a company
- be able to convene, hold and conduct meetings of directors
- be able to draft notices, resolutions and minutes of meetings for a variety of situations.

Module 10: Taxation of Companies: Tax Planning

This module covers:

- the fundamental principles in relation to the taxation of corporate entities from a global perspective
- the tax planning opportunities that accrue to a company incorporated offshore
- typical onshore anti tax avoidance provisions
- withholding tax procedures in the US under the Qualified Intermediary Rules, 2000 affecting all bank and brokerage account holders that invest in, and receive income from, US securities.

By the end of this module you should

- appreciate the fundamental principles in relation to the taxation of corporate entities from a global perspective

- understand some of the tax planning opportunities that accrue in certain circumstances, to a company incorporated offshore
- be able to recognise typical onshore anti tax avoidance provisions
- be able to comply with the disclosure requirements of offshore account holding companies under the withholding tax procedures of the US pursuant to the Qualified Intermediary Rules, 2000, which affect all bank and brokerage account holders that invest in, and receive income from, US securities.

Module 11: The Provision of Company Management Services in Offshore Centres

This module covers:

- the nature of the service providers and the range of services provided
- standard service provider documentation
- due diligence requirements
- involvement of the beneficial owner
- the regulation of company management business.

By the end of this module you should

- be able to describe the range of company services that are provided from offshore centres including
 - incorporation
 - registration and continuance
 - provision of directors and officers
 - provision of shareholders
 - registered office facilities
 - corporate filing and general secretarial services
- appreciate the importance of, and be able to construe, standard documentation including
 - company management agreements
 - directors' appointments
 - nominee shareholder declarations
- be able to avoid problems associated with the beneficial owner having too much control over the affairs of his company, and be able to respond to frequently asked questions relating to this.

Module 12: Regulation of Company Management Business

This module covers:

- international initiatives relating to the regulation of company management business
- an examination of various offshore jurisdictions' regulations of corporate management services
- an analysis of transparency and how this affects the provision of company management
- a comparison of two regulatory regimes
- what is meant by information sharing, and to examine the criteria to be met before regulator-to-regulator information sharing can take place under advance commitments given to OECD.

By the end of this module you should

- be able to name and describe four recent international initiatives relating to the regulation of company management business
- be able to describe how the provision of company management services is regulated by licensing requirements and how such provision is supervised
- understand the concept of transparency, why the OECD considers it desirable and how it may be achieved
- appreciate the rationale behind information sharing, particularly in connection with criminal and tax related matters, and how OECD hope that regulator-to-regulator information sharing will be achieved under advance commitments given by a number of offshore jurisdictions.

Module 13: Termination of Companies

This module covers:

- compulsory winding-up
- liquidation
- voluntary winding-up
- payment of debts
- summary winding-up procedure
- defunct companies
 - dissolution
 - striking off

By the end of this module you should

- be able to demonstrate an understanding of the process of, and procedures involved in
 - a compulsory winding-up of a company
 - a voluntary winding-up of a company
- be able to explain the difference between dissolution and striking off.

Society of Trust
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Diploma in International Trust Management

Trust Administration and Accounts

Syllabus



Module I: Introduction to the Law in Relation to Trust Bookkeeping and the Preparation of Periodic Trust Accounts

This module covers:

- a review of the duty owed by a trustee in relation to record keeping and the preparation of accounts
- an analysis as to whom a trustee's duty (to keep and render proper accounts) is owed and whether, and if so how, the duty can be cut down or modified
- the consequences faced by a trustee who is in breach of his duty to keep or render proper accounts
- the requirements as to the form of a trustee's books and records and the format of accounts rendered, including the frequency of accounting and the accounting date
- when and in what circumstances an audit is necessary, and, if so, how to retain auditors and determine the appropriate extent and scope of the audit to be undertaken.

