

An overview of the types and uses of Jersey law trusts

Briefing Summary: In this briefing, our Jersey Trusts and Private Wealth lawyers outline the types and uses of Jersey law trusts, including discretionary trusts, non-charitable purpose trusts and settlor reserved power trusts.

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A trust is a legal arrangement which distinguishes between the legal ownership and the beneficial ownership of property. Legal ownership is transferred to a trustee who manages and administers the property for the benefit of the beneficiaries, or for the furtherance of certain purposes. It is an arrangement intended for the safekeeping, management and eventual disposal of property.

Jersey is a leading jurisdiction for the establishment and management of trusts. The Island has a large and well-qualified professional trust sector, modern trusts legislation and an effective judicial system. It is also recognised as being in the top division of international finance centres in the regulation and supervision of its financial services industry.

The Island offers fiscal neutrality for trusts established for non-Jersey resident beneficiaries.

Trusts terminology

The settlor or grantor of the trust is the original owner of the assets to be placed on trust. The settlor creates the trust and may also benefit under its terms. Subject to certain conditions, a settlor may also act as a trustee of the trust, although this is rare in the context of Jersey law trusts established for non-Jersey resident beneficiaries.

The trustees are the individuals or company to which the legal ownership of the property is transferred and who are authorised to hold, administer and distribute such assets in accordance with the terms of the trust instrument and the Trusts (Jersey) Law 1984, as amended (the "Trusts Law").

Generally in Jersey, trusts are administered by professional corporate trustees regulated by the Jersey Financial Services Commission.

Key Contacts



Keith Dixon
PARTNER, JERSEY
+44 (0)1534 822380



Alexa Saunders
PARTNER, JERSEY
+44 (0)1534 822410

[EMAIL KEITH](#)

[EMAIL ALEXA](#)



Victoria Connolly
COUNSEL, JERSEY
+44 (0)1534 822317



Stephen Fitzgerald
COUNSEL, JERSEY
+44 (0)1534 822253

[EMAIL VICTORIA](#)

[EMAIL STEPHEN](#)

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A trust is normally documented by a trust instrument which sets out the terms on which the settlor and the trustees have agreed that the trustees will hold and administer the trust fund. The trust instrument identifies the beneficiaries of the trust, that is, those persons intended to benefit from the trust fund or those purposes the trust was established to further. The trust instrument usually only refers to an initial nominal sum settled on the terms of the trust but its terms apply equally to subsequent property settled on the trust.

Jersey trusts law

Jersey's principal trusts legislation is the Trusts Law which is supported by a body of case law from the Island's courts.

Common types of Jersey trusts

In a private wealth context, the following are the most common types of Jersey law trusts used.

Discretionary trusts

Whilst some settlors wish to specify in the trust instrument the precise circumstances in which beneficiaries are to be given the income and/or capital of the trust fund, most settlors prefer to give trustees sufficient flexibility to take account of changes in circumstances of the beneficiaries.

A "fully discretionary" trust gives the trustees wide powers to administer the assets and to distribute them at their absolute discretion. The trustees of a "fully discretionary" trust will usually be guided by a letter of wishes from the settlor which sets out the settlor's wishes regarding the manner in which the trust fund is to be administered and distributed. Although not legally enforceable, the trustees would normally exercise their powers in accordance with a letter of wishes from the settlor, which can be updated from time to time.

Non-charitable purpose trusts

It is possible for Jersey law trusts to be established partly or wholly for non-charitable purposes. Purpose trusts can be used in corporate transactions to hold underlying assets 'off balance sheet'. More commonly in a private wealth context such trusts can be used to protect family heirlooms or to hold certain assets such as the shares in a family trading company. An enforcer is required to be appointed to enforce the terms of a trust in relation to its non-charitable purposes.

Settlor reserved power trusts

It is possible for a settlor to reserve certain powers for himself or herself under the terms of a trust instrument. Such powers may include the power to give binding directions to the trustees in relation to the investment of the trust fund, the power to vary or amend the terms of the trust, the power to remove a trustee and the power to change the proper law of the trust.

Typical features of Jersey trusts

Whilst it is not possible to cover the features of all trusts in this guidance note the points below are worth noting:

Revocability of trusts

A Jersey trust may be revocable or irrevocable. If a trust is revocable, the settlor may terminate the trust and regain ownership of the trust fund held on trust on the date revocation takes effect. The fiscal regimes of several countries regard any property held under a revocable trust as still belonging to the settlor for tax purposes and so careful advice is required if a trust is to be revocable in nature.

An irrevocable trust cannot be revoked. Generally, this is the preferred form of trust settled under Jersey law.

The use of protectors

The settlor of a discretionary trust may wish to ensure certain controls are placed around the key powers of the trustees. This can be achieved by requiring the trustees to obtain the consent of a third party before exercising such powers.

