



Have a ‘lotto’ trust in your lawyer?

It took Mr S. Gayle 6 weeks to claim his J\$240M lottery jackpot, the biggest ever in the game’s history. That’s how long he needed to relax and sort himself out, and of course, buy a wig and fake beard. There are at least 7 million reasons (before tax) why the first call that any lottery winner should make is to his lawyer.

The lotto rules provide that Supreme Ventures Ltd has the right to publish the names, addresses and photographs of the jackpot winners.

It is thought that revealing their identities will earn public confidence and make the game appear more winnable. Winners are therefore left to contemplate the price of privacy and the art of anonymity. In some countries, lottery winners can create a blind trust – a type of company or partnership set up specifically to claim winnings on behalf of anonymous beneficiaries. Jamaica isn’t one of those countries. There is, nonetheless, no barrier to a local lottery winner hiring a person to act as trustee and collect the winnings on his or her behalf.

A trustee is a person who holds the legal title to assets on behalf of another person or persons who have the beneficial interest in the asset. A trust is often created by way of a trust deed that will, among other things, identify the asset to be held in trust, the purpose of the trust and the persons to benefit from the trust. Virtually any asset can be held on trust for another, including lottery winnings.

A lottery ticket is a type of bearer instrument, similar to a cheque made out to “cash”. Only the person who has signed the back of the ticket can claim the jackpot. A person holding an unsigned lottery ticket may wish to consult with an attorney to draft the appropriate trust documents to appoint a trustee (who may or may not be the same attorney). The trustee would then sign the back of the lottery ticket, thereby entitling him to claim the winnings in his own name. The trustee would participate in the photo shoot (wig and sunglasses optional) before making the payout to the beneficiary in accordance with the terms of the trust deed. The trust deed would contain special clauses to protect the privacy of the beneficiary throughout the entire process.

Some might wonder whether they really need a lawyer or a trust to send someone, such as a friend or family member, to claim their winnings for them. If you are one of these people, consider the following:

If you place your confidence and your money with a friend, you will probably lose all three. Most good friends are only better than pocket money, not lotto money. If you send a family member to collect, you might end up as a target for kidnappers. The truth is that your money alone will set you free.

In general, gifts of money are subject to income tax, which could result in the same winnings being taxed twice – once in the hands of the friend or family member and again in the true winner's hands.

To combat money laundering, financial institutions will require proof of the source of funds when unusually large deposits are made. They are unlikely to be satisfied with a note from your friend, unless your friend is a banker or lawyer or similarly qualified to vouch that the money is not the proceeds of crime.

Lottery winners who might be fearful that their lawyer might dash with the cash should take comfort in the fact that the vast majority of lawyers consider their reputations and integrity to be priceless. Further, if your lawyer is a member of a firm of attorneys, each of the partners would be liable if any one of them breached the terms of the trust and stole a client's money. The identity of a client is also something that is protected by attorney-client privilege and should only be divulged by the lawyer in limited circumstances. Certain events recently reported in the media will attest to the lengths to which some lawyers will go to keep the true identity of their clients secret.



Some may wonder if Supreme Ventures Ltd might try to block the use of lottery trustees. Perhaps it would not, for 3 good reasons. Firstly, persons who didn't play because of a fear of the camera and the sudden affection of distant relatives might be encouraged to play if they had a lottery trustee. Secondly, it would encourage more persons to play as groups without there being any question of sending any one player to collect the winnings on behalf of the rest. Thirdly, Supreme Ventures Ltd might actually be able to take and publish a decent photo of a 'winner'.

A lotto ticket could very well be a ticket to your dreams. Some dreams, however, are best kept secret.

Gavin Goffe is a litigation associate at Myers, Fletcher & Gordon and a member of its Tax Practice Group. Gavin may be contacted at gavin.goffe@mfg.com.jm or through www.myersfletcher.com