By the end of this module you should

- be able to comply with the duty owed by trustees in relation to trust records and accounts, specifically
 - to keep accurate financial data of trust property that allow a history of the trust assets to be periodically constructed, and
 - to render a summary of the financial position of the trust to interested persons periodically and when called upon to do so
- be able to establish to whom the duty to account is owed
- appreciate the consequences of failing to keep accurate financial records or failing to furnish accounts to persons entitled to them
- understand the requirements as to form and content of a trustee's books and records, and the frequency and format of a trustee's periodic accounting
- appreciate when and in what circumstances an audit of trust accounts may be necessary, and be familiar with how auditors are retained and how they report their findings.

Module 2: Introduction to Trustee's Record Keeping

This module covers:

- what information trustees have to record
- the defects of single entry bookkeeping
- an explanation of the fundamental accounting equation
- double entry bookkeeping
- the importance of the nominal ledger
- how information technology assists in the accounting process.

By the end of this module you should

- be able to explain the need for a double entry accounting system
- be able to understand the fundamental accounting equation
- be able to make simple entries relating to a trust
- be able to explain the structure of a nominal ledger
- appreciate how modern practice uses IT systems in trust accounting.

Module 3: Trust Accounts

This module covers:

- the purpose of preparing accounts for trusts
- factors that influence the form of the accounting records of a trustee
- the preparation of annual accounts of a trust from straightforward data recorded in the trustee's books and records
- the key financial statements
- the implications of trust assets being held by an underlying company.

By the end of this module you should

- be aware of the purpose of preparing trust accounts
- be able to identify relevant factors that influence the form of trust accounts
- understand the nature of the key financial statements
- be capable of drawing up a simple set of annual trust accounts from straightforward data
- appreciate the accounting implications for a trustee in circumstances where the trust's assets are held through the medium of an underlying company.

Module 4: Final Accounts of an Offshore Asset Holding Company Underlying a Trust

This module covers:

- the need for a separate set of company accounts in addition to accounts prepared by the trustee
- underlying accounting principles
- a review of the documents that constitute a set of typical company accounts
- the components of the separate documents that comprise the final accounts of a company and their meaning
- an analysis as to why conventional formats are not wholly suited to a typical offshore, passive, asset-holding investment company
- an illustration of a set of final accounts.

By the end of this module you should

- appreciate that there is a need for both company and trust accounts in circumstances when a company has been set up in order to hold trust assets
- be familiar with the documents that comprise the essential elements of a set of final accounts of a company, and the basis on which the information contained therein has been prepared
- understand where the information contained and set out in a set of offshore company accounts may well diverge from a set of typical trading company accounts
- be able to understand the information conveyed by a set of final accounts of a typical offshore company underlying a trust
- be able to prepare some elementary final accounts from information contained in the trust and/or company records.

Module 5: Trust Management – Reserved Powers and 'Sham'

This module covers:

- a foundation for later modules, particularly Module 6 through Module 11 dealing with the administration and disposition of trust assets, for delegates who are more familiar with settlor-directed trusts
- an (re)introduction of *sham trust syndrome*
- an analysis of some preliminary management issues by distinguishing the standard plain vanilla discretionary trust from a trust with extensive reserved powers enabling the settlor (or protector) to influence or control the exercise of some of the trustee's administrative and dispositive powers
- a review of the typical modern reserved powers legislation

- whether a trust can be established in a valid manner, but then administered without integrity by successive breaches of trust, which would convert what was otherwise a valid trust into one capable of being set aside as a (substantive) sham by a third party.

By the end of this module you should

- understand why a settlor may wish to reserve powers to retain some control over trust assets, and how this is often achieved in the trust instrument
- appreciate the theory that supports the view that the greater the powers reserved by the settlor, the greater the risk that the trust may be set aside as a sham
- be able to summarise the provisions of modern reserved powers legislation, and its purpose and effect
- appreciate that some of the independent decision-making issues that apply to the management and investment of, and disposition from, a typical plain vanilla discretionary trust do not apply to a settlor-directed trust
- understand how the trustee's conduct in administering a trust can give rise to a challenge on the grounds that it is a substantive sham, and appreciate how such risk can be avoided by adopting best practice.