Such a third party often described as the "protector" of the trust. The rights and obligations of a protector vary from trust to trust and are normally set out in the trust instrument. Often, the protector is a close friend, relative or trusted professional adviser of the settlor.

Common powers which are made subject to protector consent include the trustees' power to appoint new trustees, the addition and removal of beneficiaries and the payment of income and/or capital from the trust fund.

Trust period

A Jersey law trust may exist for a limited or unlimited period of time.

Practical uses of trusts

Jersey trusts are generally used by individuals and companies for personal, business and investment activities. It is important that any structure is properly established and professional advice is sought in each jurisdiction which affects the settlor, the beneficiaries and the trust fund. The following examples outline some of the practical ways in which trusts can be used:

Asset management and protection

Settlors capable of handling their own investments may be concerned about the ability of their heirs to do so after their death. A trust can be established reserving investment powers to the settlor during his lifetime. On the death of the settlor, either a person nominated by the settlor or the trustees may assume responsibility for the investment of the trust fund.

Settling assets onto trust can also serve important asset protection functions, so long as the trust is not established with the intention of defrauding creditors and the settlor does not reserve to himself unrestricted powers to revoke the trust or otherwise recover trust assets. Transferring assets to a trustee on the terms of a discretionary trust can serve to ensure that the assets are not available to creditors and that the assets are protected in the event of family breakdown among members of the beneficial class.

Avoidance of probate formalities

Assets owned by an individual usually pass on death in accordance with the terms of a will. If the assets are held in a wide variety of countries it may be necessary to obtain a grant of probate to the will in each country where assets are located. This can be onerous, expensive and time-consuming. In addition, there may be estate duties and taxes payable before the estate can be settled and the assets distributed to the heirs of the deceased.

However, if such assets are held in a trust, they can continue to be held for the benefit of succeeding generations in accordance with the terms of the trust instrument. The death of the individual should have no detrimental consequences for the continued operation of the trust.

Forced heirship

Assets held in a trust can be distributed in any manner that the settlor desires. An individual from a country with rigid legal or religious inheritance laws may wish to arrange for a distribution of assets on his death, different to that required under the law. By establishing a trust outside that country in Jersey, and depending on the location of the assets that will constitute the trust fund, the desired distribution plan can often be formulated and implemented.

Privacy, confidentiality and anonymity

Trusts are generally created by a private document to which the settlor and the trustees are the only parties. The trust instrument does not have to be filed with any public body in Jersey and information relating to the trust is not accessible by the general public. There are however certain exceptions to this, in particular, beneficiaries of a trust may be entitled to financial information relating to the trust.

Prevention of division of assets

An individual who has built up a sizeable private company may have some children who are interested in the running of the business and some who are not. The individual may wish to benefit the children equally but would not like any of them to be able to dispose of their interest in the family company to non-family members. Such arrangements can be achieved through the use of a trust.

Family assets may also take the form of works of art or real estate which, by their nature, cannot be divided but from which a number of individuals benefit. Such property can be held in trust for the beneficiaries without disturbing the underlying property.

Control of spending

In some cases, individuals may be unfit to manage their own affairs due to age, infirmity or profligacy. A trust structure can allow trustees to help in the management and preservation of wealth by controlling the manner in which trust funds are spent.

Commercial uses

There are also a range of uses to which trusts are put in the commercial sphere, including trusts established:

- for conferring benefits and incentives on employees (eg employee benefit trusts);
- as a vehicle for the administration of pension funds;
- as a platform for investment funds allowing investors to spread risk by acquiring limited stakes in a large portfolio of investments (eg a unit trust);
- to hold security over a borrower's assets for the benefit of lenders under syndicated loans; and
- as an 'orphaning' mechanism to hold assets 'off balance sheet', and in the creation of 'bankruptcy remote' structures.

Jersey taxation of trusts

In Jersey, the taxation rules for trusts are relatively straightforward provided the beneficiaries of the trust are not resident in Jersey. In general terms the position is as follows:

- trusts with no Jersey resident beneficiaries are only liable to tax on Jersey source income;
- by concession, Jersey bank deposit interest is not treated as Jersey source income when received by trustees of a trust with no Jersey resident beneficiaries; and
- if a beneficiary of a trust with no Jersey resident beneficiaries becomes resident in the Island, action must be taken to vary the trust, for example by restricting that individual to benefit from an isolated fund in the trust, if the trust's entire income is not to become subject to Jersey income tax.

Conclusion

A trust is a flexible arrangement which can be structured to meet the objectives of a settlor. Tax advice should be obtained by the settlor and in some cases the beneficiaries before a trust is established, to ensure the terms of a trust are tailored appropriately.

Carey Olsen Jersey LLP is registered as a limited liability partnership in Jersey with registered number 80.

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