Module 6: Trustee Investment – Law and Practice

This module covers:

- a foundation to your understanding of this topic by tracing the historical evolution of the law and practice relating to a trustee's power of investment in England, both at common law and by early statutory provision, and to illustrate how such powers were traditionally exercised
- an examination of the typical offshore legislation conferring upon trustees implied investment powers that operate in default of any express provisions to the contrary
- how express powers of investment conferred upon a trustee by the trust instrument oust the trustee's statutory powers
- the standard of care that trustees must observe when exercising their powers of investment, both
 - at common law, and
 - under modern statutory provisions

- the restrictions that apply at common law to reduce a trustee's ability to delegate part of his investment function to agents, such as investment managers and advisers
- an emphasis that it is often prudent to obtain advice upon when, how and where to invest from investment advisers or to delegate the investment function to qualified investment managers
- modern provisions enabling a trustee to delegate his investment powers to agents and thereby obtain a release from liability for any loss suffered by the trust fund arising from the negligence or other default of the agent
- the performance of investments made with trust funds on behalf of the beneficiaries must be continually monitored.

By the end of this module you should

- understand how a trustee's powers of investment evolved in England and how, historically, they were traditionally exercised
- appreciate how express investment powers may be conferred upon trustees by the trust instrument and that statutory powers of investment apply in default
- have established the extent of the statutory powers of investment given to trustees in your jurisdiction
- be able to comply with the standard of care expected of a professional trustee when exercising his investment powers, both under the common law criteria and under new principles found in modern trust legislation
- appreciate why it is necessary to obtain advice from, or to delegate your discretion as to when, how and where to invest, to investment advisers and qualified managers, having regard to the complexities of global investment opportunities
- understand the position with regard to a trustee's ability to delegate part of his fiduciary functions to agents, and ensure that, having properly delegated the investment function, you are duly protected from liability for loss suffered by the trust fund arising from the negligence or other default of the investment manager or adviser.

Module 7: Managing Trust Assets I – Stocks and Shares

This module covers:

- why it is prudent for a trustee to delegate his powers of investment to experts
- the advantages of delegating the power to invest on a discretionary basis
- how the appointment of an investment manager is undertaken, including factors to be addressed and the procedures involved in making an informed choice
- how to set the investment objectives of a trust by reviewing factors such as
 - the type, size and duration of the trust
 - ethical constraints
 - risk tolerance
- how to set a benchmark, namely a framework for the portfolio, giving details of an appropriate spread of investments (between cash, bonds and equities, between different sectors and between different currencies and geographical markets)
- how an investment manager creates a portfolio by investing the trust fund, and to give a brief description of various types of monetary instruments, bonds, stocks and collective investment vehicles
- how a trustee should monitor the performance of an investment portfolio by comparing performance to the benchmark by
 - simple comparison, and/or
 - a detailed analysis of the securities that comprise the benchmark indices.

By the end of this module you should

- be able to explain why it is prudent for a trustee to delegate his powers of investment
- be able to identify the advantages of delegating the power to invest on a discretionary basis
- be capable of making an informed choice when appointing investment advisers/managers
- be able to establish the investment objectives of a trust and risk profile
- be able to set both a simple and a composite benchmark for the trust investments
- be able to understand and be able to give a basic description of different types of cash instruments, bonds, collective investment vehicles and equities
- be able to monitor meaningfully the performance of a trust portfolio by
 - comparing performance with the benchmark by simple comparison, and
 - making a detailed analysis of the securities that comprise the benchmark indices.

Module 8: Managing Trust Assets II – Real Estate

This module covers:

- the management requirements of a portfolio of real estate and a portfolio of stocks and shares in order to illustrate that ownership of real estate is more complex and involves more onerous and time consuming responsibilities
- how trustees establish the investment objectives of a trust that comprises real estate
- how and why it is necessary for trustees to appoint
 - a property investment manager and/or
 - a managing agent, in respect of real estate held in trust
- how to set a benchmark in order to measure the performance of real property held by a trustee both in terms of net rental income received and capital appreciation (or depreciation)
- how a real estate portfolio is created by the acquisition (and subsequent letting) of
 - commercial property
 - agricultural property and/or
 - residential property
- the importance of periodically monitoring the performance of a real estate portfolio.

By the end of this module you should

- appreciate that ownership of real estate is far more complex and time consuming, and involves far more responsibility, than ownership of a portfolio of stocks and shares
- be able to establish the investment objectives of a trust that includes real estate
- be able to decide whether it is necessary (and, if so, how) to appoint
 - a property investment manager, and/or
 - a managing agent
- be able to set a benchmark
- understand how a real estate portfolio is created by the acquisition (and subsequent letting) of commercial, agricultural and/or residential property
- be able to measure the investment performance of real estate held by trustees both in terms of net rental income and capital appreciation.

Module 9: Managing Trust Assets III – Chattels

This module covers:

- a trustee's duties in relation to, and some of the procedures involved in, accepting chattels into trust or otherwise acquiring them by way of
 - voluntary transfer and/or
 - purchase
- whether a trustee is empowered to invest in the purchase of chattels and consider whether it is prudent to do so
- ways to minimise risk when purchasing chattels and transporting works of art and antiquities (for instance, by making ownership searches and obtaining guarantees, opinions on attribution, valuations and export licences, if applicable)
- when and in what circumstances a trustee may acquire chattels for the purpose of enjoyment by a beneficiary
- some of a trustee's special duties in relation to chattels held in trust, including the duty
 - to prepare an inventory
 - to protect the chattels and keep them safe
 - to insure.

By the end of this module you should

- appreciate the extent of a trustee's duty, and the procedural mechanics involved, in accepting chattels into trust or otherwise acquiring them by way of
 - voluntary transfer, and/or
 - purchase
- be able to establish whether you, as trustee, have the power to invest in the purchase of chattels and consider whether it is prudent to do so
- know when to minimise the risks inherent in purchasing chattels and transporting works of art and antiquities across borders
- be able to establish when and in what circumstances a trustee may acquire chattels for the purpose of enjoyment by a beneficiary
- appreciate and comply with a trustee's special duties in relation to chattels, including the duty
 - to prepare an inventory
 - to protect the chattels and keep them safe
 - to insure.

Module 10: Managing Trust Assets IV – A Controlling Interest in the Settlor's Family Business Empire

This module covers:

- some of the reasons why a prospective settlor may wish to transfer the shares of his private trading or investment company into trust
- the standard of care owed by a trustee to monitor the affairs of a private trading or investment company (whose shares are held in trust) and to supervise the actions of its directors
- ways in which trustees may keep themselves informed of the company's business activities; and ways in which the trustees may interfere in management whenever they determine that action is required to protect the trust assets and the value of their shares
- some of the ways in which a trust may be established in order to protect the trustee by modifying the *Bartlett* duty to monitor the affairs of the underlying company, including
 - express provisions and standard exoneration clauses
 - an indemnity from the settlor
 - the use of a special purpose asset-holding vehicle, namely a company (with voting and non-voting shares) or a limited partnership (with general and limited partners)
 - the use of a private trust company
 - built in protection at the level of the private company
 - the use of modern offshore trust legislation
- estate planning options for the continued good management of the private trading or investment company after the settlor's death including
 - family succession to management
 - non-family succession to management
 - public flotation/IPO
 - a sale of the business as a going concern
- some of the dispositive provisions that may be included in a trust comprising shares in a private company, and related issues.

By the end of this module you should

- appreciate why a settlor may wish to transfer the shares in his private business to trustees
- be able to describe a trustee's standard of care to monitor the affairs of the business (held in trust) and supervise the actions of its directors, and to apply that test to typical factual situations
- be able to keep informed of the company's business activities and know how to interfere in

circumstances when you determine that action is required to protect the trust assets

- be able to modify the *Bartlett* duty (to monitor the affairs of the company) by the use of express exculpatory provisions in the trust instrument, indemnity, special purpose vehicles, private trust companies, etc.
- be capable of discussing estate planning options with a settlor for the continued good management of the company after his death
- be able to consider dispositive provisions of a typical trust of shares of a private company and related issues.

Module 11: Distributions – Law, Practice and Procedure

This module covers:

- a trustee's *duty* to distribute in accordance with the beneficial interests created by the trust, and his dispositive *powers* to distribute in his discretion
- the different types of beneficial interests that exist in trust property and how the beneficial rights of the beneficiaries correspond to the duties owed by the trustee
- some typical dispositive powers conferred upon a trustee by trust legislation, and by express terms set out in the trust instrument
- the duties owed by a trustee in relation to distributions of trust property, including the duties owed when exercising a dispositive power
- the factors to consider in the decision-making process in relation to the exercise of dispositive powers
- typical procedures involved in making distributions.

By the end of this module you should

- distinguish a duty to distribute and a power to do so
- be able to explain typical dispositive powers conferred upon a trustee by
 - trust legislation
 - common express terms of the trust instrument
- appreciate the rights enjoyed by the beneficiaries and the corresponding duties owed by the trustee in respect of different types of beneficial interests, particularly
 - a life interest
 - an interest in remainder
 - a contingent interest
 - an interest under a discretionary trust

- be able to comply with the trustee's duties when considering whether to distribute trust funds pursuant to a discretionary dispositive power
- be able to identify proper considerations that affect a trustee's decision-making process regarding distributions
- understand, and duly employ, appropriate distribution procedures typically adopted by trust companies.

Module 12: Offshore Tax Planning

This module covers:

- certain fundamental concepts for consideration such as the nature of tax and its justification in a sophisticated democracy, and how the levy of tax has always been a matter that is sovereign to each nation
- the importance of obtaining competent tax advice regarding the tax implications of all relevant transactions affecting the trust and the parties to and affected by the trust
- the tax advice you are given by in-house or onshore tax professionals
- a definition of effective tax planning and how the benefits can be preserved through best practice offshore trust management
- typical taxation principles applicable to individuals, trusts and companies and describe how offshore trustees and beneficiaries of offshore trusts may become subject to onshore tax
- a review, as examples, of the tax implications of offshore structures from the perspective of the UK and the US
- the extent of the anti tax avoidance provisions in the UK and US and describe how they affect traditional tax avoidance/mitigation techniques
- how the OECD and others are addressing unfair tax competition.

By the end of this module you should

- understand the broad principles of effective offshore tax planning and the pitfalls to be avoided
- appreciate the typical onshore taxation principles, with regard to residence, domicile and citizenship, for individuals, trusts and companies and be able to apply these principles to the day-to-day establishment and administration of offshore trusts and companies
- appreciate the importance of obtaining competent tax advice upon the taxation implications of all relevant transactions affecting the trust, including
 - its creation
 - investment of trust property

- distributions
- be able to explain some of the benefits of the UK as a potential tax haven for UK non-domiciliaries and some of the basic techniques to keep the investments outside the reach of UK tax
- understand the UK anti avoidance rules and reporting requirements as they relate to UK and non-UK resident domiciliaries
- understand the broad US tax environment and how these principles apply to the offshore activities of US persons and the onshore US activities of foreign persons
- understand the principles behind US withholding tax and the benefits of double taxation treaties, as well as the US anti avoidance rules and reporting requirements, as they relate to the accumulation of income abroad
- understand the key factors applied by OECD in identifying and assessing harmful preferential tax regimes.

Module 13: Confidentiality and Compulsory Disclosure of Information

This module covers:

- the concept of confidentiality and how it impacts upon a trustee
- when and in what circumstances a trustee is obliged to disclose trust accounts and other information
 - to beneficiaries
 - to the settlor
 - to the protector
- when and in what circumstances a trustee is obliged to disclose trust documents and other information as part of his public duties
 - to the regulator
 - to the money laundering authority
 - to the courts.

By the end of this module you should

- appreciate how and why the duty of confidentiality arose and how it affects the provision of financial services
- be able to ascertain when and in what circumstances a beneficiary is entitled to trust accounts and other information relating to the trust
- know when and in what circumstances a third party related to the trust, such as the settlor or the protector, is entitled to trust accounts and other information relating to the trust
- understand the extent of your public duty to disclose documents and other information

relating to the trust to the regulator, the money laundering authority and/or the courts.

Module 14: Variation and Termination of Trusts

This module covers:

- the extent to which provisions of an existing trust may be varied or terminated by the settlor, the trustees or the beneficiaries
- typical legislation that enables the court to approve a variation.

By the end of this module you should

- understand when and in what circumstances a trust may be revoked, varied or brought to an end by either one or more of
 - the settlor
 - the trustee
 - the beneficiaries
- appreciate when and in what circumstances the court may approve a variation of an existing trust.

Society of Trust
and Estate Practitioners

Diploma in International Trust Management

Trustee Investment and Financial Appraisal

Syllabus



Module 1: Trustee Investment: An Introductory Overview

This module covers:

- an introduction to the concept of investment and reviews some preliminary definitions
- the relationship between risk and return
- an introduction to the financial markets and an explanation of their broad purpose, that is, to act as a marketplace where governments and commercial trading entities in need of capital can meet investors with money to invest, in order to raise capital by way of
 - loan
 - issuing bonds
 - selling equity
- a review of the role of a professional trustee carrying on trust business from an international financial centre in relation to the investment of trust property
- the need to consult experts or delegate the trustee's investment powers
- an identification of the three essential components of a balanced portfolio, namely
 - liquidity
 - stability, and
 - growth.

By the end of this module you should

- have developed some basic knowledge of investments
- appreciate the relationship between risk and return and understand how risk-averse and risk-tolerant investors behave
- understand the broad purpose of the financial markets
- appreciate the role of a professional trustee in relation to the investment of trust property, and in particular to appreciate the need to consult experts or delegate the trustee's investment powers
- be able to identify the three essential components of a balanced portfolio namely
 - liquidity
 - stability
 - growth.

Module 2: Investing in Cash and the Money Markets

This module covers:

- a review of a trustee's options when investing trust funds in liquid assets (so that cash is readily available in order to cover foreseeable expenses and immediate needs)
- a description of the common types of account used for holding cash
- an analysis of some of the component parts of the money markets, namely
 - the inter-bank market
 - the money market securities market
- an introduction of the money market securities market and, in particular, a review of the salient features of Treasury bills, negotiable certificates of deposit and commercial paper
- an explanation of how a trustee may gain access to the money markets by
 - retaining money market brokers
 - opening a money market account, or
 - via a money market fund.

By the end of this module you should

- appreciate the options available to trustees when investing trust funds in cash or an equivalent liquid security in order to cover immediate needs
- be able to describe the salient features of the common types of account used for holding cash
- understand some of the component parts of the money markets, namely
 - the inter-bank market
 - the money market securities market
- appreciate the features of the main money market securities
- be able to gain access to the money markets with the assistance of money market brokers or via a money market account or fund.

Module 3: An Introduction to the Bond Markets

This module covers:

- an introduction to the concept of debt
- the general characteristics of a bond
- an exploration of some of the technical features of, and terminology used in, the money and bond markets
- an analysis of the behaviour of bond prices and an identification of factors that influence the price of a bond and the rate of interest payable to a bondholder, namely
 - risk
 - maturity date
 - liquidity

- supply and demand
- rate of inflation

- a review of the yields, distinguishing the *coupon rate* of interest payable on a bond, its *current yield* and its *yield to maturity*, by taking into account
 - the price paid for, or the value of, a bond (rather than its face value)
 - its redemption value upon maturity
- a description of the credit rating system that acts as a guide to investors in order that the markets may appreciate the risk and assess an appropriate yield.

By the end of this module you should

- appreciate some of the technical features of, and market terminology used on, the bond markets
- be able to analyse what is meant by the rate of interest payable to an investor who has lent money to a borrower on the financial markets
- have an understanding of the behaviour of bond prices generally and identify factors that affect bond prices and their yields
- be able to distinguish coupon interest, current yield and yield to maturity
- be able to use the credit rating systems as a guide when investing trust funds in order to assess risk and an appropriate market rate of interest.

Module 4: Types of Bond

This module covers:

- a comparison of the money and bond markets
- domestic and the international (Eurobond) bond markets
- a description of the different types of bond, namely
 - government bonds
 - semi-sovereign bonds such as municipal, local authority and public sector bonds
 - corporate bonds and their many variations including callable, puttable and convertible bonds, debentures and warrants
 - mortgage bonds and other asset-backed securities
 - foreign bonds
 - junk bonds
- the historical background to the emergence and growth of Eurodollars, Eurocurrencies and Eurobonds
- the Eurobond market
- an exploration of the meaning of, and practice relating to
 - currency and interest rate swaps
 - coupon stripping.

By the end of this module you should

- appreciate the features of the money and the bond markets
- be able to distinguish between the domestic and the international (Eurobond) bond markets
- be capable of explaining the central characteristics of different types of bond, categorised according to the issuer
- understand price quotations
- be able to explain the historical background to the emergence and growth of Eurodollars, Eurocurrencies and Eurobonds and appreciate the importance of the Eurobond market
- realise that there are many variations on the Eurobond theme
- understand the meaning and purpose of, and practice relating to currency and interest rate swaps.

Module 5: The Equity Markets

This module covers:

- the concept of equity finance and compares it with debt
- the characteristics of stocks, a comparison of common stock with typical features associated with preferred stock and a look at other market categorisations
- the primary and secondary equity markets
- the regulation of, and the practices and procedures common to most of the world's major primary equity markets
- the common practices and procedures of some of the world's major secondary equity markets
- the performance of equity markets by consulting indexes and averages
- the challenges faced by traditional stock exchanges.

By the end of this module you should

- appreciate the main characteristics of stocks
- understand the broad characteristics of some of the world's equity markets
- be able to distinguish between the primary and secondary equity markets
- understand the common practices and procedures of the primary equity markets when a corporate raises capital in exchange for the issue of new stock by way of
 - a new issues of shares
 - rights issues
 - scrip issues and splits
- understand the common practices and procedures of the secondary equity markets when investors trade shares on an exchange including

- how shares are traded by operating brokerage accounts
- how the exchanges work
- the clearing and settlement of trades
- be able to establish the measurement, the performance of equity markets and monitor individual investment portfolios by consulting indexes and averages.

Module 6: Investment Analysis

This module covers:

- a consideration of the role of the investment analyst
- the distinct schools of thought to which analysts belong
- a description of a number of popular investment systems, such as
 - the Dow theory
 - the relative strength system
 - the filter system
 - the price volume system
 - the diversify, buy and hold strategy
- a consideration of some of the significant investment theories upon which investment systems may be based, namely
 - modern portfolio theory
 - the capital-asset pricing model using beta coefficients
- an explanation of an analyst's recommendations.

By the end of this module you should

- be familiar with the role of an investment analyst
- appreciate the difference between the fundamental analyst and the technical analyst (or *chartist*) and the two schools of thought to which they belong
- be aware of a number of investment systems used by technical analysts
- understand in broad terms what is meant by the efficient market hypothesis
- be able to explain the concepts of modern portfolio theory, the capital-asset pricing system and beta coefficients
- understand an analyst's recommendation.

Module 7: Financial Appraisal and the use of Ratio Analysis

This module covers:

- the concept of financial appraisal
- the use of ratio analysis
- important solvency ratios, namely
 - net worth calculations
 - the current ratio and quick liquidity ratio
 - debt to equity ratios
- the main profitability ratios, measuring
 - return on assets
 - return on equity
 - profit margin
 - asset turnover
- the main investor ratios, namely
 - earnings per share
 - dividends per share
 - the payout ratio (dividend cover)
 - dividend yield
 - the P/E ratio
 - earnings yield.

By the end of this module you should

- understand how ratio analysis can assist an investor and an investment analyst in deciding which stocks to buy, hold and/or sell
- be able to calculate, and interpret the meaning of, a number of the solvency, profitability ratios and those ratios specifically concerned with returns to the investor
- appreciate how analysts appraise a company and assess its solvency, liquidity, profitability, leverage, efficiency, growth, and whether its stock price offers value for money
- appreciate some of the limitations of ratio analysis as a tool for comparison.

Module 8: Collective Investment Funds

This module covers:

- an introduction to collective investment
- the advantages of collective investment funds
- the different legal structures adopted by collective investment funds
- a review of some of the more usual investment strategies that may be followed by a fund manager and a description of special types of fund
- how to buy shares in a collective investment company and an emphasis of the importance and content of the prospectus
- how to monitor performance of a mutual fund and an analysis of mutual fund quotations and typical performance figures

- the circumstances in which investment funds may be a useful investment medium for a trustee with trust funds to invest.

At the end of this module you should

- be familiar with the concept of collective investment vehicles
- be able to explain the advantages of collective investment
- understand the different structures adopted by collective investment companies
- be able to interpret investment strategies published by investment fund managers
- appreciate how to buy and sell shares in a mutual fund company
- be familiar with mutual fund quotations and appreciate how to monitor the performance of a typical fund
- appreciate how and in what circumstances collective investment funds may be used by a trustee with trust funds to invest.

Module 9: Options and Derivatives Markets

This module covers:

- derivative products and outlines who invests in them, where and with what objectives
- options and a review of the standard terms of options contracts
- a review of stock options and ascertains typical rights acquired by purchasing call and put stock options
- an exploration as to when and in what circumstances a stock option should be abandoned, exercised or traded
- an explanation of the value of options by breaking their value down into an *intrinsic* value and a *time* value, to ascertain whether the premium sought by option writers is fair
- other types of options, specifically those derived from
 - an index
 - bonds
- typical, and some esoteric exotic, option strategies for the sophisticated investor.

By the end of this module you should

- appreciate the character of derivative products and know who invests in them, where and with what objectives
- understand the topic of stock options and appreciate typical rights acquired by purchasing *call* options and *put* options
- be able to explain when and in what circumstances an option may be abandoned, exercised or traded

- understand how option premiums are priced and be able to break the value of an option down into an *intrinsic* value and a *time* value in order to analyse the pro's and cons of the various options available for a particular stock
- appreciate the concept of index options and how they may be used to hedge or speculate upon anticipated movements in the market as a whole
- be able to translate your basic understanding of stock options to cope with issues arising in relation to options to buy or sell bonds, and appreciate how the concept of bond (or interest rate) options can be used to hedge or speculate upon anticipated movements in interest rates in an economy
- be able to describe a sample of typical and/or esoteric option strategies for the sophisticated investor.
- understand the nature of commodity futures, know how and why they are traded, and be able to distinguish between
 - the cash markets
 - forward contracts and
 - futures
- be able to appreciate the nature of financial futures, know how and why they are traded, and be able to distinguish between
 - bond futures, often referred to as interest rate futures, and
 - stock index futures.

Module 10: Futures

This module covers:

- the futures markets and traces their evolution through cash markets, to forward contracts and into the modern futures markets first established in Chicago in the nineteenth century
- the identification to the users of the futures markets, namely the hedger and speculator, and to explain typical hedging techniques and the relationship between prices in the hedge market and prices in the physical market
- the commodity futures and financial futures
- the definition of a commodity futures contract, and an explanation of typical practices, procedures and investment strategies and, in particular, illustrate how futures contracts may, in due course, be closed out
- financial futures, in particular define and explain typical practices and strategies of
 - bond (sometimes known as interest rate) futures, and
 - stock index futures.

By the end of this module you should

- understand the nature of futures and futures trading and appreciate the rationale behind the futures market, namely that it enables an investor
 - to hedge against future adverse price movements or
 - to speculate thereon
- be able to explain hedging techniques and discuss the relationship between prices in the hedge market and prices in the real or physical market

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